



ALFA International
THE GLOBAL LEGAL NETWORK

2025 Labor & Employment Seminar June 11-13, 2025

**CARRIE BRADSHAW, THE ORIGINAL GIG ECONOMY WORKER – A
ROUNDTABLE DISCUSSION OF CURRENT GIG ECONOMY TRENDS**

Jacob Lehman
Moderator
GERMAN, GALLAGHER MURTAGH
Philadelphia, PA
lehmanj@ggmfirm.com

CARRIE BRADSHAW, THE ORIGINAL GIG ECONOMY WORKER – A ROUNDTABLE DISCUSSION OF CURRENT GIG ECONOMY TRENDS

The gig economy has revolutionized the modern labor market, offering flexible work opportunities through app-based platforms and independent contracting arrangements. However, this workforce model presents a complex array of legal issues for employers, particularly from an employment law perspective. This article examines the current challenges facing gig economy employers across various U.S. jurisdictions, with a focus on employee classification, workforce management, and retention strategies. Relevant case law provides critical insight into the evolving legal landscape.

Employee vs. Independent Contractor Classification

One of the most significant legal challenges for gig economy employers is determining whether workers should be classified as employees or independent contractors (ICs). Misclassification can result in substantial liability for unpaid wages, overtime, benefits, and taxes.

Legal Framework

There is no single nationwide standard for classification. The Department of Labor (DOL) applies the "economic realities" test under the Fair Labor Standards Act (FLSA), considering factors like control, opportunity for profit or loss, and the permanence of the relationship. The FLSA requires employers to pay employees at least the minimum wage and overtime for hours worked over 40 in a workweek. If a worker is improperly classified as an independent contractor, the employer may be liable for failing to comply with these wage and hour protections.

The IRS uses a 20-factor test that similarly evaluates the degree of control and independence. Several states, including California, apply the ABC test, a stricter standard that presumes employee status unless all three prongs are met:

- A. The worker is free from control and direction.
- B. The work performed is outside the usual course of the hiring entity's business.
- C. The worker is customarily engaged in an independently established trade or business.

State Test Comparison Chart

State	Test Used	Notes
California	ABC (post-Dynamex, AB5)	Modified by Prop 22 for app-based drivers
Massachusetts	ABC	Strict application, enforcement by Attorney General
New Jersey	ABC	Aggressive enforcement, high-profile settlements
New York	Economic Realities + ABC hybrid	Applied flexibly depending on context
Pennsylvania	Modified ABC	Unemployment compensation standards
Florida	Control Test	Traditional common law control test
Texas	Right to Control	Looks at behavioral and financial control
Illinois	Economic Realities	Applies DOL factors, active wage enforcement
Washington	ABC (for certain laws)	Uses ABC test under Minimum Wage Act for gig workers

Key Cases and Legislative Developments: California

Dynamex Operations West, Inc. v. Superior Court, 4 Cal.5th 903 (2018): This landmark California Supreme Court case redefined IC classification by adopting the ABC test for wage-order claims. Dynamex, a courier company, converted its drivers from employees to ICs, resulting in a class action for wage violations. The Court emphasized the need to protect workers from being improperly classified. This decision triggered California Assembly Bill 5 (AB5), codifying the ABC test and dramatically shifting the landscape for gig employers.

California Assembly Bill 5 (AB5): Enacted in 2019, AB5 extended the ABC test to most California workers, including those in the gig economy. The law aimed to ensure gig workers received benefits like minimum wage, unemployment insurance, and workers’ compensation. However, AB5 met strong opposition from gig companies.

Proposition 22: In response, gig economy companies led a ballot initiative—Proposition 22—which was passed by voters in November 2020. Prop 22 carved out app-based drivers from AB5’s reach, allowing them to remain classified as ICs while granting limited benefits such as healthcare stipends and minimum earnings guarantees. Although later challenged and briefly invalidated, the law was reinstated in 2023 by the California Court of Appeal.

Olson v. California, 62 F.4th 1206 (9th Cir. 2023): App-based companies challenged AB5 as unconstitutional. The Ninth Circuit upheld most of the law, dismissing First Amendment and equal

protection claims. The ruling reaffirmed the state's authority to set rigorous standards for classification, influencing similar legislative initiatives in other jurisdictions.

