



It's The Lawmakers' Turn: State Legislatures Take Steps To Ensure Gig Workers Are Contractors

Insights

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Online digital marketplaces such as Uber, Handy, and PostMates are now firmly rooted in many American's daily lives. With the seemingly overwhelming and growing presence, these companies continue to face uncertainty when classifying their workers which may result in longstanding financial, legal, and social implications. The business models of online digital marketplaces rely on their workers being classified as independent contractors, not employees, which are significantly less expensive to hire than employees and are not subject to most labor protections.

Courts across various states have provided inconsistent and oftentimes frustrating rulings. On the one hand, UberBLACK drivers in Pennsylvania and Uber drivers in Florida have been held by courts to be independent contractors, but on the other hand, an ALJ in New York ruled similar drivers to be employees. Further complicating matters, the California Supreme Court just recently threw away a flexible test for determining whether a worker is an independent contractor, instead adopting a significantly stricter test and placing the burden on the company to prove that an independent contractor is properly classified. The *Dynamex* case's effect will be far reaching and will make it more difficult for companies, including online digital marketplaces, to properly classify their workers as independent contractors.

In attempt to obtain clarity and hedge any adverse court ruling, Handy, a gig economy company that facilitates home cleaning and handyman services to customers, has raised more than \$100 million in venture capital to lobby state lawmakers to pass legislation declaring that online digital marketplaces' workers are independent contractors. Bills to this effect have been introduced in Georgia, Colorado, Iowa, Tennessee, Kentucky, Utah, Indiana, and Alabama.

Significantly, the bills have been signed into law in Kentucky, Utah, and Indiana and may soon be signed into law in the other states. Typically, the bills propose that when a worker finds a job through a website or mobile app, the worker is an independent contractor as long as the company does not control the worker's schedule, does not prohibit the worker from working elsewhere, and other similar criteria. In states where the bill is adopted into law, online marketplaces are provided with clear guidance as to what factors need to be present to properly classify a worker as an independent contractor.

Whether Handy's state-by-state approach will have a domino effect on other states and whether the legislation will be challenged in the courts remain to be seen. We will continue to track these

legislation will be challenged in the courts remain to be seen. We will continue to track these developments.