VOLUME 26 SUMMER 2021

ILLINOIS BUSINESS LAW JOURNAL

PROPOSITION 22 AND WORKERS' RIGHT TO CHOOSE: LEARNING FROM CALIFORNIA'S EFFORTS TO CLASSIFY INDEPENDENT CONTRACTORS

❖ Note ❖

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I. INTRODUCTION

In the 2020 general election, California voters approved Proposition 22, a statewide ballot initiative that classifies app-based drivers (Uber or Lyft drivers, for example) as independent contractors rather than as employees.[1] The culmination of over $200 million in political spending—largely by ride-share companies Uber, Lyft, Postmates, Doordash, and Instacart—the initiative was approved by 58% of voters.[2] Since its passage, the initiative has been met with regular criticism.[3] Many observers first say that classifying app-based drivers ("drivers") as independent contractors was fundamentally wrong from a worker's rights perspective, especially in light of state court decisions and legislation that preceded the initiative and established a new

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1. Jeong Park, *Uber, Lyft Win Approval of California Gig Worker Measure*, SACRAMENTO BEE (Nov. 4, 2020, 2:25 PM), https://www.sacbee.com/news/politics-government/election/article246814727.html.

2. *Id.*

3. *See, e.g.*, Greg Bensinger, *Other States Should Worry About What Happened in California*, N.Y. TIMES (Nov. 6, 2020), https://www.nytimes.com/2020/11/06/opinion/prop-22-california-labor-law.html?action=click&module=Opinion&pgtype=Homepage; Michael Sainato, *'I Can't Keep Doing This': Gig Workers Say Pay Has Fallen After California's Prop 22*, GUARDIAN (Feb. 18, 2021, 5:00 AM), https://www.theguardian.com/us-news/2021/feb/18/uber-lyft-doordash-prop-22-drivers-california.

standard for making this very decision.[4] Further, there are reports that businesses are now firing their employee-status delivery drivers and hiring cheaper app-based drivers in their stead; that drivers are earning considerably less under the initiative than was purported by its advocates; and that ride-share companies are now taking away features from drivers that gave them greater control over their earnings.[5] Because this initiative has been floated as a model for the rest of the United States, it is important to examine Proposition 22 with an eye to the future.[6] Additionally, the story of Proposition 22 also provides insight into the challenges of enacting sweeping legislation governing worker status.

This Note's Part II will review the context of Proposition 22's passage. Part III will examine the initiative's key provisions that provide how it determines worker status and how the initiative may be amended in the future. Part IV suggests legislative recommendations for future iterations of this issue that are likely to arise, one that pertains to ride-share legislation specifically and one that pertains to independent contractor legislation broadly. Part V concludes.

II. BACKGROUND

The history behind Proposition 22 is considerable and begins with *Dynamex Operations West, Inc., v. The Superior Court of Los Angeles County,* a 2018 landmark unanimous decision from the Supreme Court of California. In *Dynamex*, the court adopted the "ABC" test as the standard for determining whether a worker is an employee or independent contractor.[7] The court described the "ABC" test as follows:

> Under this test, a worker is properly considered an independent contractor . . . 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

4. *See, e.g.*, Terri Gerstein, *What Happened in California Is a Cautionary Tale for Us All*, N.Y. TIMES (Nov. 13, 2020), https://www.nytimes.com/2020/11/13/opinion/prop-22-california-gig-workers.html. *See also* Dynamex Operations West, Inc., v. The Superior Court of Los Angeles Cty., 416 P.3d 1, 8 (Cal. 2018); Assemb. B. 5, Cal. Leg. 2019-2020, Reg. Sess. (Cal. 2019).

5. Joshua Bote, *Safeway to Replace Delivery Workers with Doordash Drivers—But Says It's Not Tied to Prop. 22*, S.F. GATE (Jan. 5, 2021, 12:37 PM), https://www.sfgate.com/bayarea/article/Safeway-will-replace-delivery-workers-with-15847851.php; Sainato, *supra* note 3; Driver Announcements, *Upcoming Changes to the Driver App*, UBER BLOG (Apr. 8, 2021), https://www.uber.com/blog/california/upcoming-changes-to-the-driver-app/.

6. Josh Eidelson, *Election Day Gave Uber and Lyft a Whole New Road Map*, BLOOMBERG (Nov. 8, 2020, 6:00 AM), https://www.bloomberg.com/news/articles/2020-11-08/prop-22-gives-uber-and-lyft-a-new-model-for-gig-economy-workers.

