

Independent contractors or employees? California bill could alter state's gig economy

App-based companies could be forced to treat their hired help as employees if a new law clears the California legislature.

An assembly bill moving forward in the California legislature would significantly alter how the state's emerging and largely unregulated app-based gig economy operates.

App-based companies like Uber, Lyft and Amazon Flex rely heavily on independent contractors to support their ride-share services, food and package deliveries.

As an independent contractor for one of these companies, workers can typically drive their own car, set their own hours, and get "to be their own boss."

For Uber and Lyft, the company sets the rate of pay based on the distance and time of the ride. Workers can be paid on a weekly basis or immediately. Amazon's flex delivery drivers can make between \$18-\$25 per hour, according to the company.

"I don't think that it's independent at all," said Lyft driver and activist Erica Mighetto of Sacramento.

Mighetto has driven for Lyft for the past three years and while she says she enjoys the work, it doesn't pay the bills.

"I'm walking dogs, I'm babysitting when I can, I'm helping people with their Air BnB," Mighetto said.

That's why Mighetto supports Assembly Bill 5, which could require app-based businesses to treat their hired help as employees. If passed, it could cost these companies billions to provide employee benefits.

California Assemblywoman Lorena Gonzalez (D-San Diego) argues that the app-based trucking and construction industries have skirted employee benefit costs by misclassifying workers as independent contractors rather than employees.

The misclassification of workers results in an annual estimated loss of \$7 billion per year in payroll tax revenue to the state, according to the Division of Labor Standards.

Under state and federal law, workers classified as employees are afforded certain protections and rights that independent contractors are not, such as paid sick days, the right to unionize, social security, and access to programs like unemployment insurance and workers compensation.

Assembly Bill 5 would codify certain workers as employees under law, based on the April, 2018 California Supreme Court ruling on employee classification in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*.

That court ruling determined a three-part "ABC" test which should be used to determine employment status.

Workers can be classified as independent contractors in California if they are (A) "free from the control and direction" of the company that hired them, (B) the worker is performing work that falls "outside the hiring entity's usual course or type of business," and (C) the worker has their own independent business or trade beyond the job for which they were hired.

Twenty-six other states use the test to determine employment status for purposes of unemployment eligibility.

"For decades, many companies have increasingly shifted toward a business model that relies on the misclassification of employees and is based on exploiting workers, lowering labor standards in the workplace, and evading state and federal taxes," Gonzalez said in a statement.

Gonzalez contends that the practice of misclassifying workers creates unfair competition for other businesses who do not.

"In many cases, workers employed with these companies are performing the same work as traditional employees, but without any of the rights or protections afforded to workers under California Labor and Unemployment Insurance Codes, such as the right to paid sick days, the right to organize to improve wages and working conditions, anti-discrimination or retaliation protections, Social Security, and access to critical worker safety-net programs like unemployment insurance and workers' compensation," Gonzalez said in a statement.

However, there is a cohort of independent truckers with the California Truckers Guild who are starkly opposed to AB 5. The guild was formed in the wake of the *Dynamex* decision, which the truckers guild argues could end legitimate owner-operators in California.

"Specifically Assembly Bill 5 is working its way through the legislature to codify construction truck owner-operators as employees," the California Truckers Guild website writes. "thereby reversing decades of accepted independence that allowed these owners decide whom they want to work for and when they want to work."

On Tuesday, August 8 a convoy of trucks circled the California capitol building in opposition of the bill. Guild members are urging others to flood the Governor's office with phone calls and e-mails to oppose the bill.

AB 5 is being backed by more than 50 California labor rights and union groups. It has passed the Senate Appropriations committee and still needs to clear votes in the Senate and Assembly to move forward to the governor's desk.

AB 5 has the support of more than 50 union and labor rights groups across California.

