



5 Most Significant Gig Economy Developments In September

Insights

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Gig economy companies across the country had a whirlwind September, as legal developments impacting their business models continued to unfold. Here are the five most significant workplace law developments in the gig economy world from the past month.

- **Labor Department Unveils Rule That Would Boost Gig Economy.** The biggest news in the past month for gig economy companies came on September 22 when the Department of Labor issued a new proposed rule that would make it easier for workers to be classified as independent contractors. The proposed test looks to the “economic reality” of each workplace relationship by weighing five simple factors and determining whether the worker is in business for themselves (and thus a contractor) or economically dependent on the hiring entity (employee). The agency took the time to explain that technological and social changes have brought about the need for a revisit to the classification test, including several factors that gig economy companies will be quite familiar with (falling transaction costs, a transient and non-permanent workforce, the rise of a knowledge-based economy, the desire for a more flexible working relationship, the development of innovative work arrangements, etc.). You can read our full alert on the subject here.
- **Nomination Of New SCOTUS Justice Could Bring Gig Economy Issues Front And Center.** When the president nominated Amy Coney Barrett to be the next Supreme Court Justice on September 26, most legal observers looked to high-profile controversial issues such as religious freedoms, reproductive rights, and the future of the federal healthcare statute as the main items to pay attention to. But gig economy companies should also be aware that Judge Barrett has a key role to play in a critical issue that has been brewing across the country this past year. In August, Judge Barrett authored an opinion for the 7th Circuit Court of Appeals handing Grubhub – and gig economy companies in general – a pivotal victory. She narrowly interpreted an exception allowing certain transportation workers (including independent contractors) to escape arbitration agreements, and concluded that gig workers cannot avoid arbitration provisions by claiming they are exempt transportation workers. Given that other federal appeals courts have ruled in a contrary fashion, there is a chance this issue could bubble up to the Supreme Court someday soon.
- **Polling Shows California Voters Narrowly Support Gig Economy Ballot Measure.** A recent poll released by Berkeley IGS shows a slim lead for a California ballot measure that would scrap the infamous ABC test and institute a worker classification standard that would ensure the average

gig economy worker could be treated as an independent contractor. [According to the September 23 release](#), 39% of likely voters have lined up to support the measure while 36% said they will oppose. This means that a large swath of the electorate is as of yet undecided – a full quarter of respondents – meaning October will be a crucial month for the campaigns.

- **More Workers Exempted From California Misclassification Law...But Gig Workers Don't Yet Escape Reach.** As summarized by Sacramento partner Ben Ebbink, [a new law just went into effect that revises California's test for determining whether a worker is considered an employee or an independent contractor](#). It slices off a number of various work arrangements from having to comply with the stringent ABC test. The bad news is that the new list of exemptions doesn't go as far as most businesses – especially gig economy businesses – would have liked. The good news is that the new law creates a better situation for “business to business” arrangements that had been troubled by California's recent adoption of the ABC test. What do California businesses need to know about this latest development? [Read more here to find out](#).
- **Seattle Joins NYC In Requiring Gig Worker Minimum Wage.** Seattle followed [New York City's lead](#) and became the second city in the nation to set a minimum wage for app-based rideshare drivers. [The City Council unanimously voted on September 29](#) to adopt new rules that will take effect on January 1 and require transportation network companies to pay drivers at least \$0.56 per minute any time a passenger is in their vehicle. It will also require the companies to pay a per-mile rate to cover expenses.

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