Another Win For California Truckers In AB-5 Fight...But Gig Economy Still Awaits Misclassification Ruling

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Yesterday saw a state court conclude that California's controversial new misclassification law doesn't apply to truck drivers, the second time in the last few weeks that a judge has come down hard on AB-5 for going too far in limiting the kinds of workers who can be classified as independent contractors. While any decision limiting the reach of AB-5 should be welcomed by the business community, we're still on pins and needles waiting to see if a court will take a big step and block the law altogether, or at least even as it applies to typical gig economy workers.

Regular readers to this blog already know that at least three pieces of litigation were filed seeking to block AB-5 in some way. One has resulted in a victory for businesses, another filed by freelance artists resulted in a ruling refusing to grant a temporary restraining order, and the other is still pending. The one resulting in victory was achieved by a group of truck drivers; on New Year's Eve, a federal court temporarily blocked the law from being enforced as to owner-operators who are classified as contractors.

Meanwhile, a separate lawsuit was winding its way through the California state court system. Way back in early 2018, the Los Angeles City Attorney's office sued a group of trucking companies and alleged they had misclassified their drivers as contractors. At the time the lawsuit was filed, California was still using the flexible "*Borello*" standard for determining contractor status. While the lawsuit was pending, California saw two big changes to the misclassification test: the infamous *Dynamex* decision in April 2018 from the state Supreme Court ushered in the ABC test, and lawmakers passed AB-5 – which just went into effect on January 1 – codifying and expanding the test. The parties to the Los Angeles case disagreed, then, on which standard should be applied to their lawsuit going forward: the old flexible *Borello* test, or the new bright-line ABC test.

A Los Angeles-based state court judge ruled in favor of the truck drivers in an 18-page ruling yesterday. The main reason? He concluded, similarly to the rationale a federal court just applied in granting a temporary restraining order, that AB-5 conflicts with a federal law known as the Federal Aviation Administration Authorization Act (FAAAA) that governs the truck drivers and was thus preempted. "The requirements of the ABC Test...clearly run afoul of Congress' 1994 determination in the FAAAA that a uniform rule endorsing use of non-employee independent contractors...should apply in all 50 states to increase competition and reduce the cost of trucking services," he

concluded. For this reason, the court concluded that the older flexible test should apply to this litigation.

It is good to see another court feel comfortable in striking down the expansive new law created by AB-5. While this was a specific case involving litigation against three specific companies, rather than a facial challenge to the law itself, it certainly bodes well for the ultimate outcome of litigation challenging AB 5 and the *Dynamex* test as applied to motor carriers generally. But we can't count on this decision – or the December 31 federal court ruling – directly helping the gig economy. The pending lawsuit filed by several gig economy companies relies on constitutional arguments rather than a preemption position. So while we can hope that the court figuring out how to decide the gig economy lawsuit will take comfort in seeing another court strike down the law, we know they won't be using the same legal reasoning in making their ruling.

You can be sure we'll keep a close eye out for any ruling on that pending case and will update our readers as soon as we have a decision.

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