

California narrative casts a pall over East Coast efforts to elevate gig economy workers

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03/02/2020 05:04 AM EST

NEW YORK — An Uber executive has been roaming the halls of the New York State Capitol bearing a 44-page sheaf of news clips that, he says, augurs the misery that will envelop New York should legislators grant gig economy workers “employee” status like California has.

“Vox Media to Cut 200 Freelancers, Citing California Gig-Worker Law,” reads one headline in the book of clips the executive, Josh Gold, has been depositing in lawmakers’ offices. “How California’s new ‘gig-economy’ law undermines my livelihood,” reads another.

California’s measure, which took effect Jan. 1, has Uber and other companies who use gig workers warily watching other states that might want to emulate the biggest U.S. state.

But while labor-friendly politicians on the East Coast have been making noise about protections for contract workers in New York and New Jersey, the narrative emerging from California hangs over the two states like a specter.

The torrent of bad headlines and unintended consequences — freelance writers struggling to make ends meet, working moms whose carefully calibrated balancing acts have been thrown off-kilter — has been doing much of the lobbyists’ heavy lifting so far in scaring lawmakers away.

In New York, a divided labor movement has yet to coalesce behind a piece of legislation, while Gov. Andrew Cuomo, who cited the importance of the issue in his State of the State speech, quickly off-loaded it to a task force. In New Jersey, a skittish state Senate introduced a bill last year, only to back away from some of its more ambitious aims.

Legislators are still “all over the place,” and the conversation isn’t “mature enough” yet to ensure New York avoids the pitfalls of its West Coast counterpart, Cuomo said in an interview.

Tech-sector lobbyist spending in New York — home to Uber’s biggest market — indicates a lack of urgency around employee classification.

While Uber and Lyft lobby on a variety of issues, they spent far less on New York in 2019 than they did in 2018 — a combined \$1.2 million, according to the most recent 2019 data, compared to \$6.3 million in 2018. New Jersey’s latest lobbying data was not yet available.

In California, Uber and Lyft spent roughly twice that amount in 2019. Opponents of the new employee classification regime have promised a \$90 million fight in the coming year.

“When you have a complicated issue like this — what happened in California and how do you make sure you don’t make the same mistake — it requires actual policy research,” Cuomo said, insisting his task force is not the responsibility-dodging punt some Albany observers immediately labeled it.

Even Liz Krueger, a Democratic state senator from New York City’s Upper East Side who doesn’t often find herself in rhetorical alignment with the governor, agreed.

“I don’t think the Legislature wants to go running willy-nilly down the same path as California without understanding who are all those people out there and how does it affect them and who are the winners and losers,” she said.

The purpose of California’s [CA AB5 \(19R\)](#) was to redress what proponents describe as rampant, economy-wide mislabeling of employees as “independent contractors,” a practice that has existed for decades, but that Uber and Lyft have brought to the fore in their controversial treatment of drivers. The companies’ decision to define those drivers as “independent contractors,” even as they exert significant control over their work lives, deprives them of minimum wage protections and paid sick leave, all while giving the companies an unfair advantage over more responsible competitors, opponents say.

“Workers in construction and delivery and janitorial and homecare, and almost any sector you can name, are or will benefit from those changes once the law is fully enforced,” said Rebecca Smith, an attorney with the National Employment Law Project. “So, while no one discounts the issues that have come up, there are an awful lot of people who will be helped.”

California’s innovation was to apply a three-pronged test determining whether a worker is an employee or an independent contractor to the entire state economy — the fifth largest on the planet — after the state Supreme Court mandated the test apply to more workers.

As California was preparing to pass the legislation, [momentum seemed to build in New York state](#) to follow a similar path.

By Cuomo’s estimate, some 40 percent of New York residents have jobs "related to" the gig economy. (A [New School study](#) released last month suggests Cuomo is overstating his case by including “a range of informal activities” like house-sitting and yard work.)

During his State of the State speech this year, Cuomo described the misclassification of workers as a “fraud” — and one that isn’t relegated to the digital economy.

