

Uber and Postmates File Lawsuit Challenging California's New Independent Contractor Law (AB-5)

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On Monday, Uber, Postmates and two of their drivers filed a lawsuit in federal court in the Central District of California, seeking declaratory and injunctive relief and a determination that AB-5 is unconstitutional.

AB-5 is set to become effective on Wednesday, January 1st and will have a major impact on California's freelance workforce as well as most other companies that have workers located in the state. Among other things, AB-5 essentially prohibits companies, including Uber and Postmates, from continuing to classify their workers as independent contractors under California state law; further, the statute provides no guidance as to how these fundamental changes to California law are to be harmonized with other important areas of state and federal law, including state income tax and benefit plan participation.

Uber, Lyft and Doordash consider AB-5 to be a sufficiently significant threat to their businesses that they have pledged \$110 million dollars to fund a [voter initiative](#) for the November 2020 ballot.

In the recent lawsuit, Uber and Postmates characterize AB-5 as "irrational and unconstitutional" as well as "vague and incoherent." They allege that AB-5 will force some employers to "fundamentally restructure their business models" and could "force them to stop doing business in California." This newly filed complaint isn't the only challenge to AB-5, as it is already facing other pending lawsuits from freelance journalists as well as the trucking industry. The freelance journalists are challenging AB-5 on First Amendment grounds, as the law only allows a freelance journalist to write 35 articles per year for the same publication without becoming an employee. The trucking industry is challenging the law from yet another angle, arguing that AB-5 runs afoul of federal law which prohibits states from enforcing any law related to the price, route, or service of a motor carrier. With multiple challenges from different industries, we expect this battle to continue well into 2020.

Companies with workers in California should bear in mind that, even if one of the many challenges to AB-5 is successful, the “ABC” test codified in AB-5 would still be the default for (the much more limited) purposes of California’s wage order rules per the California Supreme Court’s decision in *Dynamex*. To hear more about *Dynamex* and the California worker classification regime prior to AB-5, listen to our podcast [here](#).

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- **Anthony J. Oncidi**
Partner