



Freelancers acknowledged as employees in California

A new bill passed by the California Senate will drastically change the way employment is perceived in the State and help prevent the established abuse of the figure of the service provider.

Where California goes, other states after follow.

The California Senate passed the new Assembly Bill 5 (“**AB5**”) - a controversial bill aimed at curbing the abusive use of the figure of the service provider in employment relationships.

As with the Supreme Court ruling in the Dynamex case, this new bill, published September 10th, establishes the “ABC” method, which requires the verification of three requirements for the qualification of a service provider: (i) the worker may freely carry out and organize his/her work; (ii) the execution by the employee of tasks outside the normal scope of the hiring company’s activity; and (iii) usual involvement of the worker in independent businesses or occupations, with the same nature as the activity performed for the hiring company.

Should the amendments to the AB5 be approved by the California State Assembly, their entry into force will cover a wide range of professionals in many different areas: construction, security, domestic service, catering, doorkeepers and janitors – as well as Uber and Lyft drivers. It is estimated that in California there will be about one million professionals affected by this bill.

The approval of the bill will also imply that these professionals will benefit from, *inter alia*, health insurance, minimum wage, maternity and paternity leave, overtime pay, unemployment protection, and the possibility of unionization. This means that the lives of workers who currently have no labor protection will be radically changed.

The AB5 represents the first major political battle in the United States against the collaborative method which characterizes the gig economy – and it is an attack to the root of its business model. The new bill will deem the drivers of private transportation platforms, like “Uber” and “Lyft”, as employees.

Given the great influence of California, it is likely that other states, such as New York or Washington, where similar projects have already been presented (but which eventually had no continuity) may adopt similar measures.

Once approved by the California State Assembly, the new bill will come into force on 1 January 2020.

We will have to wait to confirm the practical results of this new bill. However, it is anticipated that not all companies will requalify their service providers as employees. In this sense, Uber is an illustrative example – the driver’s company has an history of resisting the labour regulation and the qualification of its drivers as employees.

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