

## **Uber and Lyft Lose Their Gig Worker Appeal**

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### **Body**

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The ruling adds new urgency to a ballot measure in the state that would exempt the companies from a new labor law intended to give gig workers more employment rights.

OAKLAND, Calif. -- Uber and Lyft must treat their California drivers as employees, providing them with the benefits and wages they are entitled to under state labor law, a California appeals court ruled Thursday.

The decision points to growing agreement between the state courts and lawmakers that gig workers do not have the independence necessary for them to be considered contractors. But the California electorate will get to weigh in soon, too, when they vote in less than two weeks on a ballot initiative sponsored by gig economy start-ups to exempt themselves from the law.

The ruling by the California First District Court of Appeal is the result of a lawsuit brought by the state's attorney general and the city attorneys of San Francisco, Los Angeles and San Diego. The state and city agencies sued the ride-hailing companies in May to enforce a new state labor law that aimed to make gig workers into employees.

"Every other employer follows the law," Matthew Goldberg, deputy city attorney with the San Francisco City Attorney's Office, told the appeals court during arguments last week. "This is dollars and wages and money that is being stolen from drivers by virtue of the misclassification."

After a lower court ruled that Uber and Lyft must immediately comply and hire the drivers, the companies fought back. They threatened to shut down completely in California and appealed the decision, winning a last-minute reprieve from the appellate court while it considered the case.

This time, Uber and Lyft are unlikely to threaten a similar shutdown. The appellate court required them to develop plans to employ drivers in case the ruling did not go in their favor, and the companies have considered establishing franchise-like businesses in the state to avoid directly hiring drivers.

Uber and Lyft may choose to appeal the ruling to the state Supreme Court. But it could be a futile effort. In 2018, that court established a strict employment test that became the basis for the law Uber and Lyft are now fighting.

"We're considering our appeal options, but the stakes couldn't be higher for drivers," said Matt Kallman, an Uber spokesman. He argued that if the ballot measure, Proposition **22**, fails, hundreds of thousands of drivers would lose work and the company might shut down its services in parts of the state.

Uber and Lyft have said that it would be too expensive to hire all of their drivers, causing catastrophic harm to their businesses. But that does not justify the losses for drivers who went without workplace protections, the appellate court said.

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"When violation of statutory workplace protections takes place on a massive scale, as alleged in this case, it causes public harm over and above the private interest of any given individual," the court wrote in its decision on Thursday.

State officials have argued that the companies must comply with the law, known as Assembly Bill 5, so that workers can obtain sick leave, overtime and other benefits -- needs that have become especially pressing during the pandemic.

"This is a victory for the people of California and for every driver who has been denied fair wages, paid sick days, and other benefits by these companies," San Francisco's city attorney, Dennis Herrera, said in a statement. "The law is clear: Drivers can continue to have all of the flexibility they currently enjoy while getting the rights they deserve as employees. The only thing preventing that is Uber and Lyft's greed."

But Uber and Lyft have argued that they are technology companies, not transportation businesses. Employing drivers would force them to raise fares and hire only a small fraction of the drivers who currently work for them, they said.

The companies are sponsoring a state ballot initiative, Proposition **22**, to exempt them from the law and allow them to continue classifying drivers as independent contractors, while providing them with limited benefits. The court gave Uber and Lyft a grace period in which to make changes, and if the ballot initiative is successful, it could throw the ruling into question.

"This ruling makes it more urgent than ever for voters to stand with drivers and vote yes on **Prop. 22**," said Julie Wood, a spokeswoman for Lyft.

<https://www.nytimes.com/2020/10/22/technology/uber-lyft-california.html>

## Graphic

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PHOTO: A protest against a ballot initiative that would allow Uber and Lyft to continue classifying drivers as independent contractors. (PHOTOGRAPH BY Jim Wilson/The New York Times FOR THE NEW YORK TIMES)

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