



# In Big Win For Gig Companies, California Voters Approve Proposition 22

Insights

11.03.20

In one of the most closely watched (and most expensive) fronts in the ongoing battle over employment classification of gig workers, California voters appear to have approved Proposition 22, a ballot measure that confirms the independent contractor status of certain rideshare and delivery drivers. While likely not the end of the debate, the passage of Proposition 22 is a big win for the gig economy as it may have ripple effects across the industry.

## Why Was This Ballot Measure Needed?

We previously wrote about this ballot measure when it was unveiled in October 2019, and when it garnered the necessary signatures to qualify for the ballot. Following the California Supreme Court's *Dynamex* decision and the subsequent codification of the "ABC test" in AB 5, California utilizes the most stringent test in the nation to determine whether an individual is an employee or an independent contractor. Rideshare and delivery gig companies attempted unsuccessfully to reach a legislative compromise to loosen the reins, and therefore subsequently appealed directly to the voters with Proposition 22.

## What Does Prop 22 Do?

Similar to the laws passed in other states, Proposition 22 establishes independent contractor status for app-based drivers provided that the hiring entity:

- Permits the worker to select their own dates, times, and hours of work;
- Allows the worker to reject a request for an assignment any time they want;
- Lets workers perform services for any other company, including direct competitors; and
- Does not restrict the worker from performing any other kind of work.

The new law requires a minimum earning guarantee of at least 120% minimum wage, as well as healthcare subsidies consistent with employer contributions under the ACA for all those driving 15 hours per week or more. Further, workers will receive expense reimbursements including 30 cents per mile for gas and wear-and-tear, and insurance to cover on-the-job injuries.

Besides these benefits, the initiative requires gig economy companies to enter into written agreements with their workers that ensure workers are not terminated except for reasons specifically enumerated in the contract. Moreover, companies need to provide an appeals process

for app-based drivers whose contracts are terminated. Companies are also required to adopt and enforce strict anti-discrimination and anti-harassment policies, and provide safety training to app drivers for their protection.

### **Big Picture: What Does This Development Mean?**

On the heels of a series of recent court setbacks involving various litigation against some of the larger rideshare and delivery companies, the victory of Proposition 22 is a big game-changer for the foreseeable future, especially in California. It largely confirms the ability of covered companies to continue to classify drivers as independent contractors, regardless of AB 5, *Dynamex*, or the ABC Test. And it will be virtually impossible for the California Legislature to intrude further – the initiative requires a “super-duper majority” 7/8th vote of the legislature for any changes to its provisions.

The bigger question will be whether the passage of Proposition 22 has larger ramifications for the overall debate over employment classification in California – and beyond. Even though gig companies were the primary “target” of efforts in the courts and the legislature to change the rules regarding classification, almost every employer in the state was caught up in the changes codified by AB 5 (unless they were granted an exception). With the big rideshare and delivery companies now “off the hook” so to speak, will there be more pressure in the legislature to provide relief to the scores of businesses that were not the primary focus of the law? Or will labor entrench further and try to protect what still remains from AB 5?

Looking beyond California’s border, what will this victory mean for the misclassification question across the country? Will this ballot measure victory encourage similar campaigns to reverse the law in other states that have restrictive misclassification tests (New Jersey, Massachusetts, etc.)? And depending on the federal election results, will this development spur congressional action to seek a national version of an ABC test?

Only time will tell. We will keep you posted on further developments here. While today’s news represents a big victory for gig companies, this likely is not the end of the story.

### ***Related People***





**Richard R. Meneghello**

Chief Content Officer

503.205.8044

Email