



## **AB 5 in California: Amid lawsuits, ballot measure push and confusion, lawmakers promise to refine law**

Gabrielle Canon

USA TODAY – January 21, 2020



*California's controversial new "gig economy" labor law that went into effect Jan. 1 is already facing fierce opposition from industries that depend on contracted labor, sparking widespread concerns over how it will be implemented*

AB 5 — which takes aim at employee misclassification in the gig economy — has been legally challenged by the trucking industry, freelance media creators, and, of course, tech titans who have built their app-based empires using non-employed labor. Uber, Lyft and DoorDash have poured \$90 million into a push for state voters to weigh in on the issue by ballot initiative in November.

While Assemblywoman Lorena Gonzalez, the San Diego Democrat who championed the bill in the legislature, says there are plans in place to change the language in the legislation to address some concerns, she says some of the pushback is due to widespread misconceptions about the law.

“I just don’t think a lot of people have read the bill,” she said, adding that many of the questions she has gotten — including from online critics who have flooded her Twitter mentions in recent months — are raising issues already accounted for in the law.

The law, signed by Gov. Gavin Newsom in September last year, builds on the court’s so-called “ABC test,” which offers a stringent three-pronged assessment for whether a worker can be classified as an independent contractor, by providing exemptions for a range of industries, from commercial fishermen to barbers.

Businesses in sectors without exemptions must prove their workers are truly independent or they have to hire them as employees — and guarantee labor law protections like minimum wage, overtime and workers compensation.

“I think the biggest misconception is it prevents people from operating as an individual small business,” Gonzalez says, adding that there’s already an exemption in the bill for people to act as sole proprietors.

## **Many workers don't know about labor law protections**

According to a new survey released last week of roughly 1,000 workers done by BlueCrew, an on-demand staffing platform that connects businesses to temporary employees, there’s rampant confusion about worker status and about benefits guaranteed under labor laws.

Many hourly workers — 57% of those surveyed — don’t understand the difference between independent contractors and employees. The company also found that 84% of the hourly workers surveyed value protections and benefits guaranteed by law — workers’ compensation, minimum wage, and overtime pay — over the sort of flexibility touted by gig-economy companies like Uber and Lyft, or ranked those concerns as equally important.

Close to two-thirds of respondents said they’d prefer to be employees than contractors or gig workers. An equal amount were unaware that AB 5’s provisions would help ensure more workers

are provided with these benefits and protections, and a quarter of the gig workers polled said they currently do not have access to benefits they believe they are owed.

“It wasn’t terribly surprising but people are not really on top of AB 5 — or really the distinction between 1099 or W-2 workers,” said BlueCrew CEO Adam Roston, referring to the tax documents used by independent contractors or employees, respectively. “But if you ask a person, do you think minimum wage is important, they invariably say yes,” he adds. “People want the protections that come with W-2, even if they can’t articulate the difference between W-2 and 1099.”



*Lyft drivers Erica Mighetto and Danny Raviart hold signs in support of AB 5 on Wednesday, Aug. 28, 2019, in Sacramento, Calif.*

Roston said the survey also highlights what he’s experienced first-hand in starting a business that offers employee benefits alongside app-based flexibility.

“I think we can all agree that flexibility is great,” he said, “but most workers said the benefits of being a W-2 were as or more important as flexibility.”

He is a supporter of AB 5 and already runs his own business by the provisions in the law.

“AB 5 makes it clear that just because you find a job through technology doesn’t mean you lose protection,” Roston adds. “A job is a job whether you find it through a mobile app or you find it through the yellow pages.”

## **Lawsuits have been filed to stop the law**

Tech-based companies aren't alone in opposing the law. Last week, a federal judge extended a temporary injunction for the California Trucking Association, which challenged the constitutionality of the law in a suit filed late last year. Truck drivers will, as a result, be exempt from the law until the suit is officially decided.

Other industries haven't had the same success.

Freelance journalists and media creators — who are now limited to 35 pieces per publisher each year if they are still to be considered independent contractors — also sued to block AB 5 alleging that their First Amendment rights were being infringed upon by the rules.

In that case, a U.S. District judge in Los Angeles denied the temporary restraining order, and as a result freelance media makers will have to abide by the law while the suit goes through the court system.

Further fueling freelancer fears, publications have threatened to pull out of the state or have severed ties with their California workers. SB Nation, which is owned by Vox Media, announced in December that it would no longer retain 200 California-based writers because of AB 5.

While Gonzalez says she has heard concerns from freelancers, she doesn't agree with the SB Nation's motives or explanation for discontinuing their work with California contractors.

"I feel for anyone who has lost income," Gonzalez said, adding that the issue with SB Nation is particularly upsetting to her because the company has faced several misclassification lawsuits and has for years been accused of underpaying its writers. According to one suit, a writer said she regularly worked for more than 30 hours a week and was only paid \$125 per month.

"We know they had problems already that has nothing to do with AB 5," Gonzalez said. "I don't want to minimize anyone's position, but we have allowed industry to go too far in some instances. Reeling them back is probably a good thing."

For other industries, lawmakers are still considering changes to the law. Along with clarifying certain provisions, legislators are planning new language for musicians and the entertainment industry amid growing concerns over whether artists will be cast as employers under the new law, and be unable to work with the teams of people typically involved in production.

"We always knew we would have to come back and provide some clarity on musicians," Gonzalez said, explaining that the language lawmakers hoped to include in the bill on the sector didn't make it due to a breakdown in talks between the music industry and the entertainment unions.

“We are still waiting for compromise language between the two groups, but whether they come to compromise or not we are going to have to put something in there to protect musicians but also allow them to operate in their course of business,” she added.

### **Cost of implementing, defending AB 5**

John Boyd, who runs a corporate consultancy firm, called the new law another “onerous characteristic” of California’s business environment, and says he thinks it will lead corporations to look outside the state for their business development plans.

“Economic development professionals in places like Las Vegas, Reno, Phoenix, have been very aggressive, positioning AB 5 as another catalyst for companies to leave California,” he said. “We are getting a lot of calls into our office asking us to breakdown how AB 5 will play out, how it will affect labor costs, how it will affect benefits and workers' compensation responsibilities. If you don’t see more exemptions, I think you will see that migration.”

Even as critics hope to derail implementation, the state is moving forward. Newsom has earmarked roughly \$20 million to implement the new law. Only a small portion is allocated to the attorney general’s office, likely for fighting the lawsuits filed to challenge AB 5.

“The bill is not going away,” Gonzalez said defiantly. “It is big reform. I think it is important we listen to everybody but we are not going to be able to solve everybody’s problems,” she adds. “People are adjusting and they will continue to adjust, and we are going to try to make it as easy as possible to adjust. But that’s part of trying to do big labor.”



*California Assemblyman Ash Kalra, a Democrat from San Jose and chair of the Committee on Labor and Employment, speaks at a rally in support of AB 5 on Wednesday, Aug. 28, in Sacramento, Calif.*