



Next California Gig Economy Vote Could See Certain Healthcare Workers Deemed Eligible for Contractor Classification

Insights

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California voters may have another opportunity to categorize gig workers in a certain profession as independent contractors when Election Day rolls around this November – but this time it won't be delivery or ride-share drivers at the center of the debate. Instead, backers of a [measure just filed with the state AG's office on January 24](#) seek to have some healthcare workers – nurses, dental hygienists, occupational therapists, and other similar professionals – who get work assignments through traditional app-based platforms classified as contractors and not employees. What do you need to know about this significant development and what it might mean for the healthcare industry – and the gig economy?

Details of Ballot Measure

[According to a recent report by Marketwatch](#), the advocacy group Californians for Equitable Healthcare Access is seeking to [qualify its initiative for the November ballot](#). If passed, it would allow businesses to classify certain licensed, certified, or registered healthcare workers who receive their gigs through app-based or digital means as independent contractors if the work arrangement meets certain parameters:

- the platform doesn't prescribe specific hours or days of the week during which the worker is required to be available to accept service requests;
- the worker is free to accept or reject service requests without being penalized by the platform;
- the worker is free to work any hours or schedules they choose;
- the platform doesn't restrict the worker from engaging in any other work, including competitors of both the platform or other healthcare organizations;
- workers aren't required to use specific supplies or equipment or to follow specific instructions governing how to perform the services (though platforms can have quality standards);
- the worker certifies to the platform that they have any appropriate professional licensure, permit, certification, or registration;
- the terms of service expressly state that the work relationship is one of an independent contractor; and

- the worker has the right to terminate the agreement with the platform at any time with or without cause.

Which workers would qualify to be engaged under such an arrangement? The easiest way to approach this is to first look at the kinds of professionals who would not qualify. The ballot measure specifically excludes physicians, surgeons, dentists, podiatrists, psychologists, or veterinarians. Beyond those workers, it would allow for healthcare professionals licensed by just about any health or veterinary agency in the state – the Board of Registered Nursing, Dental Board, Occupational Therapy Board, Department of Public Health, State Board of Pharmacy, Physician Assistant Board, and the list goes on – to fall under its purview.

You Don't Have Déjà Vu

If this sounds familiar to you, you're not imagining things. In 2020, California voters overwhelmingly passed Prop 22, ensuring that app-based rideshare and delivery drivers could be classified as independent contractors if they met certain standards that are common in the gig economy world (very similar to the parameters laid out above). But that law was struck down by a state court judge in August 2021 despite the fact that 58% of voters wanted it in place. The battle over that issue will continue at state appeals courts, but meanwhile the fight –there are groups who oppose this proposal – has been taken to an entirely new arena as we look forward to November 2022.

What's Next?

The next step is for the ballot measure's backers to try to obtain a sufficient number of signatures to qualify for the ballot. Under state law, proponents are required to get a number equal to 5% of the votes cast in the preceding gubernatorial election, which means 623,212 valid signatures are required for 2022's election.

Signatures need to be certified at least 131 days before the general election, which means their deadline is June 30, 2022. However, the process of verifying signatures can take multiple months, and state election officials recommend that groups file signatures at least two months before the verification deadline. That means we should see a flurry of activity between now and the end of April in an effort to launch this ballot measure.

And if this measure makes it to the ballot? California is often seen as a laboratory for social experiments, where innovative ideas are put to the test to succeed or fail. Other states often look to what happens there and then decide whether to mimic the behavior, and we regularly see ideas spread across the country after they are given a shot in the Golden State. Look no further than the current debate unfolding in Massachusetts, where backers are aiming to push a Prop-22-like law for ride-share and delivery drivers in the coming year. No doubt other states are going to be watching what happens in California over the coming year in the healthcare field to determine whether gig economy solutions should be in play in their own backyards in the coming years. After all, healthcare is expected to add about 2.6 million jobs this decade, growing faster than any other

all, healthcare is expected to add about 2.0 million jobs this decade, growing faster than any other field to be the nation's largest industry by 2030. Developing alternative workforce solutions to provide the freedom and flexibility craved by both workers and businesses alike will be paramount to match the expected demand.

Conclusion

We will continue to monitor this issue and provide updates as necessary, 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 authors of this Insight, any attorney in our Healthcare Industry Team, or any attorney in our Gig Economy Team.

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