“A domestic worker is not an independent contractor because she brings her own broom and mop to the job,” he said. “It is [exploitive, abusive, it’s a scam, it’s a fraud](#), it must stop and it has to stop here and now.”

His remarks were muscular. They were also fleeting. Two weeks after his speech, [Cuomo sent the question to a "digital marketplace" task force](#), one that would seem to focus on tech-sector gig workers, not independent contractors writ large.

Some lawmakers want New York to take a more radical approach.

“I’m not impressed with his proposal,” said John Liu, a state senator from Queens who is working with labor to craft a New York version of the California law. “A task force is not something we need.”

But even Liu acknowledged there were lessons to be learned from the California blowback.

“You know what, California, they are the first, and sometimes it’s good to be the second,” he said in January.

The California narrative appears to be having a similar effect across the Hudson River.

Under Democratic Gov. Phil Murphy, New Jersey’s labor department has appeared more aggressive than New York toward companies classifying workers as independent contractors. In November, [the department said Uber owed it some \\$650 million](#) in taxes and damages for its failure to finance unemployment and disability insurance for its drivers — two basic rights normally afforded employees.

But the department did not go so far as to declare Uber drivers were, in fact, full-fledged employees deserving of other protections, like minimum wage. And so far it has not collected any of the \$650 million, according to a source at Uber.

Steve Sweeney, the state's Democratic Senate president and Murphy rival, tried to go further than the governor, introducing a bill last year that threatened to reclassify countless workers, app drivers included. Significantly, the bill would have prevented certain employers from classifying someone as an independent contractor if they worked outside of headquarters.

The bill, backed by the AFL-CIO, caught Trenton by surprise and prompted a swift and widespread backlash. Lawmakers and staffers say they were inundated with calls and requests for meetings from groups across virtually every industry, with the most outspoken attacks emanating from freelance journalists.

When the [bill advanced out of committee](#) in November, Lisa Yakomin, president of the Association of Bi-State Motor Carriers, said California should serve as a warning for New Jersey. She said the California bill is expected to cost tens of thousands of truckers their jobs, many of whom work as independent contractors.

“Their American dream is now shattered by the hasty passage of this horrible legislation,” Yakomin told the committee. “We cannot let that happen here.”

Sweeney has since weakened his bill.

Larry Goldbetter, the National Writers Union president, said the narrative promulgated by critics of the California law is rooted in “hysteria.”

Many of the Vox freelancers cited in the article circulated by Uber were meagerly paid, he notes. The law, which bars contractors from producing more than 35 pieces per year per employer, has also prompted Vox to create some full-time jobs. The California law may have issues, but Assemblywoman Lorena Gonzalez, the bill's author, has [promised to fix them](#).

“What happened at Vox is exactly the way the law is supposed to work,” Goldbetter said.

He's confident that when New York's labor-backed coalition releases its new bill, the one Liu has been working on, concerned freelancers will be pleased.

At the moment, New York labor seems less-than-unified about how to go about crafting that legislation.

32BJ, the SEIU affiliate that represents property service workers, has pushed for the law to encompass all purportedly misclassified employees, be they nail salon workers or DoorDash delivery people.

The New York AFL-CIO puts a greater premium on ensuring workers can collectively bargain under state law, but questions whether New York can tackle economy-wide worker misclassification all at once.

The union's New York president, Mario Cilento, said he suspects lawmakers might have more appetite for a bill that focuses on “app-based workers within the gig economy.”

During a recent hearing at the Capitol, the lack of appetite for wholesale reclassification seemed apparent. State Sen. Diane Savino, the sponsor of a 2019 [AFL-backed bill](#) that went nowhere, cited Vox news and the “consternation” the California bill had created among freelancers.

The tech companies have advocated creating some sort of third classification of worker, one entitled to portable benefits — a prospect that prompts some labor advocates to scoff.

“Who does the state want to please?” asked New York Taxi Workers Alliance Executive Director Bhairavi Desai, a 32BJ ally. “These companies that have perfected a business model that’s unleashed all of this poverty in one of the most economically unequal times in our history? Or are they going to stand with the workers and the public that they’re put into power to protect?”

Jeremy B. White contributed to this report from California.