

AFD Ep 348 Links and Notes - State-level labor law part 1 [Bill/Rachel/Kelley] - Recording Feb 7

- Prop 22 in California
 - AB5 -
<https://www.vox.com/policy-and-politics/2019/5/30/18642535/california-ab5-misc-assify-employees-contractors>
 - The CA State Assembly passed a bill (AB5) that was later passed by the State Senate. That bill redefined the term “employee” and made it harder for businesses to classify an individual as an independent contractor.
 - As a result, workers would have access to unemployment insurance, health care, parental leave, minimum wage, overtime, workers comp, etc.
 - “The California bill, known as AB5, expands a groundbreaking California Supreme Court decision last year known as *Dynamex*. The ruling and the bill instruct businesses to use the so-called “ABC test” to figure out whether a worker is an employee. To hire an independent contractor, businesses must prove that the worker (a) is free from the company’s control, (b) is doing work that isn’t central to the company’s business, and (c) has an independent business in that industry. If they don’t meet all three of those conditions, then they have to be classified as employees.”
 - Uber and Lyft never complied with the law and even threatened to leave the state.
 - Prop 22 -
<https://www.nytimes.com/2020/11/04/technology/california-uber-lyft-prop-22.html>
 - Prop 22 was the most expensive ballot measure in history - Uber, Lyft, Doordash, etc spent \$200 million on the yes campaign, while labor spent \$20 million on the no campaign.
 - In the end, yes received 59% of the vote.
 - Prop 22 undid the work of AB5 and allows companies like Lyft and Uber to continue to hire drivers in a new third category of workers which is neither employee nor independent contractors.
 - Effect of Prop 22 -
<https://prospect.org/labor/prop-22-is-here-already-worse-than-expected-california-gig-workers/>
 - In order to make a yes vote more appealing, the measure promised gig workers a pay of 120% of local minimum wage, reimbursement for mileage, and a health care stipend.
 - All of those “perks” have failed to meet expectations - The healthcare stipend is at most \$400/month while health care costs are generally over \$1000/month for families. Reimbursement for mileage falls below the minimum rate. The pay hike only applies while actively driving and the UC Berkeley Labor Center estimates that the effective pay rate is only \$5.64/hour.
 - “But companies beyond the gig economy saw their opportunity to get in on the low-cost labor pool. In January, grocery giants Vons, Pavilions, and Albertsons announced that they’d be firing their full-time, benefits-receiving delivery staff, venerated just months ago as “essential workers,” and replacing them with subcontractors from DoorDash, which has secured a nationwide deal to take over the service.”
 - Legal Challenges to Prop 22
<https://cities-today.com/california-supreme-court-rejects-prop-22-lawsuit-over-gig-worker-rights/>

- Drivers and the SEIU filed a lawsuit with the California Supreme Court alleging that Prop 22 violates the state constitution and does not allow the state legislature to create or enforce any kind of compensation system for gig workers.
- The court declined to hear the case, but suggested that it could be filed in a lower court.
- 7/8ths super-duper legislative majority to revise: <https://www.bloomberg.com/news/newsletters/2020-10-20/california-s-prop-22-would-be-virtually-permanent-if-it-passes>
- Plans to spread Prop 22 to other states
- <https://www.washingtonpost.com/technology/2020/11/05/uber-prop22/>
 - *Uber reported a \$1.1 billion quarterly loss in the period that ended in September, 6 percent less than the figure reported in the same quarter a year ago. The company has not been profitable [since debuting](#) on the stock market in May 2019.*
- <https://www.theguardian.com/us-news/2020/nov/11/california-proposition-22-uber-lyft-doordash-labor-laws>
 - *Labor advocates fear the victory for tech firms could mark the beginning of similar efforts across the US. Uber's CEO, Dara Khosrowshahi, signaled as much during an earning call last week. "Going forward, you'll see us more loudly advocating for new laws like Prop 22," he said.*

The only other state [that has introduced](#) legislation like AB5 is New Jersey, although the effort there has stalled. In January, New York's governor, Andrew Cuomo, [hinted at passing](#) a similar law, saying in a speech he would "introduce legislation to make sure all of New York's workers have necessary benefits and protections".

"Many of the gig economy workers are excluded from the progress New York has enacted because the law has not caught up with changes in the economy," according to literature put out by Cuomo's office in January. "Corporations avoid fair pay and benefits, increasing their profits at the expense of the employee and the taxpayer."

