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Gig Economy Business Model Dealt a Blow in California Ruling



An Uber sticker above one for its ride-hailing rival Lyft. Even if a ruling like California's eventually forces such companies to change their business model, that moment could be far off. Richard Vogel/Associated Press

By **Noam Scheiber**

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In a ruling with potentially sweeping consequences for the so-called gig economy, the California Supreme Court on Monday made it much more difficult for companies to classify workers as independent contractors rather than employees.

The decision could eventually require companies like Uber, many of which are based in California, to follow minimum-wage and overtime laws and to pay workers' compensation and unemployment insurance and payroll taxes, potentially upending their business models.

Industry executives have estimated that classifying drivers and other gig workers as employees **tends to cost 20 to 30 percent** more than classifying them as contractors. It also brings benefits that can offset these costs, though, like the ability to control schedules and the manner of work.

“It’s a massive thing — definitely a game-changer that will force everyone to take a fresh look at the whole issue,” said Richard Meneghello, a co-chairman of the gig-economy practice group at the management-side law firm Fisher Phillips.

The court essentially scrapped the existing test for determining employee status, which was used to assess the degree of control over the worker. That test hinged on roughly 10 factors, like the amount of supervision and whether the worker could be fired without cause.

In its place, the court erected a much simpler “ABC” test that is applied in Massachusetts and New Jersey. Under that test, the worker is considered an employee if he or she performs a job that is part of the “usual course” of the company’s business.

By way of an example, the court said a plumber hired by a store to fix a bathroom leak would not reasonably be considered an employee of that store. But seamstresses sewing at home using materials provided by a clothing manufacturer would probably be considered employees.

In addition, a company must show that it does not control and direct the worker, and that the worker is truly an independent business operator, not just classified that way unilaterally.

While companies like Uber have had some success arguing that they don’t exert sufficient control over drivers to be considered employers, it would be hard to assert that drivers are performing a task that isn’t a standard feature of their business.

In a recent case involving the restaurant ordering and delivery service GrubHub, for example, [a California judge found](#) that food delivery was a regular part of the company’s business in Los Angeles, where the plaintiff worked, potentially satisfying the ABC test. But she ruled in favor of the company, concluding that it did not exert sufficient control over the worker to be considered an employer.

Shannon Liss-Riordan, the attorney for the plaintiff in that case, said she would seek reconsideration in light of the new ruling.

GrubHub said in a statement that it was aware of Monday’s ruling but could not comment because of the appeals process in the case, other than to say it “will continue to ensure delivery partners can take advantage of the flexibility they value from working with our company.”

Uber declined to comment.

The case on which the court ruled Monday was brought by delivery drivers at a company called Dynamex, who had been considered employees before 2004, when the company changed the relationship to a contracting arrangement.

Were the courts to find that workers at companies like GrubHub and Uber, as now constituted, were employees rather than contractors, the companies could respond in several ways. They could simply make their workers employees rather than contractors.

Alternatively, ride-hailing companies like Uber might choose to rein in their operations, providing a more limited platform in which drivers and passengers can negotiate prices and the terms of the service.

Even if Uber and the like are eventually forced to change their business model, however, that moment could be far off. Uber drivers typically sign an arbitration agreement stating that any disputes must be brought individually and outside the court system. While the United States Supreme Court recently heard a challenge to such agreements, it is widely expected to uphold them.

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