

# Daily Journal

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## Top Labor & Employment Lawyers 2018

How the *Dynamex* decision will impact employment law around the growing gig economy

### Rachael E. Meny

FIRM:	CITY	SPECIALTY
<b>Keker, Van Nest &amp; Peters LLP</b>	<b>San Francisco</b>	<b>Trade secrets, employee mobility disputes</b>

**M**eny has extensive experience handling trade secret and employee mobility disputes with a focus on the startup and shared economy arena. She advises tech companies — including Google LLC — on pre-litigation and litigation issues involving employees being lured from, or departing to, competing companies. The issues often include trade secret theft and non-compete agreements for out-of-state employees.

Sometimes, high levels of confidentiality are involved, as in her representation of Google in its high-profile arbitration with former engineer Anthony Levandowski over accusations he poached Google employees to launch the self-driving startup Otto, which Levandowski sold to Uber Technologies Inc. The case, *Google v. Levandowski*, is before JAMS.

“The trial portion of the hearing has been completed. Any results will remain confidential,” Meny said.

Meny defended Lyft against a potential class action in a contentious three-year battle over worker classification that threatened to upend the company’s business model and could have had a serious effect on the sharing economy. The critical question was whether Lyft drivers have been misclassified

as independent contractors rather than as employees.

She negotiated a settlement with more than 100,000 Lyft drivers in California that allows those who use Lyft’s app to continue to be classified as independent contractors. The \$27 million deal was approved in March 2017 by U.S. District Judge Vince Chhabria of San Francisco. “The settlement was unique in a couple of ways,” Meny said. “It was the first in the gig economy classification space; there was a \$100 million tentative deal in a case [*O’Connor v. Uber*] that did not get approval. And our case resolved a significant open question and gave certainty in a world that does not offer much certainty.”

Although her client’s \$27 million payout is a significant sum, Meny pointed out that it still was a win. “Judge Chhabria’s order found that the settlement amount was less than 20 percent of the potential liability in the case,” she said. “And he found there were significant litigation risks on both sides.” *Cotter v. Lyft Inc.*, 3:13-cv-04065 (N.D. Cal. March 16, 2017).

Meny said the state Supreme Court’s April *Dynamex* decision over employee classification issues “won’t be an earthquake for the gig economy.” The justices placed the burden on businesses to prove that a worker



is an independent contractor rather than an employee, reversing a decades-old test. “*Dynamex* will change some of the arguments defense lawyers make,” Meny said, “but exactly how remains to be seen.”

— John Roemer