



Truckers Seek To Toss California's New Gig Economy Law

Insights

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We're now just a few weeks away from the nation's most stringent independent contractor misclassification law taking effect in California. But if a group of truck drivers have their way, the law will stall out before it ever gets on the road. The California Trucking Association filed an amended lawsuit in federal court on November 12 asking the court to block the new statute from taking effect, claiming that it violates federal law and would harm over 70,000 independent truckers who have chosen to be independent workers. It appears to be the first legal challenge to California's AB 5, and all eyes will be on this litigation over the next month.

When Governor Gavin Newsom signed AB 5 into effect in September, it all but spelled doom for many industries and businesses across the state. Starting January 1, 2020, a worker will be considered an employee for all purposes under the law unless the hiring entity establishes that (A) the worker is **free from the control and direction** of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact; (B) the worker performs work that is **outside the usual course** of the hiring entity's business; and (C) 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. This concerned many businesses, especially those in the gig economy, as it could require a restructuring of common business models that have grown used to relying upon contract labor.

One business that would be particularly hard hit is the trucking industry. According to the CEO of the California Trucking Association, independent truckers are typically experienced drivers who have previously worked as employees and have, by choice, struck out on their own. To force these drivers into the role of employee, the CTA says, would deprive more than 70,000 independent truckers of their ability to work. "Many would have to abandon \$150,000 investments in clean trucks and the right to set their own schedules," the AP reported.

In order to redress this concern, the CTA filed a lawsuit in the Southern District of California federal court last week. "The direct and real consequence of AB 5, therefore, is that CTA's motor-carrier members, if they wish to avoid significant civil and criminal penalties, must cease contracting with owner-operators to perform trucking services for customers in California and to shift to using employee drivers only when operating within the state," said the complaint. Specifically, the lawsuit alleges that AB 5 is preempted by the commerce and supremacy clauses of the Constitution and the Federal Aviation Administration Authorization Act (FAAAA). Therefore, the trucking association wants the law blocked from being applied or enforced.

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The big question – if this lawsuit is successful, what would it mean for the gig economy in general? In the prayer for relief of the complaint, the association asks for injunctive relief to be granted “with respect to the trucking industry.” In other words, it wants the court to declare that AB 5 (and the underlying *Dynamex* decision that put all of this into motion) is preempted by federal law, unconstitutional, and may not be enforced as to drivers of certain commercial motor vehicles. However, the relief requested could be read more broadly to apply to the statute generally. It is possible that any court decision granting the drivers their wish could be drafted broadly enough to serve as a saving grace for all gig economy operators in California.

If successful, the first step would probably be a temporary injunction blocking the law from taking effect on January 1 as planned. In the meantime, once some breathing room is established and no immediate deadline is looming, the parties would gear up for a larger legal fight over whether the injunction would be rendered permanent, and if so, the extent and scope of such an injunction. We will monitor the court proceedings and report back regarding the status of this critical litigation.

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