- <https://www.washingtonpost.com/technology/2020/11/17/uber-lyft-prop22-misinformation/>
 - *The measure's success could endanger independent contractors outside the gig economy, too. That includes janitors and home health aides, who also do not typically qualify for minimum wage, overtime protection, paid leave or unemployment insurance, said Margaret Poydock, a policy associate at the Economic Policy Institute, a pro-labor think tank. "Prop 22 showed that companies and big corporations can buy their way out of providing protections for workers under the law," she said.*

Uber chief executive Dara Khosrowshahi [said](#) the company would be "more loudly advocating" for laws like Prop 22, while Lyft Chief Policy Officer Anthony Foxx [said](#) Prop 22 demonstrated a model that could be "replicated and can be scaled." Lyft President John Zimmer [told](#) Axios last week that the company saw an "easier" path to cementing drivers' contractor status at the federal level but was prepared to go state by state.

- *Gig companies are expected to try a similar strategy in other states where contractor status has been up for debate, such as New York, New Jersey, Massachusetts and Illinois, according to experts on the gig economy.*
- **New Mexico** joins the ranks of states with a state-level card check law for public sector unions (article does not mention private sector unions):
<https://inthesetimes.com/article/new-mexico-workers-rights-victory-publicsector-union>
 - March 2020 reform of public-sector state union law in New Mexico
 - *One stunning aspect of H.B. 364 went mostly unmentioned in the public debate over its passage: Section 7c of the bill made New Mexico one of the few states to provide public employees the right to form a union through card check. That provision has already paid off: Organizers with University of New Mexico graduate assistants say they filed for union recognition under the new law on December 9 [2020]*
 - *Card check, sometimes called majority sign-up, requires that employees submit cards signed by a majority of the proposed bargaining unit; after it's confirmed they have a majority, they have a recognized union. Nine states — California, New York, New Jersey, Illinois, Massachusetts, Oregon, Washington, Maine and New Mexico — have strong mechanisms for mandatory recognition using card check. A number of additional states — such as Kansas, North Dakota and Maryland — have card check provisions that apply to smaller groups of public employees, and which may have weaker provisions. Two others, Oklahoma and New Hampshire, passed card check laws in 2004 and 2007, only to repeal them in 2011.*
 - *New Mexico is different: In 2019, only 22.8% of its public sector workers were covered by a union contract, placing New Mexico 36th in the nation. This puts New Mexico well behind most other states with wide-ranging card check laws, which tend to have higher union density. This means there's unprecedented room for growth*
- "Laws enabling public-sector collective bargaining have not led to excessive public-sector pay" (2015 study, Economic Policy Institute)
<https://www.epi.org/publication/laws-enabling-public-sector-collective-bargaining-have-not-led-to-excessive-public-sector-pay/> *Unlike many other countries, when the United States enacted its private-sector labor law, the National Labor Relations Act, in 1935, it did not include public employees within the same or similar framework for collective bargaining. Not until the late 1950s and 1960s did state and local governments grapple with a labor law to govern their rapidly growing public-sector labor forces. No state or local government chose to transplant the private-sector model of collective bargaining; instead they adopted some parts of it, chose to create no bargaining framework at all, or prohibited collective bargaining.*
 - *Until Wisconsin in 1959 created a framework for municipal collective bargaining, labor legislation in the United States had largely excluded public employees from any legal framework for collective bargaining. The greatest concern about extending the private-sector model was whether public-sector collective bargaining would result in distortions of democracy that would shift governmental resources disproportionately toward public-employee compensation and expand employment of politically advantaged and powerful groups of public employees (Wellington and Winter 1971). This concern rested on an incorrect economic assumption that the demand for public-sector workers was inelastic because public employers provided essential services without substitutes and were vulnerable to strikes and other types of job actions. Despite this conclusion, even*

public-sector collective bargaining critics recognized that there were alternatives to strikes: arbitration, fact-finding, mediation, or bargaining without some final resolution mechanism. Another concern was the scope of bargaining, that the relatively broad scope of bargaining in the private sector, if applied to public-sector employment, might distort and disrupt the democratic processes and procedures established in local governments, thwarting democratically decided policy through a labor dispute with an organized minority (Wellington and Winter 1971).

- *Only 2 percent of the state and local public-sector workforce in 1960 had the right to bargain collectively. By 2010, that share had grown to 63 percent.*
- A 2010 University of Missouri Law School faculty publication:
<https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1234&context=facpubs>
The legal environment covering state and local employees has been described as a “crazy-quilt patchwork of state and local laws, regulations, executive orders, court decisions, and attorney general opinions”
- State of Idaho public sector unions
 - <https://www.reuters.com/article/us-usa-idaho-unions/idaho-is-latest-state-to-curb-state-workers-union-idUSTRE72G7Q620110317>
 - https://www.commonwealthfoundation.org/state_labor_laws/detail/idaho

Also mentioned in this episode: AFD Ep. 325 Boston Police Strike of 1919:

<http://arsenalfordemocracy.com/2020/09/22/sept-20-2020-the-boston-police-strike-of-1919-arsenal-for-democracy-ep-325/>