In July 2024, the California Supreme Court upheld Proposition 22, a voter-approved initiative that allows app-based companies like Uber, Lyft, and DoorDash to classify their drivers as independent contractors. This decision overturned earlier efforts to enforce Assembly Bill 5 (AB5), which aimed to reclassify such workers as employees. Under Proposition 22, while drivers remain independent contractors, they are entitled to certain benefits, including a guaranteed minimum earnings floor and health care stipends

Key Cases: Outside California

Razak v. Uber Technologies, Inc., 951 F.3d 137 (3d Cir. 2020): The Third Circuit vacated a summary judgment ruling that UberBlack drivers were independent contractors, finding there were disputed facts under the FLSA's economic realities test. The court emphasized the need to weigh the degree of control and the drivers' entrepreneurial opportunity.

The case experienced two mistrials due to hung juries. In July 2024, Judge Michael M. Baylson dismissed the case with prejudice, invoking the court's inherent powers to manage its docket. Additionally, he granted Uber's motion for judgment as a matter of law under Rule 50(b), concluding that the plaintiffs failed to present sufficient evidence to support their claims.

Lowman v. Unemployment Compensation Board of Review, 235 A.3d 278 (Pa. 2020): The Pennsylvania Supreme Court ruled that an Uber driver was not self-employed for purposes of unemployment benefits. The court held that Uber had failed to meet the burden under Pennsylvania's ABC-like test to prove the driver was free from control and engaged in an independent trade.

Swales v. KLLM Transport Services, LLC, 985 F.3d 430 (5th Cir. 2021): The Fifth Circuit addressed misclassification under the FLSA in the context of conditional certification. Though not a gig case per se, the court underscored how classification disputes often turn on individualized factors.

In June 2024, Uber and Lyft reached a \$175 million settlement with the Massachusetts Attorney General's Office. The agreement mandates that the companies provide drivers with a minimum pay of \$32.50 per hour during engaged time, paid sick leave, healthcare stipends, and occupational accident insurance. Despite these benefits, the settlement maintains the classification of drivers as independent contractors.

In November 2023, Uber and Lyft agreed to a \$328 million settlement with the New York Attorney General over claims related to taxes and fees. The agreement included provisions for a minimum wage and paid sick leave for drivers, but did not change their classification as independent contractors.

Vega v. Postmates Inc., 2020 WL 1031301 (N.Y. Sup. Ct. Feb. 24, 2020): The New York State court determined that Postmates couriers qualified as employees for purposes of unemployment insurance. The court cited the company's control over assignments and performance monitoring as key factors. This decision exemplifies how gig work oversight may tip the scales toward an employment relationship.

Carrie Bradshaw, The Original Gig Economy Worker – A Roundtable Discussion of Current Gig Economy Trends



New Jersey has taken a stringent approach to worker classification, applying the ABC test. In 2022, Uber agreed to pay \$100 million to the New Jersey Department of Labor and Workforce Development to settle claims that it misclassified drivers as independent contractors, thereby avoiding unemployment insurance contributions.

Monitoring and Managing a Mobile Workforce

Gig work is inherently mobile and decentralized, posing significant challenges in oversight and quality control. Employers often rely on technology to manage worker performance.

Oversight vs. Autonomy

App-based platforms use GPS tracking, rating systems, and algorithmic assignments to manage workflows. While efficient, such tools risk blurring the line between independence and control, one of the key factors in misclassification disputes.

Legal Risks

Heavy-handed monitoring can strengthen an argument for employee status, especially when workers are penalized for deviating from set schedules or performance benchmarks. Additionally, states such as California (under the CCPA) and Illinois (under BIPA) impose privacy obligations on employers collecting biometric and location data.

California Consumer Privacy Act (CCPA): While originally aimed at consumer data, amendments extended certain rights to employees and ICs. Gig companies collecting GPS or behavioral data may be required to disclose data practices and honor opt-out requests.

Illinois Biometric Information Privacy Act (BIPA): Applies to companies collecting biometric identifiers (e.g., facial recognition, fingerprints). In *Rosenbach v. Six Flags Entertainment Corp.*, 129 N.E.3d 1197 (Ill. 2019), the Illinois Supreme Court held that technical violations of BIPA (without actual harm) were sufficient to establish standing. While not a gig economy case, it illustrates the risk for companies using facial recognition or similar tech to monitor gig workers.

Practical Takeaways for Employers

- **Customize Contracts:** Tailor independent contractor agreements to reflect jurisdiction-specific standards and emphasize the lack of control.
- **Limit Behavioral Oversight:** Avoid policies that resemble employee handbooks or mandate specific performance targets.
- **Reevaluate Incentives:** Structure any bonuses or perks to preserve IC status.
- **Monitor Legal Developments:** Laws are rapidly evolving, particularly in progressive states.

Carrie Bradshaw, The Original Gig Economy Worker – A Roundtable Discussion of Current Gig Economy Trends



- Consider Hybrid Models: Some platforms now offer voluntary employment status for those seeking stability, creating a flexible workforce structure.