Eakinomics: The Next Battle in the Worker Wars

Employer-employee relationships are a central policy battleground in the Biden Administration. The president created a White House Worker Organizing and Empowerment task force to promote unionization, and the administration backs the Protecting the Right to Organize (PRO) Act, which includes preempting right-to-work laws in states and reclassifying independent contractors as employees.

An important precursor to the PRO Act is the California law known as AB5. AB5 reclassified many independent workers as employees, thus limiting flexibility and non-traditional labor arrangements. In particular, AB5 threatened the business models of Uber, Lyft, and other app-based service companies. In response to its passing, Californians voted on – and supported with 59 percent of the votes – Proposition (Prop) 22, which carved the ride-sharing and delivery drivers out of the AB5 regime.

As laid out by Jennifer Huddleston and Juan Londoño in their latest, a California court recently found Prop 22 in violation of the state constitution, largely stemming from specifics of the California ballot initiative process. From a policy perspective, this decision is a step backward because policies such as AB5 (and the PRO Act) “are based on the presumption that independent workers ranging from Uber and Lyft drivers to freelance writers and mall Santas are being harmed because they do not receive the same benefits as workers classified as employees. Worker classification plays a crucial role in the flexibility and services that many app-based and online services can offer as well as other seasonal, temporary, or flexible working arrangements.” In addition, AAF’s Isabel Soto highlights that while much of the rhetoric around AB5 has focused on tech companies in the sharing economy, its impact extends over multiple other industries. Broad reclassification will disproportionately impact women, people of color, and workers with disabilities who rely on self-employment and independent contracting at higher rates.

Huddleston and Londoño note that “The court found Prop 22 unconstitutional under the California constitution based on the process by which the proposal amended the statute. In many ways this ruling is based on the particularities of California’s unique ballot-initiative process.” This outcome suggests that not all ways of getting to the right policy are created equal. It is far better to legislate in a way that is consistent with protecting worker freedoms at the outset, rather than try to apply rifle-shot fixes for emerging problems after the fact.