7. *Dynamex Operations West, Inc.*, 416 P.3d at 5.

> 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.[8]

If any one of the test's three factors are not met, then the worker should be classified by law as an employee rather than an independent contractor.[9] The court viewed this test as the most appropriate method for making a decision that carried big implications:

> On the one hand, if a worker should properly be classified as an employee, the hiring business bears the responsibility of paying federal Social Security and payroll taxes, unemployment insurance taxes and state employment taxes, providing worker's compensation insurance, and, most relevant for the present case, complying with numerous state and federal statutes and regulations governing the wages, hours, and working conditions of employees. The worker then obtains the protection of the applicable labor laws and regulations. On the other hand, if a worker should properly be classified as an independent contractor, the business does not bear any of those costs or responsibilities, the worker obtains none of the numerous labor law benefits, and the public may be required under applicable laws to assume additional financial burdens with respect to such workers and their families.[10]

California's laws governing minimum wage, overtime, workplace safety, and retaliation, for example, apply to employees but not to independent contractors.[11] Further, employees can seek redress for violations of these laws with state agencies such as the Labor Commissioner's Office, while independent contractors cannot.[12] Following the *Dynamex* decision, the California legislature codified the new standard in Assembly Bill 5 ("AB-5"), a 2019 bill that added the "ABC" test into the state's Labor Code with the intention of ensuring "that all workers who meet its criteria

8. *Id.*

9. Celine McNicholas & Margaret Poydock, *How California's AB5 Protects Workers from Misclassification*, ECON. POL'Y INST. (Nov. 14, 2019), https://www.epi.org/publication/how-californias-ab5-protects-workers-from-misclassification/.

10. *Dynamex Operations West, Inc.*, 416 P.3d at 8.

11. STATE OF CAL. DEP'T OF INDUS. REL., INDEPENDENT CONTRACTOR VERSUS EMPLOYEE (2021), https://www.dir.ca.gov/dlse/faq_IndependentContractor.html.

12. *Id.*

receive the basic rights and protections guaranteed to employees under California law."[13]

In turn, this legislation quickly drew the attention of ride-share companies and their drivers, with many wondering what impact the legislation might have on drivers' worker status.[14] Prior to *Dynamex* and AB-5, drivers were largely treated as independent contractors.[15] Following passage, the dominant view was that drivers would now be classified as employees under the new "ABC" standard.[16] Many, including California governor, Gavin Newsom, thought further that this would be a positive change for drivers, conferring them with much needed legal benefits and protections.[17] Ride-share companies resisted this view, however, and refused to automatically reclassify drivers as employees, arguing instead that drivers benefit more by being classified as independent contractors.[18] For example, Uber CEO, Dara Khosrowshahi, claimed that "drivers overwhelmingly" prefer the flexibility of their independent contractor status, and that the company would have to cut 926,000 drivers (75% of Uber's drivers) if the company were forced to adhere to AB-5.[19]

Perhaps predictably, this discourse escalated into litigation when, in May 2020, the state filed an action in the Superior Court of California in which the State asked the court to enjoin ride-share companies Uber and Lyft from classifying their drivers as independent contractors.[20] With respect to the State's claim that Uber and Lyft were misclassifying drivers as independent contractors in defiance of AB-5's "ABC"

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13. Assemb. B. 5, Cal. Leg. 2019-2020, Reg. Sess. (Cal. 2019); People of the State of Cal. v. Uber Tech., Inc., 20 WL 5440308 at *1 (Cal. Sup. Ct., 2020).

14. *See, e.g.*, Shirin Ghaffary & Alexia Fernández Cambell, *A Landmark Law Disrupted the Gig Economy in California. But What Comes Next For Uber Drivers?*, VOX (Oct. 2, 2019, 2:30 PM), https://www.vox.com/recode/2019/10/4/20898940/uber-lyft-drivers-ab5-law-california-minimum-wage-benefits-gig-economy-disrupted.

15. Valerio De Stefano, *The Rise of the 'Just-in-Time' Workforce: On-Demand Work, Crowdwork, and Labor Protection in the 'Gig-Economy'*, 37 COMPAR. LAB. L. & POL'Y J. 471, 478 (2016).

