

# THE SACRAMENTO BEE

## Fact check: Did the U.S. House just pass a federal version of California's gig economy law?

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California Assemblywoman Lorena Gonzalez celebrates committee passage of a bill to reclassify workers in California

California lawmakers are working on legislation that would change the 'gig' economy by reclassifying independent contractors as workers in California. California Assemblywoman Lorena Gonzalez celebrated the passage of a bill on July 10, 2019. BY HANNAH WILEY

The U.S. House last week passed a bill that could be the biggest overhaul to labor law in decades if it can clear the Senate and reach President Joe Biden.

The Protecting the Right to Organize Act, known as the PRO Act, contains a number of provisions that would make it easier for workers to organize. The bill, for instance, would change the definition of "employee," allowing millions of gig workers such as rideshare drivers the right to organize and form a union.

That provision has led some Republican lawmakers to call the law a federal version of California's Assembly Bill 5, a landmark labor law passed in 2019 that required businesses to give employment benefits to more workers.

"Even worse, the PRO Act will bring to every state California's AB 5, which destroyed numerous jobs by denying work to independent contractors," Rep. Darrell Issa, R-Temecula, tweeted last week. "To take a reckless job killer like AB 5 and extend it across America is to make one state's mistake the entire nation's crisis."

Issa's claim about the PRO Act is inaccurate. Unlike AB 5, the PRO Act does not regulate employees' wages and benefits, meaning companies won't suddenly have to pay for new perks to those who are being reclassified.

"There has been a good deal of online hype that the PRO Act uses the ABC test to create a national worker classification law. To be clear, it does not," a writer's group the Author's Guild wrote March 11. "It amends the federal labor law that provides collective bargaining rights and governs the National Labor Relations Board, and nothing else."

**Claim:** The PRO Act will bring California's AB 5 nationwide, Issa and other Republican lawmakers say.

**Rating:** False

**Details:** The California Supreme Court issued a ruling in 2018 adopting what is known as the ABC test to define independent contractors. AB 5 in 2019 codified the ruling, which is referred to as the Dynamex decision.

The test has three prongs that must be met for a worker to be considered an independent contractor. Otherwise, the person would be considered an employee eligible for benefits:

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- The individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact;
- The service is performed outside the usual course of the business of the employer; and
- The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.

The PRO Act would apply the ABC test used in AB 5 to the National Labor Relations Act, which regulates collective bargaining in private sector companies.

But there's a key difference between AB 5 and the PRO Act.

AB 5 applies the ABC test to much of California's labor laws, from wages to workers' compensation.

The PRO Act, however, applies the test only to workers' rights to organize and collective bargain, said William B. Gould IV, a law professor emeritus at Stanford University and a former chairman of the National Labor Relations Board under the Clinton administration.

"The focus of AB 5 and Dynamex is minimum wage, maximum hours, workers' compensation, health insurance and paid sick leave that is available to employees, unemployment insurance as well," he said.

Other parts of federal labor law, such as the Fair Labor Standards Act which regulates minimum wage and overtime, are not touched by the PRO Act, Gould said.

Gig workers under the PRO Act would simply gain the right to organize and collectively bargain, if they choose to exercise it, Gould said. Currently, gig workers classified as independent contractors are not allowed to collectively bargain because of antitrust laws.

Freelance writers opposed to the PRO Act have noted that Biden has called for the ABC test for "all labor, employment, and tax laws." They and other opponents of the PRO Act also point to a bill proposed by Sen. Patty Murray (D-Washington) that would apply the ABC test to the Fair Labor Standards Act.

"It's clear what is going on here," said Walter Olson, a senior fellow at the libertarian Cato Institute's Robert A. Levy Center for Constitutional Studies. "I just find it little odd for them to say... we're only asking for the first slice."

Still, those concerns are not directly about the PRO Act itself, noted Assemblywoman Lorena Gonzalez, D-San Diego, who authored AB 5.

“This is simply providing opportunity for independent contractors to bargain for themselves or to bargain with a union for a job,” she said. “Don’t say this is going to end freelancing. It’s not.”