



Federal Court Pumps Brakes On California AB 5 As Applied To Motor Carriers

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Scott J. Witlin

Partner
Wage and Hour
Co-Chair

On New Year's Eve, a district court in San Diego issued a temporary injunction preventing the new California independent contractor statute from taking effect for motor carriers. For other industries, the new law Assembly Bill 5 took effect on Jan. 1, 2020.

In his decision, District Judge Roger Benitez found that AB 5's "ABC test" for independent contractor status "is likely preempted by the [Federal Aviation Administration Authorization Act] because AB-5 effectively mandates that motor carriers treat owner-operators as employees, rather than as the independent contractors that they are. In other words, because contrary to Prong B, drivers perform work *within* 'the usual course of the [motor carrier] hiring entity's business,' drivers will never be considered independent contractors under California law." Prong B of AB 5's ABC test requires that a "person performs work that is outside the usual course of the hiring entity's business" in order to qualify as an independent contractor.

The motor carrier case is just [one of several challenges](#) to portions of AB 5. On Dec. 17, 2019, associations representing freelance journalists and photographers filed suit in federal court in Sacramento challenging provisions in AB 5 that classify such freelancers as employees if they make more than 35 submissions to a publication in a single year. That challenge is on First and Fourteenth Amendment grounds.

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Another challenge came earlier this week from Uber, Postmates and two drivers who provide services to the companies, when they filed suit in federal court in Los Angeles on Dec. 30. Uber and Lyft have been reported to be planning a ballot initiative to repeal all or parts of the law as well.

Because of its ramifications for so many laws, independent contractor status promises to be an area to watch for frequent developments in the coming year. These challenges to AB 5 are likely be just the first of many legal battles.