16. *See, e.g.*, Joel Rosenblatt, *Uber's Future May Depend on Convincing the World Drivers Aren't Part of Its 'Core Business'*, TIME (Sep. 12, 2019, 9:37 AM), https://time.com/5675637/uber-business-future/; N. Lee, *Uber and Lyft Had Time to Comply With the Law. They Did Not.*, ENGADGET (Aug. 21, 2020), https://www.engadget.com/uber-lyft-ab5-gig-economy-130000612.html.

17. Rosenblatt, *supra* note 16; Gavin Newsom, *On Labor Day, Let's Pledge to Protect Workers and Create Paths to Union Membership*, SACRAMENTO BEE (Sep. 2, 2019, 4:10 PM), https://www.sacbee.com/opinion/article234624897.html.

18. *See* Tony West, *Update on AB5*, UBER NEWSROOM (Sept. 11, 2019), https://www.uber.com/newsroom/ab5-update/.

19. Dara Khosrowshahi, *The High Cost of Making Drivers* Employees, UBER NEWSROOM (Oct. 5, 2020), https://www.uber.com/newsroom/economic-impact/.

20. People v. Uber Tech., Inc., 20 WL 5440308 at *1 (Cal. Sup. Ct., 2020).

standard, the court's response was blunt. "It's this simple: [Uber and Lyft] drivers do not perform work that is 'outside the usual course' of [the companies'] businesses."[21] The state's motion for a preliminary injunction was granted by the court, an order that was affirmed by the California Court of Appeals.[22]

Rather than acquiescing to the courts, ride-share companies sought "to persuade the voters to change the law." [23] This effort culminated in Proposition 22, which California voters approved in the 2020 general election. First, it allowed ride-share companies to circumvent AB-5.[24] Second, it allowed ride-share companies to establish their own standards for determining driver status.[25] Finally, Proposition 22 erected strong amendatory provisions that would protect key provisions of the initiative from future changes.[26] Part III will examine the standards and beliefs incorporated into Proposition 22 along with the implications of the amendatory provisions.

III. ANALYSIS

This analysis focuses of two aspects of Proposition 22. First, it examines the notion that Proposition 22 benefits drivers by preserving their flexibility and right to choose an independent contracting relationship. As will be shown, Proposition 22's key provisions are not necessarily as flexible and driver-friendly as many were led to believe. Given this fact, Proposition 22's amendment provisions are also significant because they make amending the initiative incredibly difficult.

A. Proposition 22 Presumptions and Independent Contractor Provisions

Upon Proposition 22's passage, the Protect App-Based Drivers and Services Act ("Act") was added to the California Business and Professions Code.[27] The Act opened with "findings and declarations."[28] Chief among these findings were that drivers are "choosing to work as independent contractors" rather than employees.[29] Rather than

21. *Id.* at *3; Assemb. B. 5, Cal. Leg. 2019-2020, Reg. Sess. (Cal. 2019).

22. People v. Uber Tech., Inc., 20 WL 5440308 at *18 (Cal. Sup. Ct., 2020*);* People v. Uber Technologies, Inc., 270 Cal. Rptr. 3d 290, 317 (Cal. Ct. App. 2020).

23. People v. Uber Technologies, Inc., 20 WL 5440308 at *1 (Cal. Sup. Ct., 2020).

24. *See* CAL. BUS. & PROF. CODE §7451 (West 2020) ("Notwithstanding any other provision of law…an app-based driver is an independent contractor and not an employee or agent with respect to the app-based driver's relationship with a network company if the following conditions are met…").

25. *Id.*

26. *Id.* § 7465.

27. *Id.* div. 3 ch. 10.5.

28. *Id.* § 7449.

29. *Id.* § 7449(a).

individuals who are seeking traditional employment, drivers are people such as "parents who want to work flexible schedules while children are in school; students who want to earn money in between classes; retirees who rideshare or deliver a few hours a week . . . and families struggling with California's high cost of living that need to earn extra income."[30] Moreover, "recent legislation has threatened to take away the flexible work opportunities of [drivers] . . . taking away their ability to make their own decisions about the jobs they take and the hours they work."[31] Thus, the Act's overriding purpose was to "protect[] the ability of [drivers] to work as independent contractors throughout the state using app-based rideshare and delivery platforms."[32]

The Act appears to achieve this purpose in its second article.[33] Article 2 establishes that "an app-based driver is an independent contractor," "notwithstanding any other provision of law," as long as companies meet the following conditions:

> (a) The network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the app-based driver must be logged into the network company's online-enabled application or platform.
> (b) The network company does not require the app-based driver to accept any specific rideshare service or delivery service request as a condition of maintaining access to the network company's online-enabled application or platform.
> (c) The network company does not restrict the app-based driver from performing rideshare services or delivery services through other network companies except during engaged time.
> (d) The network company does not restrict the app-based driver from working in any other lawful occupation or business.[34]

