Questions Loom Over Possible Gig Economy Solution In 2019 California Legislature

Insights
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A California State Senate leader may have thrown cold water on the idea that we will see a 2019 legislative solution to the misclassification debate that would preserve the gig economy workforce model as we know it, but her office later clarified that a compromise was still possible before the close of this session. Senate President pro Tem Toni Atkins told Capital Public Radio on Wednesday that it is unlikely the legislature would be able to reach a deal that would provide protections for gig economy companies this legislative session but instead may have to wait until 2020, although her office later walked back those remarks and said that Senator Atkins is not ruling out some sort of legislative deal in 2019.

By way of background, the California legislative session is reaching crunch time, as lawmakers have just returned from their summer recess and are working overtime to complete their work by September 13 (the last scheduled day of the session). At the forefront of the minds of gig economy businesses – and many other businesses using contractors as part of their workforce – is the fate of the so-called *Dynamex* legislation that will either codify or modify the ABC test adopted by the state Supreme Court last year. We summarized the legislation in a post here soon after the Assembly passed AB5, but noted that the Senate would be unlikely to pass it in its current form. "Even many of its supporters said they felt it needed revisions before going through the Senate," we wrote, "notably exempting more professions and industries, as well as small businesses, from its provisions."

The best hope was that the California Chamber of Commerce and other business coalitions would make some headway into adding further exemptions to the bill, including ones that would carve out workers performing "short-term projects" or those people who control their own schedules. That would exclude your average gig worker and relieve average gig economy businesses from facing additional responsibilities under the ABC test. In June, Uber and Lyft joined forces to appeal for a widescale revision to the laws surrounding contractor classification, specifically a fix to AB5 that would protect gig economy contractor status in exchange for benefits, wage guarantees, and a drivers' association to advocate for workers. Several days ago, Postmates jumped into the fray, buying a full-page ad in the LA Times pushing for the work flexibility associated with contractor status that can only be guaranteed by a fix to AB5 that exempts gig workers.

Earlier this week, however, Senator Atkins seemed to dash our hopes of seeing a comprehensive solution for gig companies ironed out in the next month. "I have no doubt that we will discuss this

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into next year," she told the radio station, saying that she hoped the legislature would "strike a balance" between businesses seeking relief and worker advocates wanting to push full-steam ahead with codification of the ABC test. "We want to continue to make sure that those workers have the flexibility," she said, "but also have the ability to make a decent living." Meanwhile, she expected that there will be an up-or-down vote on AB5 before the end of the session, though she did not predict whether any of the hoped-for revisions to the bill would be agreed upon before a final vote. All she would say? "Anything is possible" – hardly words of comfort to gig businesses and others in the business community hanging on the daily activities of the state legislature.

If there's a glimmer of hope, it's that the Senator's office soon attempted to clarify her remarks, noting that the conversation about worker classification would continue into 2020 whether AB5 was passed in its current form or with a gig economy solution embedded before passage, and that she wasn't necessarily signaling that a solution couldn't be reached in 2019. As the radio station reported, the Senator's office said that while Atkins believes it's "very, very challenging," she is not "ruling out the consideration of a compromise separate and apart from AB 5 before the end of session." In any event, we'll keep monitoring the bill's progress and provide updates as developments occur.

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