



Could 2020 Be The Year Of The California Copycats? Other States Line Up To Consider Misclassification Statutes

Insights

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Gig economy businesses across the country looked to what happened in California this year and cringed. Other states looked there and were intrigued. After California passed the most aggressive independent contract statute in the nation in 2019 and made it extremely difficult for gig economy businesses to classify their workers as independent contractors, a string of states are considering their own equivalent statutes. 2020 could be the year that the ABC test spreads far and wide across the country.

By way of quick background, California's legislature just passed Assembly Bill 5, a new statute that will codify the "ABC" test for most businesses across the state. Rather than determining whether a worker is an independent contractor or employee using a flexible multifactor balancing test, the state will soon use a three-prong test forcing the hiring entity – not the contractor – to establish each of the following:

1. **Control.** The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under contract and in fact.
2. **Usual course of business.** The person performs work that is outside the usual course of the hiring entity's business.
3. **Established trade or business.** The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Now, several other states have decided that they may want to consider adopting their own versions of the ABC test in the next legislative session. While we are still months away from the 2020 legislative sessions, here is a quick look at some of the activity we can expect to see debated after January 1:

- **New York:** As my New York City colleague Melissa Camire wrote in a blog entry several weeks ago, there are several signs indicating that New York will consider an ABC test in 2020. The state senate just held a public hearing on the matter, legislative leaders are lining up possible proposals, the governor has already indicated support for a similar measure, and organized labor is of course solidly behind this action.
- **Illinois:** A state representative from Chicago recently indicated that he would put forth a proposal in the 2020 legislative session to follow California's lead and adopt the ABC test in Illinois. While

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Rep. Will Guzzardi does not yet have any announced co-sponsors for the proposal, his staff is already hard at work drafting legislation for the upcoming session.

- **Wisconsin:** The governor's taskforce at the Department of Workforce Development wants to tighten restrictions on gig businesses on the state and is considering mirroring California's legislative efforts. According to a recent report, there appears to be bipartisan support for a proposal along these lines. The taskforce is slated to meet seven times in the coming months with an eye towards a final policy recommendation to be unveiled in February 2020.
- **Oregon and Washington:** As noted by the New York Times, both Oregon and Washington considered similar legislation in their 2019 sessions but neither failed to advance. They could see renewed momentum in 2020 considering what happened in California and the expected impact we'll see there come January 1.

Meanwhile, it's worth noting that a bill seeking to federalize the ABC test across all 50 states was recently introduced in Congress. The "Protecting the Right to Organize Act" was introduced by a Florida congresswoman (Frederica Wilson) and mirrors AB 5's three-pronged ABC test. However, given the fractured nature of Congress and a business-friendly administration in the White House, there is a slim-to-none chance that this legislation will be enacted anytime soon.

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