Simply put, this provision exempts drivers from classification as employees under AB-5 as long as ride-share companies meet the above standard, which largely reflects the way the industry already operates. Arguably, though, this provision does more than merely protect drivers' right to choose an independent contracting relationship. More accurately, the language stating that "an app-based driver *is* an independent contractor" reflects the reality that the Act now classifies all drivers as independent contractors even if some would actually prefer to be employees.[35]

One assumption requiring questioning is the notion put forth by Proposition 22 proponents that drivers would lose independence and flexibility if they were forced to

30. *Id.* § 7449(b).
31. *Id.* § 7449(d).
32. *Id.* § 7449(e).
33. *Id.* div. 3 ch. 10.5 art. 2.
34. *Id.* § 7451.
35. *Id.*

be classified as employees.[36] They argue that classifying drivers as employees may result in such changes such as drivers having to wear uniforms, work set hours, or work at a specified location.[37] But others counter that such changes are not mandated by employment law and would be imposed by the companies themselves.[38]

But even if the argument that most drivers are better served by independent contractor classification was credible prior to the Act's passage, it is becoming less so following its passage. Ironically, this is due in part to the Act itself. Following the Act's passage, several corporations announced that they were laying off their full-time, employee-status drivers and opting to use cheaper app-based drivers instead.[39] Unless these employee-status drivers are able to find other corporations willing to hire them as employees, it may be that they end up having to work as app-based drivers on an independent-contractor basis. Thus, while the Act purported "to protect the basic legal right of drivers to *choose* to work as independent contractors," it may have the actual consequence of forcing all drivers into independent contractor relationships, whether or not they desired such an arrangement.[40]

Additionally, there are concerns that supposed wage protections provided by the Act are not as strong as proponents purported. The Act provides that drivers will earn a rate equal to "120 percent of the applicable minimum wage."[41] But drivers will only earn this rate for "engaged time," which starts when a driver accepts a request and ends when the driver completes that request.[42] It does not include idle waiting time, or time lost due to customer cancellations.[43] A 2019 University of California, Berkeley study estimated that these provisions in effect guaranteed an hourly wage of only $5.64 an hour.[44] More recent reporting has indicated that post-Prop 22 wages are indeed falling well short of what drivers were led to believe they would earn.[45]

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36. Recent Legislation, *Labor and Employment Law—Worker Status—California Adopts the ABC Test to Distinguish Between Employees and Independent Contractors*, 133 HARV. L. REV. 2435, 2440–41 (2020).

37. *Id.*

38 *Id.* at 2441.

39. Levi Sumagasay, *Albertson's Vons Shifting to Third-Party Grocery Delivery in California, Elsewhere*, MARKETWATCH (Jan. 4, 2021, 8:51 PM), https://www.marketwatch.com/story/albertsons-vons-shifting-to-third-party-grocery-delivery-in-california-elsewhere-11609811463; Bote, *supra* note 5.

40. BUS. & PROF. § 7450(a).

41. *Id.* § 7453(d)(4)(A).

42. *Id.* §§ 7453(d)(4)(A), 7463(j).

43. *Id.* § 7463(j).

44. Ken Jacobs and Michael Reich, *The Uber/Lyft Ballot Initiative Guarantees Only $5.64 an Hour*, UC BERKELEY LAB. CTR. (Oct. 31, 2019), https://laborcenter.berkeley.edu/the-uber-lyft-ballot-initiative-guarantees-only-5-64-an-hour-2/.

45. Sainato, *supra* note 3.

Finally, ride-share companies are beginning to reverse course on measures they implemented to give drivers increased control and flexibility over their work. For instance, in 2020, prior to the vote of Proposition 22, Uber gave drivers the ability to set their own price, a move giving drivers significantly more control over the wages they received.[46] In April 2021, however, after the passage of Proposition 22, Uber removed this feature.[47] Such actions indicate Proposition 22 proponents made a concerted effort to exaggerate the benefits drivers receive by remaining classified as independent contractors.

