

California Companies Brace For Litigation After Labor Bill, *Bloomberg*, ft. Katherine Catlos

Katherine S. Catlos, partner at Kaufman Dolowich & Voluck LLP in San Francisco, and Chief Diversity & Inclusion Officer at KD, was quoted in an article published by Bloomberg on September 13, 2019.

California employers say a new measure that could make it harder for them to classify their workers as independent contractors would have ripple effects across the gig economy and beyond, prompting new litigation, investor concerns, and uncertainty about whether existing business models will be upended.

The measure, Assembly Bill 5 or A.B. 5, would codify a more rigid test for employers to classify workers as independent contractors instead of employees. Known as the “ABC test,” it would create a more difficult landscape for companies that rely on contractors. The distinction is key because employees are entitled to benefits such as minimum wage, business expenses, and overtime, unlike a contractor.

It’s not just the app-based companies, such as Uber Technologies Inc., Postmates, Inc., and Lyft, Inc., that would face legal hurdles to meet that standard but also franchises, construction workers, truckers, software coders, janitors, journalists, and exotic dancers. Nationwide, there has been a steady rise in independent contracting jobs as companies look to shed labor costs and liability.

“This will affect almost all industries. We’ve already seen an uptick in litigation on this particular issue and we’ll see a lot more,” said Katherine Catlos, a partner in San Francisco with Kaufman Dolowich & Voluck. “A.B. 5 is a Band-aid over an already complex legal analysis. It may appear simple, but it’s not, and each factor below has a wealth of seemingly conflicting case law and differing public policies depending on the industry and worker at stake.”

The new standard, which has yet to be signed by California’s governor, requires companies to clear three hurdles to classify a worker as a contractor: weighing the employer’s control over how the work is performed; whether the services are within the normal course of business; and whether the workers have an independently established role. These factors could upend business models that rely on contractors.