Modernizing Labor Laws for the 21st Century - The Online Gig Economy

February 2, 2016
Modernizing Labor Laws for the 21st Century - The Online Gig Economy

Moderator:

Linda Barrington - ILR Associate Dean for Outreach and Sponsored Research; and Executive Director, ILR Institute for Compensation Studies

Guests:

Seth D. Harris '83 - Distinguished Scholar, Cornell University's ILR School; Counsel in the Public Policy & Regulation and Employment & Labor Practices of Dentons, a global law firm; and former U.S. Deputy Secretary of Labor
Modernizing Labor Laws for the 21st Century - The Online Gig Economy

Guests:

Alan Krueger '83 - Bendheim Professor of Economics and Public Affairs at Princeton University; and former Chairman of the Council of Economic Advisers

Sara Horowitz '84 - Founder and Executive Director of the Freelancers Union; MacArthur Foundation “Genius” fellow and Deputy Chair of the Federal Reserve of New York
Seth D. Harris, Alan B. Krueger

POLICY PROPOSAL


www.hamiltonproject.org/papers/modernizing_labor_laws_for_twenty_first_century_work_independent_worker
“Independent Workers” in Triangular Relationship with Consumers and Intermediary

Intermediary

Independent Worker

Customers
“Employee” - Social compact
• Exchange economic dependence on employer (manifest through employer control of work) for legally mandated/encouraged modicum of economic security, legal protections.

“Independent Contractor” - Individual compact
• Independent businesses with arms-length business relationships and bargaining power.

“Independent Worker” - What’s their compact?
• Some employer control, but not over means, methods, or hours of work, and some worker independence
Independent Workers in Gray Area of Labor and Employment Law

Independent Workers:
• Control over whether, when, how long, where and (for most part) manner in which they provide service and duration;
• Able work for multiple intermediaries simultaneously, or engage in personal tasks while working (“waiting to engage” vs. “engaged to wait”);
• Hours easy to measure with technology, but often conceptually impossible to assign to an employer.
• Can work with online or offline intermediaries.

Intermediary:
• Exerts some control (fees or elements of how work is done).
Current “employee” vs. “independent contractor” legal dichotomy
• Is inefficient
• Creates legal uncertainty for workers and intermediaries.

Classifying independent workers as “employees”
• Jeopardizes benefits of flexibility and innovation.

Classifying independent workers as “independent contractors”
• Jeopardizes social compact.
Our proposal:
A new legal classification of “independent workers,” with requirements on intermediaries that are:

1) appropriate for independent workers;

2) economically efficient;

3) neutral with respect to choosing independent worker over employee status.
• 51% work ≤15 hours a week for Uber

• 61% have another full-time or part-time job

43% of drivers work 50% more or 50% less from one week to the next

Flexibility in Choosing When, Whether and How Much to Work
Number of Uber Drivers Has Grown Exponentially and Uber is Largest Online Intermediary in U.S.

FIGURE 1.
Google Trends: Four-Week Moving Average of Web Searches

Source: Google Trends analysis by authors
Searches for “Uber” are 2X Everything Else Combined (100 v. 48.5).

If scale relative to Uber’s ~400,000 drivers, only ~600,000 workers in whole sector, or 0.4% of total U.S. employment.

Source: Google Trends analysis by authors.

Notes: “Other” includes Agent Anything, Axiom, Caviar, Clickworker, Curb, Eden McCallum, Gengo, Hourly Nerd, Instacart, Medicast, Red Beacon, Samasource, Shyp, Skillshare, and Washio. Search period spans January 1, 2015 - November 7, 2015. Google Trends normalizes the data for each term specified relative to the total number of Google searches conducted in that week, so that the period with the most searches for Uber equals 100.
Guiding Principles

Maintain and Expand Social Compact

• Appropriate for workers whose hours cannot be assigned to an employer
• Efficient
• Neutral with respect to employment status
Proposed Benefits and Protections for Independent Workers

**Required**
- Right to Organize
- Civil Rights Protection
- Tax Withholding
- Contribute half of FICA tax
- Contribution to ACA based on earnings
- Intermediaries could pool workers for provision of benefits (e.g., insurance, retirement accounts)

**Not Required**
- Overtime
- Minimum Wage
- Unemployment Insurance
- Workers’ comp is not required but intermediary could opt in and be exempted from tort suits
Conclusions

• Number of jobs in online gig economy is small but growing fast.

• Careful thought must go into reforming labor laws to support innovation and maintain the social compact. We propose tailoring benefits and employment protections to independent workers in a way that is:
  1) appropriate for workers who can choose their own hours or whether to work
  2) efficient
  3) neutral with respect employment status.
Related References

Continuing the conversation – Resources from Today’s Webcast

Seth Harris and Alan Kreuger, A Proposal for Modernizing Labor Laws for 21st Century Work: The “Independent Worker” [link]


Freelancing in America: 2015 [link]

“UBER and the American Worker: Remarks from David Plouffe” [link]
Related References

Continuing the conversation – Additional ILR Resources


John M. Abowd, ILR School-Cornell University; Michael R. Strain, American Enterprise Institute, and Lars Vilhuber, ILR School-Cornell University, "Technology and the Labor Market-what we know and how we can know more" prepared for Cornell ILR School 2013 Employment & Technology Roundtable. [www.ilr.cornell.edu/sites/ilr.cornell.edu/files/Technology_and_the_labor_market.pdf](http://www.ilr.cornell.edu/sites/ilr.cornell.edu/files/Technology_and_the_labor_market.pdf)

The Worker Institute at Cornell University, ILR School, Precarious Workforce Initiative [www.ilr.cornell.edu/worker-institute/initiatives/precarious-workforce](http://www.ilr.cornell.edu/worker-institute/initiatives/precarious-workforce)