California governor signs gig economy bill into law

California Gov. Gavin Newsom signed AB5 into law on Wednesday, ending a nearly one-year long process to address the state's long-standing issue with workers being misclassified as independent contractors.

"Assembly Bill 5 is landmark legislation for workers and our economy. It will help end worker misclassification — workers being classified as 'independent contractors' rather than employees," Governor Newsom said in a signing statement. "A next step is creating pathways for more workers to firm a union, collectively bargain to earn more, and have a stronger voice at work, all while preserving flexibility and innovation."

AB5 codifies the California Supreme Court's ruling in Dynamex Operations West vs Superior Court of Los Angeles. In the class action suit, two delivery drivers claimed Dynamex unlawfully classified them as independent contractors although the company considered drivers as employees in the past.

Dynamex argued a "new contractual agreement" allowed them to begin classifying drivers as contractors, but the court ruled in the drivers' favor, saying companies could no longer reclassify workers at their discretion.

Now, companies must use a state-mandated ABC "test" to classify a worker as an independent contractor. A worker is considered an independent contractor if they pass each of the three standards:

(A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
(B) that the worker performs work that is outside the usual course of the hiring entity's business;
(C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

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The passage of AB5 has immediate implications for companies such as Lyft and Uber that classify their drivers as independent contractors. Now, these workers can become full-fledged employees entitled to set wages and benefits.

"We will continue to advocate for a compromise agreement," Uber Chief Legal Officer Tony West said on a press call last week as the bill moved through California's senate and assembly.

"At the same time, we need to make sure we are exploring all options and all alternatives to put forward a framework that works for the 21st-century economy and we believe we have a framework that does that."

On the other hand, the AB5 has little impact on real estate agents' status as independent contractors. The bill provides exemptions for real estate agents, licensed insurance agents, securities brokers or investment advisers, commercial fisherman and cosmetology workers.

This group of workers must follow the economic realities test in where "the most significant factor to be considered is whether the person to whom service is rendered (the employer or principal) has control or the right to control the worker both as to the work done and the manner and means in which it is performed."

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Editor's Note: A previous version of this article included a misinterpretation of AB5 and how it could impact real estate professionals. The section has been removed, and we apologize for any confusion it may have caused.

Source: click here