California Appeals Court Orders Rideshare Drivers To Be Classified As Employees

Insights
10.23.20

Rideshare companies in California have now been ordered by an appeals court to reclassify their drivers as employees, threatening to upend the very foundation of the gig economy business model that offers flexibility and freedom to workers and businesses alike. Yesterday's ruling by the California Court of Appeal upholds the injunction granted several months ago by a state court judge in San Francisco against the two biggest ridesharing companies in the country. But once again there is a silver lining to yesterday's developments that provides a glimpse of hope for these businesses and gig economy companies in general – the order will not go into effect immediately, meaning that a ballot measure that will be decided on Election Day could permit their business models to survive despite the judicial setback.

Prong B Once Again The Weak Link

Just as with the state court ruling, yesterday's decision from the Court of Appeal focused on Prong B of the ABC test to conclude that the rideshare drivers were likely misclassified as independent contractors. As most know by now, California state law requires businesses to meet a three-part standard to prove their workers are independent contractors. The test requires companies prove these three elements:

1. The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
2. The person performs work that is outside the usual course of the hiring entity's business; and
3. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

The companies argued that they satisfy Prong B because they aren't actually in the transportation industry, and thus rideshare drivers perform work outside the usual course of their business. Instead, they said, they operate digital platforms that match drivers with the opportunity to perform services for willing riders. They view themselves as simply operating the software tools that facilitate the connection. An expert witness who provided testimony in the case said that such services make rideshare businesses "network companies" that connect independent service providers and consumers, where the independent service provider is hired by the consumer to provide a one-time service. Think of us as "matchmakers," the companies said, not rideshare companies.

But the Court of Appeal wasn't having it. "A number of cases have considered contentions that ride-sharing companies are in the business solely of creating technological platforms, not of transporting passengers, and have dismissed them out of hand," it said. It then ran through a list of other courts that have been confronted with this same argument but rejected it, including federal courts in California and Massachusetts (two states that have adopted the ABC test). The facts as outlined in the case supported the conclusion, the court said, that rideshare drivers perform services for the companies in the usual course of the businesses. "Defendants' businesses depend on riders paying for rides. The drivers provide the services necessary for defendants' businesses to prosper, riders pay for those services using defendants' app, and defendants then remit the drivers' share to them," it said.

Two More Shots At Success

Yesterday's ruling upheld the injunction that forces the companies to reclassify their drivers to employee status. But there are two final chances available to gig economy companies to prevent this foundational shift to occur.

- The ruling said that the businesses have 30 days to comply with the ruling once the appeals process finishes. As noted in CNN Business, "that clock typically starts 61 days after the appellate court transfers jurisdiction back to the trial court, assuming the opinion is not challenged," which gives us a several-month window before the order will go into effect. Even if that timeframe is accelerated, California voters are already casting their ballots on a measure that would cast aside the ABC test and ensure the average ride-sharing driver (and gig worker) would be classified as an independent contractor. In other words, if voters approve Proposition 22 in less than two weeks, this entire judicial proceeding will be rendered moot and the companies can proceed with business as usual.
- And if voters reject the measure? The companies can still take one final shot by requesting final review by the California Supreme Court. One business indicated that it was considering its appeal options after yesterday's ruling, and certainly this is a strategy that could come into play and be the ultimate deciding voice on the matter.

We'll monitor this case – and the election results – and provide updates as developments occur.

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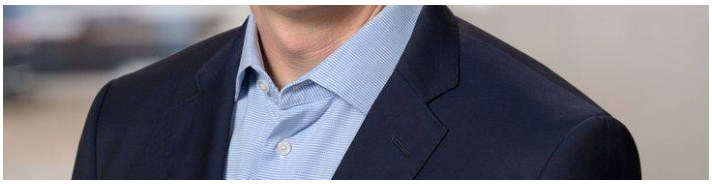

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