Region	July 2018	June 2019	July 2019	Percentage Point Change	
				1 month	12 months
San José–Sunnyvale MSA	2.8%	2.7%	2.8%	+ 0.1	0.0
San Francisco MD	2.4%	2.3%	2.4%	+ 0.1	0.0
California	4.5%	4.2%	4.4%	+ 0.2	- 0.1
United States	4.1%	3.8%	4.0%	+ 0.2	- 0.1

Sector—July 2019	San Jose MSA	San Francisco MD	Combined Region	Percentage Change (Combined Region)	
				1 month	12 months
Total Nonfarm	1,157,200	1,185,700	2,342,900	- 0.2%	+ 3.0%
Construction	50,600	46,900	97,500	- 0.2%	+ 4.6%
Manufacturing	180,800	38,800	219,600	+ 0.7%	+ 2.7%
Retail Trade	86,600	79,200	165,800	+ 1.0%	- 0.7%
Information	102,500	93,900	196,400	+ 1.1%	+ 7.3%
Professional & Business Services	245,600	303,800	549,400	+ 1.3%	+ 3.9%
Educational Services	46,100	27,100	73,200	- 4.2%	+ 3.8%
Health Care & Social Assistance	127,900	114,600	242,500	- 0.1%	+ 2.2%
Leisure & Hospitality	109,800	147,100	256,900	- 0.3%	+ 2.6%
Government	91,800	129,300	221,100	- 5.9%	+ 2.2%

Note: San José MSA (San José–Sunnyvale–Santa Clara Metropolitan Statistical Area) = Santa Clara and San Benito Counties
 San Francisco MD (San Francisco–Redwood City–South San Francisco Metropolitan Division) = San Mateo and San Francisco Counties

Source: California Employment Development Department, LMIID

9-County San Francisco Bay Area	Labor Force			Employed			Unemployment		
	July 2018	July 2019	Change	July 2018	July 2019	Change	July 2018	July 2019	Change
California	19,498,200	19,453,600	- 0.2%	18,621,300	18,589,100	- 0.2%	4.5%	4.4%	- 0.1
Alameda County	854,000	853,900	0.0%	826,200	825,700	- 0.1%	3.2%	3.3%	+ 0.1
Contra Costa County	568,100	567,900	0.0%	548,900	548,400	- 0.1%	3.4%	3.4%	0.0
Marin County	142,800	142,700	- 0.1%	139,100	139,000	- 0.1%	2.6%	2.5%	- 0.1
Napa County	76,200	75,700	- 0.7%	74,000	73,500	- 0.7%	2.9%	3.0%	+ 0.1
San Francisco County	580,700	586,700	+ 1.0%	566,200	572,500	+ 1.1%	2.5%	2.4%	- 0.1
San Mateo County	458,800	463,400	+ 1.0%	447,900	452,700	+ 1.1%	2.4%	2.3%	- 0.1
Santa Clara County	1,060,300	1,064,400	+ 0.4%	1,030,800	1,034,900	+ 0.4%	2.8%	2.8%	0.0
Solano County	211,300	207,300	- 1.9%	202,600	198,700	- 1.9%	4.1%	4.2%	+ 0.1
Sonoma County	264,100	262,000	- 0.8%	256,400	254,200	- 0.9%	2.9%	3.0%	+ 0.1
SF Bay Area (sum)	4,216,300	4,224,000	+ 0.2%	4,092,100	4,099,600	+ 0.2%	2.9%	2.9%	0.0

Note: Totals may not add correctly due to rounding

Source: California Employment Development Department, LMIID

July 2019 Events			WARN SUMMARY	
Company	Location	# Affected	Events YTD †:	8
Aramark Sports & Entertainment	Santa Clara	129	Individuals Affected YTD:	687
Dressbarn	San Bruno	10	Individuals Previous YTD ‡:	44
Futurewei Technologies	Santa Clara	202		
JC Penney	Daly City	73		
Lenovo	Santa Clara	35		
Riverbed Technology	Sunnyvale	38		
Security Industry Specialists	Sunnyvale	196		
Symantec	Mountain View	4		
Total		687		

WARN SUMMARY

Events YTD †: 8
 Individuals Affected YTD: 687
 Individuals Previous YTD ‡: 44

* **WARN: Worker Adjustment and Retraining Notification** (notice of mass layoff or closure)
 † **YTD: Year to Date** (Program year: July 1–June 30)
 ‡ **Previous YTD:** (Same date range as YTD, one year prior)

Note: Layoff data are preliminary and should be considered an estimate of monthly regional activity

Source: NOVA's internal Rapid Response database