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LEGISLATIVE ACTION ALERT

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Gig workers' win in California is a victory for workers everywhere

September 11, 2019

According to an article posted on line from the Huntsville Tribune, millions of people have been working without basic labor protections. After two hours of debate Tuesday, it happened: The California Senate voted on AB 5. It passed. Democratic lawmakers applauded. Supporters of the bill cheered online. "I have tears in my eyes and goosebumps on my limbs," **wrote** Veena Dubal, a law professor at University of California Hastings.

AB 5's passage — which still needs the formality of a state assembly vote and Gov. Gavin Newsom's signature, both of which are expected — could easily be seen as just another progressive victory in California. But it is more than that. It is a historic moment for the US labor movement too. By making it hard for employers to misclassify employees as independent contractors, potentially millions of California workers who've been kept off payrolls will get basic labor rights for the first time, like overtime pay and unemployment benefits. This includes janitors, construction workers, security guards, and hotel housekeepers — and yes, this group also includes Uber and Lyft drivers. "Symbolically, this is huge," César Rosado Marzán, a labor law professor and co-director of the Institute for Law and the Workplace at the Illinois Institute of Technology, told me. "The pride of California is tech. Now they're passing a law that says these people are your employees, and you need to take care of them. It shows that labor unions and activists have a lot of pull."

The passage of AB 5 also means millions of new workers will now have a right to join labor unions. To get a sense of how big this workforce is, consider this: When state tax investigators **audited about 8,000 California businesses** in 2017, they discovered nearly half a million employees had been misclassified or otherwise left off payrolls. The rise of misclassification is one reason labor unions have been systematically weakened since the 1980s, William Gould, a law professor at Stanford University and former head of the National Labor Relations Board, told me. That helps explain why only 1 out of 10 workers are unionized today, compared to 3 out of 10 back in the 1950s. "This legislation will, for the first time really, attack the misclassification phenomenon," he said.

Pushing AB 5 through the legislature is perhaps one of the most significant labor wins in decades, if only because the labor movement has had very few victories in the past 40 years. But it's particularly significant because of California's position as one of the world's largest economies and its outsized influence in national politics. If any state can start to reverse the trend of shrinking labor unions, it's California.

Where California goes, other states often follow

While Republicans set out to gut labor unions in Midwestern states starting back in 2010, lawmakers in progressive states have been pushing for more pro-labor policies. These policies often began in California and were later adopted by other states.

For example, in 2004, California became the first state to mandate paid family leave at work. That triggered a wave of other states to do the same, including Rhode Island, Washington, New Jersey, and New York. In March of 2016, California was the first state to pass a $15 minimum wage bill. Since then, more than a dozen other states have done so, too. In July, California lawmakers were the first to ban **natural hair discrimination** in the workplace. A few days later, New York state lawmakers passed a similar bill. This dynamic is one reason AB 5 could have such widespread impact, says Stanford's Gould.

But AB 5 isn't going to resolve everything. In fact, Gould predicts that not every company will willingly switch their independent contractors into employees. They may wait for workers to take legal action, especially those who require workers to sign arbitration agreements, in which they agree to take legal claims to a private arbitration forum instead of the court system. Uber, for example, has a history of resisting regulation, so the company may wait for workers to file complaints in arbitration to get employee status. Senators, however, amended the bill Tuesday to give cities some authority to enforce the law.

There's also debate about whether gig economy workers can unionize, even under AB 5. Trump's National Labor Relations Board, which enforces federal labor union laws, recently decided that gig workers are independent contractors, not employees, which means they don't have a right to unionize. "This is a big deal on the national level, but there are still formidable obstacles," Gould said. However, hundreds of thousands of workers — possibly millions — will see an immediate impact on their working conditions after the switch. Those who can unionize would also have a legal right to negotiate their pay and benefits.

What AB 5 means for tech companies and workers

Ten years ago, Silicon Valley tech companies were the pride of both California and America at large. Global investors **sank fortunes** into startups like Uber. Lawmakers across the country **backed off** efforts regulate them. Legislators in Congress and in Sacramento sat back and watched tech companies seize more power, **buying up competitors** and morphing into giants.

That hands-off approach has since backfired. Scandal after scandal has caused Silicon Valley's halo to lose a lot of its shine: Tech companies have **sold user data** without permission, **allowed bad actors** to manipulate their platforms, built **biased artificial intelligence systems**, profited from exploitative business models, and created **misogynistic work cultures**.

Meanwhile, tech workers **have been calling out** executives about the industry's impact on society. Google employees, for example, have changed company policies through sustained action, signaling the growing power of workers and the labor movement as a whole. After thousands of Google employees and contractors staged a **global walkout** in November, the company agreed to some of their demands to change its policies related to sexual harassment.

Uber and Lyft drivers have also been vocal. More than 5,000 of them have joined Rideshare Drivers United, an unofficial group that advocates for ride-hail drivers around the country. The California-based group helped organize a **global strike in May** to protest Uber's pay rate cuts before the company went public.

