Shots Fired: First Post-Dynamex Lawsuits Filed Against Gig Companies

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The ink on the *Dynamex* court decision is barely dry, but plaintiffs' attorneys are not wasting any time in taking advantage of the new misclassification standard established for California businesses. In a pair of lawsuits filed on May 8 in a San Francisco state court, workers for both Lyft and Postmates filed claims alleging they were improperly classified as contractors. The lawsuits each use specific language aimed at conforming to the new ABC test established by the California Supreme Court. Specifically:

PRONG B: The business must prove that the worker performs work that is outside the usual course of the hiring entity's business

- Lyft lawsuit, paragraph 15: "Drivers provide a service in the usual course of Lyft's business because Lyft is a car service that provides transportation to its customers, and drivers such as [the plaintiffs] perform that transportation service. Lyft holds itself out as a transportation service, and it generates its revenue primarily from customers paying for the very rides that its drivers perform. Without drivers to perform rides, Lyft would not exist."
- Postmates lawsuit, paragraph 13: "Postmates perform (sic) services with Postmates' usual course of business as a delivery service. The couriers' services are fully integrated into Postmates' business. Without couriers to perform deliveries, Postmates would not exist."

PRONG C: The business must prove the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

- Lyft lawsuit, paragraph 17: "Lyft drivers are not typically engaged in their own transportation business. When driving Lyft customers, they wear the "hat" of Lyft."
- Postmates lawsuit, paragraph 14: "Postmates couriers are not typically engaged in their own delivery business. When delivering items for Postmates customers, they wear the "hat" of Postmates."

Each lawsuit aims to certify the dispute as a class action, which could incorporate hundreds—or thousands—of other workers into the lawsuit. The lawsuits each include a claim of "willful misclassification" in violation of California law in addition to wage and hour claims. They each state: "On April 30, 2018, the California Supreme Court issued its decision in *Dynamex* ... which makes

clear that [the workers] should be classified as employees under California law for purposes of wage-and-hour statutes like the ones at issue here. Under the "ABC" test adopted in *Dynamex*, in order to justify the [workers] as independent contractors, [the company] would have to prove that its [workers] perform services outside its usual course of business, which it cannot do. Notwithstanding this decision, [the company] has willfully continued to classify its [workers] as independent contractors."

We will monitor these cases, and the interpretation of the ABC test by lower courts, in future blog posts.

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