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LEGISLATIVE ACTION ALERT

Los Angeles Times©

Newsom signs bill rewriting California employment law, limiting use of independent contractors

By JOHN MYERS, JOHANA BHUIYAN, MARGOT ROOSEVELT SEP. 18, 2019

California businesses will soon face new limits in their use of independent contractors under a closely watched proposal signed into law by Gov. Gavin Newsom on Wednesday, a decision praised by organized labor but unlikely to quell a growing debate over the rules and nature of work in the 21st century economy.

Newsom, who signed Assembly Bill 5 in a private ceremony in his state Capitol office, had already committed to embracing the new law. Legislators [gave final approval to the sweeping new employment rules before adjourning for the year last week](#).

The new law “will help reduce worker misclassification — workers being wrongly classified as ‘independent contractors’ rather than employees, which erodes basic worker protections like the minimum wage, paid sick days and health insurance benefits,” Newsom wrote in a signing message released by his office. Under AB 5, which will take effect Jan. 1, Californians will be considered to be employees of a business unless an employer can show the work they perform meets a detailed set of criteria [established by a California Supreme Court ruling last year](#). Under those criteria, a worker is an employee if his or her job forms part of a company’s core business, if the bosses direct the way the work is done or if the worker has not established an independent trade or business.

The ruling and new state law raise the bar for companies that otherwise might rely on freelance or contract work. California’s bill is arguably the strongest of its kind in the nation, giving the state and cities the right to file suit against companies over misclassification, overriding the arbitration agreements that many businesses use to shield themselves from worker complaints. The new law’s supporters point to audits conducted by state employment officials that found almost 500,000 workers were wrongly treated as independent contractors. Much of the early legislative debate on the bill centered on low-wage sectors of the California economy. “As one of the strongest economies in the world, California is now setting the global standard for worker protections for other states and countries to follow,” Assemblywoman Lorena Gonzalez (D-San Diego), the author of AB 5, said in a written statement.

But while the legislation began as a way to formalize the 2018 court ruling, it quickly became the focus of a high-stakes lobbying effort over which kinds of jobs and industries deserved exemption from the new rules. Doctors, accountants, architects, real estate agents, travel agents, graphic designers and investment advisors — along with other exemptions come with conditions. Commercial fishermen are exempt except from unemployment insurance. Barbers, cosmetologists and manicurists are exempt only if they set their own rates, are paid directly by clients and schedule their own appointments. Salespeople are exempt, provided their pay is based on actual sales rather than wholesale purchases or referrals. While the new law outlines detailed standards for who should be considered an independent contractor, the complexities of various industries are likely to present an enforcement challenge. Lawsuits

are likely over how to parse the law's language. Last week, San Diego City Atty. Mara Elliott [filed a lawsuit alleging that grocery delivery company Instacart had classified workers as independent contractors](#) to avoid paying overtime, providing unemployment insurance and scheduling paid rest breaks. Few, if any, business groups believe the process to narrow the rules for what constitutes an employee should end with the enactment of AB 5. The legislation was rewritten a half-dozen times after its introduction last December, the result of intense negotiations in Sacramento to ensure the bill would have the necessary votes from both liberal and business-aligned Democrats in the state Senate and Assembly. Not all industries and professions were successful. Truckers who own their own rigs, for example, were not exempted except when they deliver to a construction contractor licensed by the state. It is unclear how many of the thousands of truck drivers servicing the ports of Los Angeles and Long Beach could be affected. The final legislative concession made was to the newspaper industry, lobbied for by publishers including the ownership of the Los Angeles Times, [for a one-year delay in recognizing newspaper carriers as employees](#). That change was contained in a second piece of legislation that the governor has not yet acted on.

Those in the most prominent industry left out of the final changes to the bill, California's app-based technology sector, insisted they would continue to seek exemptions from any new mandate to classify workers as employees. And as AB 5 made its way through the Legislature, the ongoing tensions between many gig workers and the companies they contract with reached a new high. The legislation also gave rideshare and app-based delivery drivers a soapbox from which to rally for new worker protections and to continue [their battle against low wages and arbitrary termination](#). Backed by the California Labor Federation and others, hundreds of gig economy workers [rallied at the state Capitol on numerous occasions](#) to support AB 5. By the end, they received support from several Democratic presidential candidates. The workers were up against the vast resources and reach the tech companies had at their disposal. Uber and Lyft, as well as Postmates and DoorDash, sent out in-app petitions and emails throughout much of the year, seeking to convince customers and drivers alike that the flexibility of the work— and the core of their businesses — was at risk. In the meantime, [the companies met privately with labor union representatives in hopes of negotiating a deal](#) that would allow them to continue treating their workers as contractors while providing some benefits.