"Global unions are also carefully following the passage of #AB5 through the legislative process. We want an international governance framework for #gigeconomy workers that can help put an end to the scourge of misclassification. #California can be a source of inspiration," **tweeted** Ruwan Subasinghe, legal director for the International Transport Workers' Federation, last week.

Ten years ago, Democratic lawmakers would have been terrified to crack down on the gig economy with a bill as far-reaching as AB 5. But the power dynamic has shifted. That was clear when presidential frontrunners, including Elizabeth Warren and Kamala Harris, endorsed AB 5 last month. "All Democrats need to stand up and say, without hedging, that we support AB 5 and back full employee status for gig workers," Warren wrote in **an op-ed earlier this month**. The bill's passage is a triumph for workers after decades of brutal political losses.

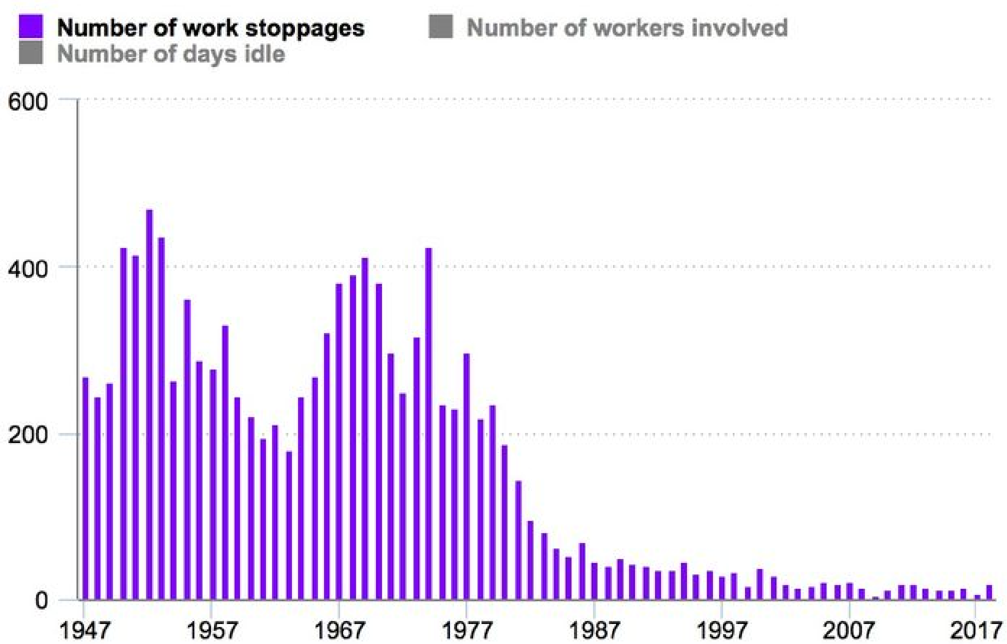
How AB 5's win fits into the labor movement's recent history of losses

To truly understand why the California Senate's passage of AB 5 is such a historic moment, it's important to understand the three most devastating losses for the labor movement in the past three decades and how they paved the way for the revival of American labor. Back in the heyday of the labor movement, in the 1960s and 1970s, it was common for private- and public-sector workers to go on strike. In fact, it was the most effective tool to negotiate higher wages for working-class Americans. And even though businesses have a legal right to replace striking employees with temporary workers, employers rarely did so back then, out of fear of angering their workforce.

That all changed in 1981. On August 3, 1981, nearly 13,000 air-traffic controllers went on strike after negotiations with the federal government to raise their pay and shorten their workweek failed. About 7,000 flights were canceled. The same day, President Ronald Reagan called the strike illegal and threatened to fire anyone who didn't return to work within 48 hours. Reagan got angry and carried out his threat, firing all 11,359 air-traffic controllers who had not returned to work. In a stunning move, he declared a lifetime ban on the rehiring of the strikers by the Federal Aviation Administration.

By busting the air-traffic controllers strike, Reagan and his National Labor Relations Board encouraged businesses to do the same. In the following years and decades, employers began hiring lawyers to deploy aggressive tactics against striking workers to discourage them from rebelling. Unsurprisingly, major strikes in the US dropped from an average of 300 each year in the decades before the air-traffic controllers strike to fewer than 30 in recent years:

Annual work stoppages involving 1,000 or more workers, 1947–2018



Click legend items to change data display. Hover over chart to view data.
Source: U.S. Bureau of Labor Statistics.

US Department of Labor

"More than any other labor dispute of the past three decades, Reagan's confrontation with the [air-traffic controllers] undermined the bargaining power of American workers and their labor unions," Joseph McCartin, a Georgetown University historian, **wrote** in a New York Times op-ed. Workers everywhere grew afraid to go on strike. Then, about a decade later, union workers suffered another major blow. Despite fierce resistance from labor unions, President Bill Clinton signed the North American Free Trade Agreement in 1993, opening tariff-free trade between the US, Canada, and Mexico.

