

CALIFORNIA'S AB5 STILL INTACT AFTER REJECTION OF MOTION FOR PRELIMINARY INJUNCTION

On February 10, U.S. District Judge Dolly Gee declined to issue an injunction to prevent enforcement of AB5 despite attempts by ride-hailing company Uber and courier delivery company Postmates. The companies concurrently failed to convince the judge that the law does not apply to their situations. AB5, California's gig economy law, was intended to reduce worker misclassification. AB5 creates a presumption that all workers in California should be employees, unless they pass a stringent ABC test (or fall into a detailed exemption):

- The company must not be able to control or direct what the worker does, either by contract or in actual practice;
- The worker must perform tasks outside of the hiring entity's usual course of business; and
- The worker must be engaged in an independently established trade, occupation or business.

In the lawsuit, Uber and Postmates contend their delivery drivers meet the ABC test and are properly classified as independent contractors since the work performed is outside the usual course of their business. It should be noted that neither Uber nor Postmates have been forced to defend their positions in court or through some form of arbitration. The companies' request for an injunction claimed AB5 was unconstitutional because it violated the equal protection and due process clauses.

For companies still assessing their worker status or figuring out potential classification options, they can consider the following types of approaches:

- The *usual course of business* can be defined in a clear manner.
- The professional service exemption applies.
- Whether a business-to-business exemption would be applicable.



Employers should note that this is a "procedural decision" and that the decision could be appealed to the U.S. Court of Appeals for the Ninth Circuit.

Cowden will continue to monitor events related to AB5 and provide additional information as it becomes available.



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