B. Amendment Provisions

The consequences of the Act highlighted above makes a strong case for building some degree of flexibility into legislation governing worker status given the complexity of the topic. The Act, however, has been made inflexible through its provisions governing amendment. First, the Act can only be amended by a seven-eighths majority vote of the legislature.[48] This seven-eighths vote requirement for amendments is the highest requirement in current California statutory law.[49] In contrast, AB-5 was passed by a simple majority vote and was amended by a two-thirds vote.[50] And even if the legislature is able to reach such a level of agreement, there are further limitations on what provisions can be amended.[51] Section 7465(a) of the Act stipulates that any amendments must be "consistent with, and further[] the purpose(s)" of the Act, as described by the Act's first article.[52] This requires that any amendment bears the burden of proving its consistency with the Act's declarations, even if those declarations have been proven unsound.

Even more limiting is that amendment of section 7451 of the Act is expressly prohibited.[53] Recall that section 7451 is the section that exempts app-based drivers from all relevant state legislation, and instead determines their worker status by a test other than the "ABC' test established by the California Supreme Court and codified

46. Driver Announcements, *supra* note 5.

47. *Id.*

48. BUS. & PROF. § 7465(a).

49. Matt Urban & Kylie Zaechelein, *Proposition 22: Protect App-Based Drivers and Services Act*, 2020 CAL. INITIATIVE REV. 122, 126 (2020).

50. Assemb. B. 5, Cal. Leg. 2019-2020, Reg. Sess. (Cal. 2019); Assemb. B. 2257, Cal. Leg. 2019-2020, Reg. Sess. (Cal. 2020).

51. BUS. & PROF. § 7465(a).

52. *Id.*

53. *Id.* § 7465(c)(2) ("Any statute that amends Section 7451 does not further the purposes of this chapter.").

by the legislature.[54] Therefore, even if the legislature agreed that the Act's test was no longer appropriate or contained pitfalls, it would be powerless to amend the test.

Finally, the Amendment provisions go even further by requiring that completely distinct legislation could be considered an amendment that is subject to the Act's amendment provisions.[55] Section 7465(c)(3) provides that any statute the legislature passes that poses "unequal regulatory burdens upon app-based drivers based on their classification status, constitutes an amendment of this chapter and must be enacted in compliance with the procedures governing amendments . . . set forth in subdivisions (a) and (b)."[56] One must first consider what the word "unequal" means in this context. Arguably, a plain reading suggests that "unequal" could be construed to mean any legislation that regulates app-based drivers specifically. Accepting this reading, any effort by the California legislature to enact further legislation regulating drivers in any way would automatically be brought into the Act's amendment provision and subject to its limitations.

This analysis reflects two possible realities following Proposition 22's approval. First, while the ostensible goal may have been protecting drivers' ability to work as independent contractors should they choose to do so, the true consequence may be that they have no choice but to work as independent contractors. Second, the limiting nature of the Act's amendment provisions may deprive the Act of the necessary flexibility to respond to future problems. Part IV suggests recommendations to address these issues.

IV. RECOMMENDATION

With the benefit of hindsight, it is increasingly clear that Proposition 22 may not confer the benefits on drivers they both expected and deserved. For this reason, it's important to consider how future iterations of the Act could be improved. Any such attempts should focus on providing greater flexibility. Concerning ride-share legislation specifically, future acts should ensure that drivers do in fact have the right to choose their working arrangement. More generally, sweeping independent contractor legislation should provide for the creation provisional independent contractor standards on an as-needed basis to provide added flexibility for the legislation.

54. *Id.* § 7451.
55. *Id.* § 7465(c).
56. *Id.* § 7465(c)(3).

A. Protecting Drivers' Right to Choose

Any law that purports to protect drivers' right to choose to work as an independent contractor should do just that—let the driver choose. With respect to any forthcoming legislation pertaining to drivers specifically, this right to choose may be obtained through a slight change in statutory language. In the provisions directly stipulating the standards that determine whether a driver is an independent worker, legislatures should consider using the words "retains the right to be" instead of "is." To use the provision controlling drivers in California as an example, consider again the relevant language: "an app-based driver *is* an independent contractor and not an employee or agent with respect to the app-based driver's relationship with a network company if the following conditions are met…"[57] If "retains the right to be" replaced "is" in this provision, it would add much need leeway that would give drivers the actual right to choose their status. It could still be the case that, as Dara Khosrowshahi argued, that the vast majority of drivers—the moms, the college students, the retirees—wish to remain independent contractors with ample flexibility.[58] This proposed language would still allow that. But it would also allow for the limited number of drivers more inclined to full-time work—grocery delivery drivers, or luxury/high-end drivers—to pursue employee-status arrangements. Indeed, the companies may themselves find that for these more specialized driving tasks, they may prefer drivers that can provide a higher level of professionalism and consistency. Importantly, the "retains the right to be" language will leave sufficiently flexibility such that the parties are left to reach an agreement on their own, rather than being forced into an unwanted arrangement by legislation.