Three companies — Uber, Lyft and DoorDash — upped the political pressure last month, [opening a campaign committee with a \\$90-million contribution toward taking the issue to California voters in a 2020 ballot measure](#). No proposal has yet emerged, however, and next year's deadline for qualification of a ballot measure means a paid signature-gathering effort needs to begin this fall. Even tougher and more expensive would be an effort to overturn AB 5 through a ballot referendum. That option, though, would come with a unique benefit for opponents of AB 5: If backers gathered enough signatures, the employment law would be suspended until voters weighed in next November. The app-economy companies said Wednesday that they are looking to Newsom, who counts tech and labor groups as longtime supporters, to help broker a truce. "We are confident that with his leadership we can reach a historic agreement, but if necessary we are prepared to take this issue to the voters to preserve the freedom and access drivers and passengers want," Adrian Durbin, a Lyft spokesman, said in a statement.

Labor groups say more workers, including those in the tech sector, should be allowed to organize and collectively bargain. "We won't rest until all misclassified workers in California receive the basic protections they deserve, including the right to form or join a union," said Art Pulaski, executive secretary-treasurer of the California Labor Federation. Newsom pledged on Wednesday to continue the discussion with business and labor groups, making particular note of existing limits on union membership. "I will convene leaders from the Legislature, the labor movement and the business community to support innovation and a more inclusive economy by stepping in where the federal government has fallen short and granting workers excluded from the National Labor Relations Act the right to organize and collectively bargain," he wrote in his signing message.

Review Entire Article at: <https://www.latimes.com/california/story/2019-09-18/gavin-newsom-signs-ab5-employees0independent-contractors-california>



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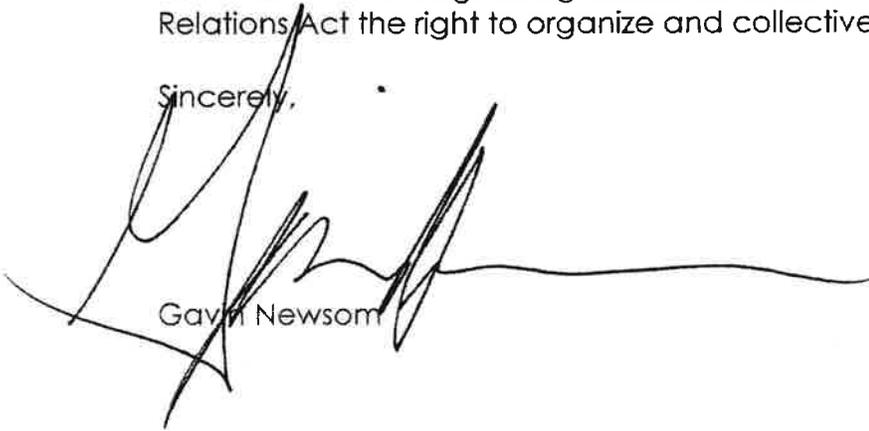
To Members of the California Assembly:

Assembly Bill 5 is landmark legislation for workers and our economy. It will help reduce worker misclassification—workers being wrongly classified as “independent contractors,” rather than employees, which erodes basic worker protections like the minimum wage, paid sick days and health insurance benefits.

The hollowing out of our middle-class has been 40 years in the making, and the need to create lasting economic security for our workforce demands action. Assembly Bill 5 is an important step. A next step is creating pathways for more workers to form a union, collectively bargain to earn more, and have a stronger voice at work – all while preserving flexibility and innovation.

In this spirit, I will convene leaders from the Legislature, the labor movement and the business community to support innovation and a more inclusive economy by stepping in where the federal government has fallen short and granting workers excluded from the National Labor Relations Act the right to organize and collectively bargain.

Sincerely,



Gavin Newsom