Paying Gig Workers In Company Stock Might Soon Be An Attractive Option (Emphasis On "Might")

Insights
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The federal government has taken another step to further incentivize highly skilled workers to join the gig economy: it has proposed rules that would permit publicly held gig companies to offer equity compensation to their employees as payment. The rules, proposed by the Securities and Exchange Commission on November 24, would allow these companies to pay workers in stock during a five-year pilot period. "As our economy and work arrangements evolve, we must be willing to experiment with concomitant changes to our regulations," commissioners Elad Roisman and Hester Peirce wrote in a statement that accompanied the release. However, there's a good chance the rules may never get off the ground at all due to the impending changes in Washington, D.C. What do you need to know about this recent announcement?

Why Are These Rules Being Proposed?

The SEC provided its justification for the proposed rules, which seem to have been pushed along due to the economic crisis caused by the pandemic. The Commission indicated that many under- or unemployed individuals are attracted to the flexibility and income opportunities that gig work can offer. By expanding the types of incentives that can be provided to gig workers, the SEC hopes that the plan will "improve benefits for these important workers and to introduce them to the powerful role that our capital markets can play in building a nest egg for retirement and for passing along to the next generation."

And, of course, as we have noted on this blog previously, steps like these will be crucial to expand the pool of workers interested in joining the gig economy. By providing sought-after monetary rewards in the form of stock ownership, a larger group of highly skilled workers will be more likely to enter or remain in the gig economy world and improve the services offered by gig businesses.

The Details

As proposed, the draft rules would permit gig companies to provide up to 15% of a worker's compensation in stock rather than cash. There would also be a $75,000 limit for such compensation over a three-year period. Businesses that retain workers who "provide bona fide services by means of an internet-based platform or other widespread, technology-based marketplace platform" would be able to take part in the program, not workers who use apps to sell goods.

The rules would also include protections to ensure that stock payments issued to gig workers are actually compensation and not a fundraising mechanism. If finalized as proposed, those companies issuing stock during the five-year trial run would provide information to the SEC to determine whether the plan is working as intended.

What's Next?

The proposed rules are currently open for a 60-day public comment period, and the SEC is particularly interested to hear input from gig workers themselves. Once the period closes in late January 2021, the Commission will review the input and adapt the proposal as necessary.

The potential hitch: a new administration will be taking charge of federal agencies come January 20, 2021. That's because SEC Chair Jay Clayton recently announced he would be stepping down from the leadership position at year's end rather than ride out the remainder of his term through mid-2021. And although there has been rampant speculation about who President-elect Biden will select as Clayton's replacement, we might not know until that person is officially seated at the head of the table whether this pilot program will be shelved or continued.

We might have an early indication that the Biden administration may not favor the plan. The two Democratic commissioners at the SEC, Caroline Crenshaw and Allison Herren Lee, voted against the proposal. "We cannot find any principled basis for the policy choice to single out a specific platform-based business model for a particular competitive advantage," they said in a statement. And when the proposal was first considered in 2019, the National Employment Law Project came out strongly against the concept. In a letter to the SEC, it criticized gig economy companies, saying that "they want a loyal and committed workforce, which is why they seek a change to [SEC rules] that would align their platform workers' compensation with the companies' stock price. Yet, by labeling their workers as independent contractors, they seek to deny them the many legal protections and benefits that attach to employees."

If the new administration supports this proposed policy, we could see the new rules put into place by the first quarter of the new year. Stay tuned to this blog for further details about this significant development.

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