B. Making Independent-Contractor Legislation More Flexible

AB-5 was a bold effort by California's legislature to enact a sweeping change in the way worker status was determined. Maybe it was too sweeping. While it is questionable that ride-share companies' foremost concern in light of AB-5 was the right of their workers to choose, it's unquestionable that AB-5 posed substantial economic implications for those companies.[59] As a result, ride-share companies successfully lobbied for legislation of their own that provides them incredibly strong protections

57. *Id.* § 7451.

58. *Id.* § 7449 (1)(b); Khosrowshahi, *supra* note 19.

59. *See, e.g.*, Thomas O'Connell, *AB 5 Could Have an Unintended Impact on the Franchise Industry*, PRESS-ENTERPRISE (May 22, 2020, 5:01 AM), https://www.pe.com/2020/05/22/ab-5-could-have-an-unintended-impact-on-the-franchise-industry/.

and that also undermines AB-5.[60] Yet, the fact that AB-5 itself has been amended to add exceptions shows the difficulty in enacting sweeping bright-line rules governing worker status.[61] An alternative solution states should consider when adopting new tests and standards for determining worker status broadly is to include statutory language creating provisional standards for specific situations.

For example, if AB-5 had such a feature, companies like Uber could instead apply for a provisional standard that would be used to determine drivers' worker status in lieu of the "ABC" test which they felt is inappropriate. The standard could look like the very one that was codified following the passage of Proposition 22, or it could be an alternative standard that the state considers more appropriate. Additionally, rather than being enacted as permanent, nearly unamendable legislation, the provisional standards could be approved for a finite amount of time. Such a tool would give states tremendous flexibility to experiment with standards for determining worker status. Moreover, it would encourage companies to work with states and find standards that are in fact good for workers as well. Because the State would have the power not to extend a provision if it ends up being too favorable to a company, there would be incentives for companies to seek standards that are fair to workers and thus likely to be extended following the initial observation period. This would also preserve the integrity of the state's sweeping standard such as the "ABC" test because that standard would still be applied in all situations where the state itself hasn't opted to grant a company or industry a provisional standard.

This solution would certainly come with added administrative costs. States could mitigate these costs by placing limitations on how the licenses may be procured. States could only accept applications during a specified time window; the number of companies that seek a provisional license could be restricted by the size of the company as measured by revenues or the number of workers; and companies whose applications are denied could be prohibited from re-applying for a certain amount of time. This final limitation may also have the benefit of encouraging companies to seeking standards that are more worker-friendly and thus more likely to be accepted.

An additional benefit is that allowing provisional standards can result in standards that are easier for companies to implement than a bright-line rule which is applied categorically. Any provisional standard will be created specifically with the company that is applying for it in mind. Just as ride-share companies consider Proposition 22's test more workable than the ABC test, other provisional standards created with a

60. BUS. & PROF. div. 3 ch. 10.5; Michael Hiltzik, *Column: With Prop. 22, Uber and Lyft Used Their Wealth to Reshape Labor Law in Their Sole Interest*, L.A. TIMES (Nov. 4, 2020, 12:26 PM), https://www.latimes.com/business/story/2020-11-04/uber-lyft-proposition-22.

61. Assemb. B. 2257, Cal. Leg. 2019-2020, Reg. Sess. (Cal. 2020).

specific company or industry in mind are likely to be much more narrowly tailored and thus more easily implemented.

Finally, initial administrative costs may be further outweighed by a lack of subsequent administrative costs if a provisional standard proves to be ineffective. In contrast to Proposition 22, which would require tremendous efforts to alter no matter how problematic it proves to be, a faulty provisional standard may simply expire at the end of its duration without further action being necessary. Moreover, as a state gains more experience creating provisional standards and working with companies, it is likely to acquire efficiencies over time.

V. CONCLUSION

California's enactment of the "ABC" standard and the response by ride-sharing companies to push for the passage of Proposition 22 highlight the challenges and pitfalls of enacting sweeping standards for determining worker status. Other states should take note. When pursuing changes of their own, states should take great effort to ensure that workers truly retain the right to choose their working arrangement and that legislation remains flexible enough to address its shortcomings as they become apparent.