

One Minute Memo®



Gig Economy Threatened By Proposed Legislation for Collective Bargaining Rights

By Jennifer Holly, Justin Curley, and Josh Henderson

Gig economy workers would gain the right to collectively bargain for benefits and wages under groundbreaking legislative amendments introduced in California this week by Assembly Member Lorena Gonzalez (D-San Diego). The proposed legislation would allow independent contractors—most notably, those individuals working in the gig economy—to organize and collectively bargain just like unionized employees. The legislation, if passed, would mark a dramatic departure from federal labor law, which extends collective bargaining rights only to workers classified as employees.

[Assembly Bill 1727](#)—now known as “The California 1099 Self-Organizing Act”—would allow independent contractors who perform their work through an online hosting platform (such as a mobile app) to organize and negotiate as a group, boycott or critique business practices, communicate with customers and the public, and report any practices believed to violate the law or adversely affect workers or clients. The bill would also allow for a “members-only” collective bargaining relationship where the workers would only need ten or more individuals working via the hosting platform to say they want to negotiate as a group with the company. Such a provision represents a departure from federal labor law, which generally requires a majority of employees to agree to union representation.

Assembly Member Gonzalez’s proposed legislation is believed to be the first statewide legislative attempt in the nation to provide collective bargaining rights and other employee workplace protections to gig economy workers. In December 2015, the Seattle City Council approved an ordinance allowing independent contractors in the transportation sector to organize and collectively bargain. The U.S. Chamber of Commerce recently filed a lawsuit to enjoin the enforcement of the Seattle ordinance and to have the ordinance declared in violation of federal antitrust and labor law.

The proposed legislation comes at a time when gig economy companies are facing a flurry of class action lawsuits alleging that gig workers are entitled to the same wage and hour protections as employees. Gig economy companies, and their independent contractor business model, are also facing ever-increasing scrutiny from federal and state regulators, including the U.S. Department of Labor’s Wage and Hour Division.

If signed into law, the California 1099 Self-Organizing Act would be sure to face significant legal challenges from gig economy companies. For example, Reuel Schiller, a professor at University of California Hastings College of the Law, has pointed out that ride-hailing services could argue that allowing drivers to form unions could raise antitrust concerns since it could enable price-setting by thousands of contractors, each operating as independent businesses.

Gig economy companies may also argue that the law, if enacted, is preempted by the National Labor Relations Act on two grounds. First, under the *Machinists* preemption doctrine, opponents of the law may argue that the law upsets the delicate balance that Congress struck by excluding independent contractors from protection under the NLRA. Second, under the Garmon preemption doctrine, the National Labor Relations Board has exclusive jurisdiction to decide who is covered by the Act. Although the bill purports to apply only to independent contractors, opponents may argue that the Board must first decide that threshold coverage question. Indeed, the Board is currently considering whether certain drivers are employees under the Act.

We will continue to monitor the California 1099 Self-Organizing Act and provide our readers with further information as it becomes available. In the meantime, if you have any questions, please contact your Seyfarth attorney, [Jennifer Holly](mailto:jmholly@seyfarth.com) at jmholly@seyfarth.com, [Justin Curley](mailto:jcurley@seyfarth.com) at jcurley@seyfarth.com, or [Josh Henderson](mailto:jhenderson@seyfarth.com) at jhenderson@seyfarth.com.

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