

How Calif. Justices' Prop 22 Ruling Affects The Gig Industry

By **Mark Spring** (August 19, 2024)

Recently, the California Supreme Court in *Castellanos v. State of California* unanimously upheld Proposition 22, the 2020 ballot measure that allows gig economy businesses like Uber Technologies Inc., DoorDash Inc. and Lyft Inc. to legally classify their drivers as independent contractors, rather than employees.

While the July 25 decision provides significant clarity for these companies and others in the gig industry, it does not mark the end of their regulatory battles in California.

Below is a summary of what the ruling means and some ongoing implications for both gig workers and businesses.



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The Passage of Proposition 22

In November 2020, the California voters approved the Protect App-Based Drivers and Services Act, or Proposition 22, with 59% of the vote supporting the measure. The measure was codified at Sections 7448 to 7467 of the California Business and Professions Code.

Proposition 22 was passed to protect app-based drivers from falling under California A.B. 5, the statute enacted by the California Legislature in 2019 in order to restrict most California workers from becoming independent contractors by codifying the California Supreme Court's 2018 decision in *Dynamex Operations West Inc. v. Superior Court* and adopting the ABC test for determining who qualifies as an independent contractor in California.

Essentially A.B. 5 requires California businesses to classify all workers as employees, unless the business can prove each of the following:

- That the workers are not directly controlled by the company during their work time;
- That their work is not the part of the businesses core function; and
- That the workers have their own business doing that type of work.

A.B. 5 made it very difficult for many workers that traditionally performed their work as independent contractors, including app-based drivers, to continue to perform their work as independent contractors.

A year after A.B. 5 was enacted, Proposition 22 was placed on the 2020 California ballot with the support of app-based driving companies such as Lyft and Uber.

Proposition 22 provided that app-based drivers would be exempt from A.B. 5 as long as they met certain requirements, which included, among other requirements:

- Getting paid a minimum wage for all driving time;
- Being provided a health insurance stipend if they drove a certain number of hours per week; and

- Getting reimbursed for medical costs if the driver is injured on the job.

Proposition 22 essentially allowed Lyft, Uber, Door Dash and other app-based driving companies to continue to use their existing business model in California, with only moderate adjustments to ensure they met the requirements of the act.

The Ruling

In *Castellanos*, the plaintiffs filed a lawsuit in Alameda County Superior Court contending that Proposition 22 was unconstitutional because it improperly removed the Legislature's ability to regulate the drivers when it comes to the application of workers' compensation laws to the drivers.

The plaintiffs claimed that by doing so, the proposition violated Article XIV Section 4 of the California Constitution.

The plaintiffs were successful at the trial court level, before the Alameda County Superior Court. However, the state of California appealed that decision and the California Court of Appeal reversed the trial court decision, holding that Proposition 22 did not violate the Constitution. The plaintiffs then successfully sought a writ of certiorari with the California Supreme Court.

Last month, the California Supreme Court issued its final decision holding that Proposition 22 is legal and does not violate the state Constitution. More specifically, the California Supreme Court's decision reaffirms that Proposition 22 does not infringe upon the California Legislature's authority to regulate workers' compensation systems.

Justice Goodwin H. Liu, who authored the opinion, emphasized that while the California Constitution permits voter initiatives to affect workers' compensation, Proposition 22 does not permanently restrict the Legislature from extending benefits to independent contractors in the future.

However, the court did not expressly address whether state lawmakers could properly extend the workers' compensation system to include app-based workers in the face of Proposition 22.

Implications

The ruling is crucial for businesses in the gig industry, reaffirming the viability of maintaining independent contractor status for app-based drivers. This classification supports a flexible business model that the companies view as pivotal for scaling operations and managing labor costs.

The ruling alleviates a significant regulatory uncertainty and eliminates a very significant legal risk for app-based driving companies.

Had Proposition 22 been invalidated by the California Supreme Court, companies that utilize app-based drivers for their workforce would have potentially faced substantial additional costs associated with reclassifying drivers as employees and potential retroactive liability for violations of various wage and hour and other employment laws.

This could have led to a complete disruption of the current business model for driver-based app companies, and even resulted in these companies ceasing operations in California,

which had previously been threatened.

For app-based drivers, this ruling appears to eliminate their ability to utilize A.B. 5 as a means for claiming that they are employees under California state law, and seeking to secure the benefits of employment such as California wage and hour protections, leave rights, and other benefits that California mandates for employees through A.B. 5.

Potential Legal Challenges and Legislative Responses

While Proposition 22's upholding provides stability, it does not eliminate other potential future legal and regulatory challenges related to app-based drivers. Ongoing debates about worker classification and rights are likely to influence legislative and regulatory trends nationwide, and especially in California.

For example, the California Supreme Court's Castellanos decision leaves open questions about whether the California Legislature can properly extend workers' compensation benefits to app-based workers without being in violation of Proposition 22.

Some speculate that the Legislature might consider extending workers' compensation benefits to drivers and making such benefits mandatory. The court's decision also did not address whether a law granting gig workers automatic access to the workers' compensation system would be considered an amendment to Proposition 22, or a new law altogether.

This uncertainty could lead to further litigation because, if it is considered an amendment, California law dictates that the Legislature needs a seven-eighths super majority vote to amend any proposition. Even in California, that will be difficult to achieve.

In addition, unions and other allied groups are pushing hard to expand the number of workers that qualify as employees and are hoping to secure various employee rights for gig workers, including the right to organize and bargain.

The Castellanos decision relates to a state proposition. Labor law is governed by federal law.

Therefore, Castellanos does not prevent or limit the National Labor Relations Board from trying to expand the scope of who qualifies as an employee under the National Labor Relations Act to include app-based drivers, thereby giving such drivers the right to bargain collectively.

Of course, the June 28 U.S. Supreme Court decision in *Loper Bright Enterprises v. Raimondo* appears to eliminate the requirement that the courts give any deference to NLRB decisions, so this would not be easy for the unions to successfully accomplish, even if they could get the NLRB to back their position.

Businesses and many consumers are looking for the flexibility that the independent contractor model provides to maximize efficiency and to serve the needs of those workers who strive for the flexibility that being a gig worker provides. Workers are seeking as many protections as possible and the California Legislature and the NLRB have traditionally been very friendly to those efforts.

This creates constant tension. California gig-based businesses and gig workers, particularly app-based drivers, should stay informed and adaptable as regulatory environments may still continue to shift, depending on new creative attacks on the existing system as well as the results of the upcoming elections in November.

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