



# Judge Strikes Down California's Prop 22 – Will Gig Companies Need to Classify App-Based Drivers as Employees?

Insights

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In an unexpected blow to gig economy companies in California, a state court judge just reversed the will of voters and overturned the law created by ballot measure that ensured that app-based rideshare and delivery drivers could be classified as independent contractors. Ruling that Prop 22 – which garnered 58% of votes in last November's election – was unconstitutionally impermissible in several respects, Alameda County Superior Court Judge Frank Roesch issued an opinion late Friday that throws the status of California's workers classification system into chaos. His ruling may mean that many gig economy workers may need to be instead classified as employees, even if they prefer the freedom and flexibility of independent contractor status. What did the judge rule and what are the next steps in this critical battle?

## Reminder: What Does Prop 22 Do?

California voters overwhelmingly passed Prop 22 in November 2020 after the state legislature passed the nation's strictest classification test in 2019 that forced just about every gig economy company to classify their workers as employees. The ballot measure established 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 law also 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 covered by Prop 22 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.

You can read more detail about the ballot measure in the Insights we posted at the time it passed here ([In Big Win for Gig Companies, California Voters Approve Proposition 22](#)) and here ([5 Biggest Questions After California Voters Pass Landmark Gig Economy Law](#)).

## **Judge Strikes Down Ballot Measure**

Shortly after Prop 22 went into effect, [a group of workers and a union filed suit to overturn the ballot measure](#). They took their challenge to the California Supreme Court, which [declined to take up their lawsuit and instead told the workers and union to start their journey at the lowest state court level](#). As we noted at the time, the Supreme Court's denial to hear the case was [without prejudice](#), which meant the workers and union could still seek to challenge Prop 22 by refiling its case with a lower court.

The challengers took this route and found a receptive audience in Alameda County Court. The judge agreed with their three main arguments in his August 20 ruling:

- **Inappropriate Intrusion into Lawmaking:** He agreed that the measure inappropriately shackles state lawmakers, preventing them from implementing a system of workers' compensation for those workers swept up in the new standard.
- **Unconstitutional Attempt to Restrict Amendments:** He also ruled that the ballot measure violated the state constitution by defining an invalid system to amend the measure. The measure included a provision requiring a 7/8 legislative "super-duper majority" to amend any portion of the new law, which the challengers claimed "impermissibly usurped this Court's authority to 'say what the law is' by determining what constitutes an 'amendment.'"
- **Ballot Measure Addressed Too Many Issues:** Finally, the judge agreed that Proposition 22 violated state law by including more than a single subject, thereby creating possible voter confusion. He concluded that the common "theme, purpose, or subject" of the ballot measure was to protect an opportunity for Californians to drive their cars for delivery purposes on an independent contract basis while receiving minimum welfare standards and being required to follow consumer protection and safety standards. But by also blocking Prop-22-covered workers from being able to collectively bargain, he ruled that the ballot measure veered too far from its purpose and addressed too many issues, rendering it inappropriate and invalid.

## **What's Next?**

No doubt those companies – and perhaps some workers who preferred the independent contractor model – will challenge this ruling at the appeals court stage. And almost certainly we can predict that the ruling at that level will not be the final word on this matter, and the issue will ultimately be

decided by the California Supreme Court. However, the wheels of justice grind slowly, and such a final decision should not be expected until 2022 at the earliest.

Until then, it is possible that the companies impacted by this ruling could seek and receive a “stay” from a trial court or even the appeals court placing this ruling on ice until a final decision is reached by the Supreme Court. The ruling from the Alameda County Court will not take effect for at least 10 days as the parties sort out the formal language needed for a court order to be issued, and in that time we could see some action that would grant the companies a reprieve to keep matters at status quo.

We will monitor these developments and provide updates as warranted, so make sure that you are subscribed to Fisher Phillips’ Insights to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our Gig Economy Practice Group.

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