



Massachusetts Court Has Bad “Prong B” News For Gig Businesses

Insights

5.27.20

A federal court judge in Massachusetts just rejected Lyft’s attempt to escape the reach of Prong B of the ABC Test, indicating it was “likely” that its rideshare drivers are employees and not independent contractors. The news wasn’t great for Lyft, but more importantly, the May 22 decision doesn’t portend well for gig economy companies trying to fit their traditional business model into the strict confines of the ABC Test. For those operating in states where misclassification conflicts are resolved using the test – we’re looking at you, California – this development isn’t the best news, and is definitely worth tracking.

Dispute In A Nutshell

In the ongoing battle between a class of rideshare drivers and Lyft over their status as contractors or employees, a group of Massachusetts drivers recently filed an emergency request with the court asking to be immediately recognized as employees. Their argument was that this move was necessary in order to secure the employment benefits afforded to employees during the COVID-19 crisis.

In order to win the injunctive relief they were seeking, the drivers would need to prove four elements: that they are likely to succeed on the merits of their dispute, that they are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that an injunction is in the public interest.

If there is any good news for Lyft, it’s that Judge Indira Talwani rejected the request for the emergency injunctive relief. She concluded that they could not show that they would be irreparably harmed absent an immediate order. But the bad news came when she wrote her conclusion that the drivers were likely to prevail on the merits of their misclassification dispute, focusing on Prong B of the ABC test.

The ABC Test – And Prong B

For those uninitiated in modern misclassification standards, several progressive states have adopted what’s known as the “ABC test” to determine whether a worker is a contractor or employee. In states such as California and Massachusetts, a business must prove the following three elements in order to have a valid independent contractor arrangement:

1. the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact;
2. the service is performed outside the usual course of the business of the employer; and
3. the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

The most difficult hurdle to overcome for most gig economy companies is Prong B. As the California Supreme Court said when first introducing the ABC test to the state in the now-infamous *Dynamex decision*, a retail store can satisfy Prong B when it hires an outside plumber to repair a leak in a bathroom on its premises or an outside electrician to install a new electrical line, but not when it retains someone to perform general retail services. Applying that same standard to gig economy companies, if a delivery service (for example) hired a plumber to fix a water leak at its headquarters, that company would be able to satisfy Prong B as it related to that worker. But if that delivery service retained a delivery driver? That would be a challenge to overcome.

Court Rejects Lyft's Novel Approach To Prong B

Lyft's argument is one similar to positions put forward by Grubhub and other gig economy companies trying to comply with Prong B of the ABC test. It argued that it was not a transportation company, and that its core business is actually as a "platform service," working to connect drivers and riders. It pointed to its Term of Services that states that it "does not provide transportation services and Lyft is not a transportation carrier." It likened itself to other placement services, such as those providing health care workers or babysitters to other employers, and argued that its business should be viewed more like a "taxi stand, rather than as a taxi company."

But the court wasn't having it. "The court finds a substantial likelihood of success on the merits that, despite Lyft's careful self-labeling, the realities of Lyft's business – where riders pay Lyft for rides – encompasses the transportation of riders," the judge wrote. "The realities of Lyft's business are no more merely "connecting" riders and drivers than a grocery store's business is merely connecting shoppers and food producers, or a car repair shop's business is merely connecting car owners and mechanics," she said. "Instead, focusing on the reality of what the business offers its customers, the business of a grocery stores is selling groceries, the business of a car repair shop is repairing cars, and Lyft's business – from which it derives its revenue – is transporting riders."

It stood to reason, then, that the judge would conclude that Lyft drivers provide transportation services to riders. "Taken together," the judge said, "plaintiffs have a substantial likelihood of success on the merits of their misclassification claim."

What Does This Mean?

It's worth saying again that this wasn't a final decision. The judge simply concluded there was a *likelihood* that the drivers could prove they were misclassified as contractors at the conclusion of the litigation. The case will continue through further discovery and court proceedings, and there is always the possibility of the case taking unexpected twists and turns along the way.

Unfortunately, however, it appears this judge has made up her mind regarding the Prong B argument. It will be difficult for Lyft (and other gig economy companies following her lead) to demonstrate that they can overcome this ABC test hurdle when it comes to typical gig economy work. If her point of view is shared by other judges across the state – and in other jurisdictions that have adopted the ABC test such as California – it will be increasingly difficult to maintain the status quo when it comes to classification and standard business models.

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