

Proposition 22

Driver Classification for App-Based Companies

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Purpose

Proposition 22 would designate app-based rideshare and delivery drivers as independent contractors, rather than employees. The measure would exempt drivers from AB 5, a recent state law that classified these workers as employees.

Background

In a 2018 decision titled *Dynamex Operations West, Inc. v. Superior Court*, the California Supreme Court required many employers doing business in California to reclassify their workers as employees rather than as independent contractors.¹ In 2019, the legislature codified and strengthened this decision through AB 5, a bill authored by Assemblymember Lorena Gonzalez (D-San Diego).²

The distinction between employees and independent contractors is important because employees are entitled to various rights and protections under state law that independent contractors do not enjoy. These benefits include a guaranteed minimum wage, overtime pay, unemployment and disability insurance, sick leave and family leave, and vehicle mileage and maintenance reimbursement. By contrast, the relationship between employers and independent contractors is less highly regulated.

App-based transportation and delivery companies (such as Uber, Lyft, Instacart, and DoorDash) have strenuously opposed this new policy because it directly threatens their business models, which rely on a flexible and relatively low-cost labor force.

Uber and Lyft have led this resistance, and have now joined with other transportation and delivery companies to sponsor Prop 22.

Proposition 22 would establish that app-based drivers are independent contractors, rather than employees, under state law, and would add other provisions to moderately improve drivers' working conditions.

¹ *Dynamex Operations West, Inc. v. Superior Court*, S222732 available at: <https://scocal.stanford.edu/opinion/dynamex-operations-west-inc-v-superior-court-34584>, (last visited Saturday, September 26, 2020).

² A.B. 5, Sess. of 2019 (Cal. 2019), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB5.

Prop 22 has become, by far, the most expensive ballot initiative fight in United States history, with the two sides combining to spend upward of \$200 million, with most of the spending coming from the Yes-on-22 side.³

Proposal

As noted above, Prop 22 would classify app-based transportation and delivery drivers as independent contractors, rather than as employees. It would exempt drivers from AB 5, the state law that limits the ability of companies to classify their workers as independent contractors.

At the same time, the measure would require app-based companies to provide certain benefits to their drivers. Companies would be required to:

- Cap drivers' hours at 12 in a 24-hour period.
- Pay some costs for drivers who are hurt on the job.
- Pay drivers 120 percent of the local minimum wage for each hour driving.
- Provide a health insurance stipend for drivers working more than 15 hours weekly.

Prop 22 also would prohibit workplace discrimination and would require companies to provide drivers safety training, perform background checks, and develop sexual harassment policies.

Fiscal Impact

Prop 22 would exempt rideshare and delivery companies from the added costs of providing employee benefits, typically 20 percent of businesses' labor costs.⁴ The companies would likely achieve higher profits and the costs for those services would remain lower for consumers. Consumers might then patronize these app-based services more often, which would, in turn, slightly increase drivers' incomes.

Supporters

Prop 22 is backed by Lyft, Uber, DoorDash, Instacart, and Postmates, and a broad coalition of interest groups, public safety unions, and social advocacy organizations,⁵ including:

- California Chamber of Commerce
- California Small Business Association
- California Black Chamber of Commerce
- California Hispanic Chambers of Commerce
- CalAsian Chamber of Commerce
- California Taxpayer Protection Committee

³ Ballotpedia, "California Proposition 22, App-Based Drivers as Contractors and Labor Policies Initiative (2020)," [https://ballotpedia.org/California_Proposition_22,_App-Based_Drivers_as_Contractors_and_Labor_Policies_Initiative_\(2020\)](https://ballotpedia.org/California_Proposition_22,_App-Based_Drivers_as_Contractors_and_Labor_Policies_Initiative_(2020)).

⁴ Legislative Analyst's Office, "Proposition 22 [Ballot]," <https://lao.ca.gov/BallotAnalysis/Proposition?number=22&year=2020>.

⁵ "Yes On Prop 22 | Save App-Based Jobs & Services," <https://yeson22.com>

- California-Hawaii State Conference of the NAACP and nine local NAACP chapters
- California Police Chiefs Association
- California State Sheriffs' Association
- Crime Victims United of California
- California Peace Officers Association

As of September 19, 2020, supporters raised approximately \$184 million, with Lyft, Uber, DoorDash, Instacart, and Postmates contributing virtually all of those funds.⁶

Arguments of Supporters

Supporters say Prop 22 would:

- Protect app-based drivers' choice to be independent contractors, allowing them to maintain autonomy over their schedules and workloads.
- Save thousands of rideshare and delivery services jobs.
- Provide drivers new benefits and earnings guarantees.
- Strengthen public safety.⁷

Opponents

Prop 22 is opposed by almost every major labor union in California and several Democratic elected officials, including:

- International Brotherhood of Teamsters
- California Labor Federation, AFL-CIO
- Gig Workers Rising
- SEIU California State Council
- State Building and Construction Trades Council of California
- Transport Workers Union of America
- United Food and Commercial Workers Western States Council
- UNITE HERE
- California Teachers Association
- Assembly Speaker Anthony Rendon
- Sen. Kamala Harris
- Former Vice President Joe Biden
- U.S. Sen. Elizabeth Warren (D)⁸

As of September 19, 2020, opponents raised just over \$10 million, with just over half coming from the International Brotherhood of Teamsters, the Transport Workers Union of America,

⁶ "California Proposition 22, App-Based Drivers as Contractors and Labor Policies Initiative (2020)."

⁷ California Secretary of State, "Official Voter Information Guide, November 3, 2020, General Election," <https://voterguide.sos.ca.gov/propositions/22/>.

⁸ Ballotpedia, "California Proposition 22."

SEIU-UHW West, Members' Voice of the State Building and Construction Trades Council of California, and the SEIU California State Council Issues Committee.⁹

Arguments of Opponents

Opponents say Prop 22 would:

- Create a special exemption for Uber, Lyft, DoorDash, and other app-based delivery and transportation companies that would deny their drivers' basic rights and protections at work like paid sick leave, workers' compensation, or unemployment benefits.
- Enable companies to eliminate basic workplace benefits and replace them with earnings guarantees and healthcare subsidy payments, which are generally lower in the long run.
- Allow app-based companies to save billions by avoiding taxes and wage laws that apply to most other California businesses.¹⁰

Conclusion

A YES vote on Prop 22 would allow app-based transportation and delivery companies to continue to hire drivers as independent contractors. Drivers would continue to enjoy autonomy over when and how much they work, along with minimum earnings and safety protections, but would not get standard benefits and protections that other businesses provide employees.

A NO vote would cause app-based transportation and delivery drivers to be classified as employees, pursuant to state law.

⁹ Ballotpedia, "California Proposition 22."

¹⁰ California Secretary of State, "Voter Guide."