Global Workplace Law & Policy

California: From Proposition to Law

David Mangan (Maynooth University (Ireland)) · Monday, February 1st, 2021

Reclassification of ‘gig’ workers in California

Bellecour, Lyon, France
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The State of California passed a law in force as of 1 January 2020 that classified ‘gig’ workers as employees of the platforms engaging their services ‘unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity’s business, and the person is customarily engaged in an independently established trade, occupation, or business.’ This law has been the subject of criticism. A coalition has argued the law ignored the growing trend and choice of Californians to work independently. Business press has contributed its own critique of the outdated nature of the law with the commensurate economic lag it will produce. The law codified the ‘ABC Test’[1] which had been applied by the California Supreme Court in *Dynamex Operations West Inc. v Superior Court of Los Angeles* ((2018) 4 Cal.5th 903).

Labour Law on the Ballot

In the 3 November 2020 American elections, the State of California placed Proposition 22 on the ballot. A vote for Prop. 22 supported classifying only app-based drivers (such as Uber drivers) as independent contractors and therefore outside of the scope of the aforementioned new law. This was a contested item. (It may be that no better measure of attention is the creation of a Wikipedia page.) Dara Khosrowshahi (Uber CEO) argued that three-quarters of current US drivers would be lost if drivers were classified as employees.

Campaigns for and against Prop.22

Uber, Lyft and similar companies launched a campaign of support for the proposition. which

turned out to cost over USD 188 million. Spending in opposition to Proposition 22 came in at just under USD 16 million. Amongst other points, Prop. 22 guaranteed '120 percent of minimum wage earnings with no maximum.'(Art.1(f)) The calculation of working time would not include any wait periods between rides. The 120% figure has been challenged as amounting to $5.64 per hour.

Passage of Prop.22

The proposition was supported by a majority of those responding to it: 9,958,425 (58.6%) for the proposition; 7,027,820 (41.4%) against.

Challenging Prop.22 in court

This has not been the end of the matter. As set out in Prop. 22 (Art.9.), the law can be amended by seven-eighths majority; a threshold that drew dismay from Professor William Gould IV: '"I've never seen anything like that. The companies are trying to divest the Legislature of any authority". The Service Employees International Union (SEIU) leads a group of plaintiffs seeking to overturn Prop.22 in *Castellanos v State of California* (12 January 2021). In litigation that preceded Prop.22, Uber drivers were permitted by a California court on 26 January 2021 to sue Uber (in a class action) for denial of expense reimbursements and itemised pay statements. However, this same class action was not allowed to proceed on minimum wage, paid sick leave, and overtime payments. These claims were to be made only by the drivers individually.

A Wider Significance of Prop.22?

While still an important labour issue, this matter seems to have extended into how influential these types of ballots may be in setting law.

[1] 'Under this test, a worker is properly considered an independent contractor to whom a wage order does not apply only if the hiring entity establishes: (A) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact; (B) that the worker performs work that is outside the usual course of the hiring entity's business; and (C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.'

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