

Legal Update Article

California Propositions Employers Should be Watching in Upcoming Election

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California voters will decide on several important propositions in the upcoming November election, including three employment law issues that could have far-ranging implications for California employers and businesses.

Proposition 16 – Repeal of Proposition 209 Affirmative Action Ban

The California Legislature passed Assembly Constitutional Amendment 5 (known as ACA-5), which was [placed on the 2020 ballot as Proposition 16](#). Proposition 16 would allow government decision-making policies to consider race, sex, color, ethnicity, or national origin as a factor in public employment, education, and contracting decisions. This practice has been illegal in California since 1996 upon passage of Proposition 209, banning affirmative action. While the passage of Proposition 16 would affect universities and government offices directly, this also could change how contracts with state governmental agencies and universities are awarded.

Proposition 22 – Independent Contractor Classification of “Gig Economy” Workers

The classification of service providers as “independent contractors” has been a contested and evolving issue in California. Over the last several years, the California Supreme Court set forth a new and more stringent test to uphold the classification of independent contractors. Governor Gavin Newsom also signed Assembly Bill 5 (AB 5), which recasts, clarifies, and expands exemptions to California’s independent contractor law. However, the classification of service providers in the “gig-economy” has mostly been adjudicated in litigation.

Proposition 22 would grant app-based transportation and delivery companies a special exception to AB 5 by allowing these companies to classify their drivers as “independent contractors,” thereby exempting them from providing benefits to certain drivers. If passed, other industries may seek similar changes to allow for expanded classification of workers as independent contractors, such as food delivery personnel and couriers.

Proposition 24 – Expansion of Employee Privacy Rights

The privacy rights group that sponsored the California Consumer Privacy Act (CCPA) is sponsoring Proposition 24. While Assembly Bill 1281 recently amended the CCPA to extend the exemption on employee personal information until January 1, 2022, Proposition 24 would further extend the exemption to 2023. However, Proposition 24 would create additional obligations for companies and organizations processing personal information, including responding to consumer’s right to correct personal information, right to know data retention policy, and right to opt-out of advertisers using precise geolocation. Furthermore, Proposition 24 also would allow consumers to limit the use and disclosure of newly defined “sensitive personal information” including government-issued identifications, account credentials, financial information, biometric information, precise geolocation, and more.

Jackson Lewis attorneys are tracking the many changes facing employers in the upcoming election. If you have questions about these California Propositions or other issues, contact a Jackson Lewis attorney to discuss.

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