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Uber & Lyft Ordered To Treat Drivers As Employees, Are Any Contractors Independent Now?

A judge granted a preliminary injunction and ordered Uber [UBER -0.8%](#) and Lyft [LYFT -4.6%](#) to start treating their California drivers as employees. It is a sweeping [court order for both companies to consider all their drivers as employees](#). The companies will appeal, of course, but it's a big victory for California's tough new law, [Assembly Bill 5](#). Billions are at stake in taxes, penalties and restitution, and not just with a few companies. Uber and Lyft have opposed the new law even before it passed in September 2019, vowing not to treat drivers as employees despite the new law. They claim they are not providing rides but rather offering technology platforms. Huh, why does the nature of the business matter? Under AB5, California workers can only be independent contractors if the work they do is *outside* the usual course of a company's business.

Conversely, workers must be employees instead of contractors if a company exerts control over how they perform their tasks, or if their work is part of a company's regular business. These and other companies say they are tech

companies, not providers of rides. California hopes to stop what it claims are “free-riding businesses” from passing their own business costs onto taxpayers and workers. Employees trigger federal and state tax withholding, anti-discrimination, health care, pension, worker’s compensation and unemployment insurance obligations. You avoid these entanglements by hiring independent contractors, or do you?



If they are *really* independent contractors, sure, but labels aren’t enough. Gig companies have stretched worker classification boundaries with vast armies of "non-employees." Worker status issues can come up almost anywhere, and not just from the government. Workers who sign contracts as independent contractors can *still* sue claiming they are employees. Third parties injured by an 'independent contractor' can sue saying he or she was *really* an employee, so the employer is liable. And much of that has already been happening. There are numerous legal tests used to determine who is really an employee.

The legal standards come from the IRS, Department of Labor, state labor and unemployment laws, workers' compensation, and more. In that sense, it is no wonder that employers can't keep up. The IRS test is one of the more thorough ones, so it is often looked to even in other contexts. Under the IRS test, to determine who is an independent contractor, the IRS says you must [evaluate 20 factors](#), and assess whether you are controlling the method, manner and means of the work. No one factor is controlling. The duration of your work relationship is important, as is whether it is full or part time, professional credentials, flexible vs. rigid hours, who supplies tools and supplies, expense reimbursements and more. A written contract is key to independent contractor status, but that alone is clearly not enough. Are you paying for a job—like having someone put in a new kitchen—or paying for someone to work by the hour doing reception work? Determining who is an employee has always been a fact-intensive minefield.

Disputes are common, and many different agencies can second-guess your decision. There's the IRS, state tax authorities, labor departments, and insurance companies. All of them [scrutinize](#) the [status of workers](#). Signing a contract does *not* prevent the worker from suing and winning. [Obamacare](#) defines a [full-time employee](#) as someone who works on average at least 30 hours per week, or 130 hours per month. Independent contractors aren't covered, assuming their status is legitimate. If your independent contractor classification doesn't hold up, taxes and penalties can be crushing. No matter how you label someone, the substance of the work relationship will control, but it can take years for these disputes to really rise to the surface, and California wants a fix.

Given the huge stakes and high costs of having employees, companies have big incentives to push the envelope. Uber and Lyft opposed AB5 from the start,

and want voters to weigh in on a ballot measure. Whatever happens, the vast gig economy may change, and not just in California. California is often a leader in laws regulating employment, often followed quickly by other states, so the changes could spread.

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