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What California's Proposition 22 Means for Independent Contractors

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On November 3, 2020, California voters passed Proposition 22, allowing certain app-based rideshare and delivery drivers to be classified as independent contractors. Proposition 22 overrules California Assembly Bill 5, as it applies to app-based drivers.

AB 5, signed in September 2019, established a three-factor test for classifying workers as independent contractors. The three-factor test requires that: (1) the worker be free from the hiring entity's control and direction in the performance of work; (2) the worker be doing work that is outside the entity's usual course of business; and (3) the worker be engaged in an established trade, occupation, or business of the same nature as the work performed. This test resulted in many gig economy workers being classified as employees under California law as opposed to independent contractors.

Individuals Covered by Prop. 22

Prop. 22 applies to workers who either: (a) provide delivery services on an on-demand basis through a hiring entity's online-enabled application or platform; or (b) use a personal vehicle to provide prearranged transportation services for compensation via a hiring entity's online-enabled application or platform.

App-based drivers may be classified as independent contractors if the following conditions are met:

- The hiring entity does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the drivers must be logged into the app or platform;
- The hiring entity does not require the driver to accept any specific rideshare or delivery service request as a condition of maintaining access to the app or platform;
- The hiring entity does not restrict the driver from performing rideshare or delivery services through another business, except when the driver is actively completing a rideshare or delivery request through the hiring entity; and

- The hiring entity does not restrict the driver from working in any other lawful occupation or business.

Benefits Provided under Prop. 22

Prop. 22 provides certain benefits and protections to app-based drivers who are classified as independent contractors, including, but not limited to:

- For drivers working at least 15 hours a week for the hiring entity, a quarterly health care subsidy;
- Occupational accident insurance to cover medical expenses and lost income resulting from on-the-job injuries;
- A new minimum earnings guarantee tied to 120% of minimum wage with no maximum;
- Compensation for vehicle expenses; and
- Protection against discrimination and sexual harassment.

Prop. 22 will take effect following the certification of California's election results, which is expected on December 11, 2020. While Prop. 22 provides clarity for delivery and rideshare drivers, its scope is limited and provides little guidance for other employers. Such California employers should continue to comply with AB 5 and pay close attention to the changing classification landscape. In the meantime, if you have any questions regarding this new law, please contact your Vorys lawyer.