Labor leaders worried at the time that allowing goods to cross the border untaxed would give US manufacturers too much incentive to move factories and jobs to Mexico, where wages were super-low and environmental standards more relaxed. Proponents of NAFTA pushed back against that idea, saying that boosting trade would raise wages for low-skilled Mexican workers, pulling millions out of poverty and making it less attractive for companies to move factories to Mexico.

That definitely didn't happen. Competition from US farms was largely responsible for **putting more than 1 million** farmworkers in Mexico out of work, and the unemployment rate in Mexico is higher today than it was back then. The trade deal was also directly responsible for the loss of more than **840,000 US factory jobs**, most of which were moved to Mexico. Just last year, Ford announced it was closing one of its auto factories and opening another one in Mexico. Steven Greenhouse, a former labor reporter for the New York Times, writes that the drop in manufacturing jobs over the past 20 years has seriously eroded union membership. He sums up the impact in his new book, ***Beaten Down, Worked Up: The Past, Present, and Future of American Labor***:

Globalization has thrown workers into direct competition with lower-wage workers in China, Mexico, India, and other countries, exerting a downward pull on pay. Partly because of imports and outsourcing, more than 60,000 factories have closed since 2000, causing many unions and workers to grow gun shy about making aggressive pay demands, which could lead to even more jobs being shipped overseas.

President Trump's administration recently negotiated a version of NAFTA with stronger labor protections, known as the US-Mexico-Canada Trade Agreement, but union leaders worry that they are not strong enough. Meanwhile, US companies are still moving manufacturing jobs to Mexico because they can pay poverty wages.

Another loss for labor occurred when Republicans took over a historic number of state legislatures in the 2010 midterms. With support from pro-business groups, lawmakers began to expand anti-union laws from the South to Midwestern states with a strong union presence. These laws, known as right-to-work laws, make it illegal for unionized workplaces to charge any fees to employees who don't want to pay them. This creates what is known as the "free-rider" problem in which some workers benefit from union contracts but choose not to pay for them. These laws also strain union finances because they give workers an incentive not to pay membership dues. In 2012, lawmakers in Indiana and Michigan passed right-to-work bills. At the time, the country was in the midst of the Great Recession, and politicians promised that relaxing labor laws would attract businesses to the state and turn around the economy. Since then, Wisconsin, Kentucky, and West Virginia have passed right-to-work laws too.

Missouri was on track to become the 28th state to enact such a law. In 2017, the state's then-governor, Republican Eric Greitens, **signed the right-to-work bill**, saying it would encourage businesses to move to the state. But workers and union leaders in Missouri put up a fight. They gathered about 300,000 signatures — more than double the number needed — to freeze the law and put it on the ballot for voters to decide. **In August 2018**, voters rejected the bill. The public rejection of Missouri's right-to-work bill was one small victory for US workers during years of repeated defeats. But of all the states, usually it's California that notches those small wins for workers.

The future of the labor movement

Despite decades of loss, the labor movement has grown louder and stronger in the past two years. It started with the widespread **teachers strike in West Virginia** in January 2018, followed by teachers in Oklahoma, Arizona, Kentucky, California, and Colorado. Soon, thousands of **Marriott workers** were on strike demanding higher pay too.

In fact, a record number of US workers went on strike or stopped working in 2018 because of labor disputes with employers, according to **new data** released **in February** by the US Bureau of Labor Statistics. A total of 485,000 employees were involved in major work stoppages last year — the highest number since 1986, when flight attendants, **garbage collectors**, and steelworkers walked off the job. The increasing number of workers involved in labor strikes suggests that average Americans are not experiencing the "**economic miracle**" that President Donald Trump has described. They see the **economy expanding** and profits growing, but this doesn't extend to **their paychecks**.

A new generation of younger workers, who don't remember the crackdowns on striking employees and have suffered the most from widening income inequality, has taken the lead in organizing a grassroots labor movement. Frustrated **public school teachers** were behind last year's largest walkouts, but **hotel housekeepers** and steelworkers also organized strikes that lasted for days. And in most cases, the actions have worked. But it's not only striking that's back in vogue. Many of the progressive policies enacted in states like California, Oregon, New York, and Washington have made their way to the federal level.

Congress is currently considering bills to give workers benefits like paid sick days and paid family leave. Democratic lawmakers have also introduced **major labor reform bills** that would make it much easier for workers to join labor unions. One of them is the Protecting the Right to Organize Act, which would ban right-to-work laws in every state. There's even a congressional version that mimics AB 5, called the Workplace Democracy Act, introduced by Sen. Bernie Sanders. The bill would require all employers to use the same strict standard that California uses to determine if someone is an employee or an independent contractor. Now that California has its win, it may only be a matter of time until workers across the country have theirs too. **Author:** ***Alexia Fernández Campbell***