



# How The Sharing Economy Can Tackle Discrimination Claims

Insights

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As my colleague Brooke Tabshouri pointed out earlier this month, one of the unique situations facing the sharing economy is that customers — not coworkers or employers — may be the primary or even *sole bad actors* when it comes to harassment and discrimination against independent workers.

Unlike most traditional employment settings, independent workers like Uber drivers and Airbnb hosts interact directly with customers with little or no involvement by the company. Many of these new on-demand platforms may consider themselves “passive participants who offer a software platform that simply connects willing participants,” and nothing more. The description sounds a lot more like the service that Match.com or eHarmony provides than it does a traditional employee-employer relationship, right?

There’s one big difference between TaskRabbit and Tinder, however, and it translates into big time potential liability when a plaintiff’s attorney comes knocking on your door. Although there are no statutes, regulations, or legal codes in America that forbid you from swiping left on a romantic interest of a different ethnicity, racial discrimination is still extremely illegal in the employment context. If a court or government agency finds your shared economy company to be an employer rather than a mere online platform, you will probably be on the hook for customers’ discrimination or harassment. A number of courts have held that employers are legally obligated to protect employees from discrimination, and “customer preference” can’t justify discrimination.

But what happens when the opposite is true? What happens when it’s the independent worker — who is not an employee subject to discipline, sensitivity training, or an employee handbook — discriminating against a prospective customer?

A recent National Bureau of Economic Research study, looking at 1,500 rides on different ride-hailing services, found that passengers who used “African-American-sounding” names in cities like Seattle waited 35% longer for rides. In some cities, they were up to three times as likely to have their rides cancelled as white riders. The study found that African-Americans weren’t the only ones paying a high price for their chromosomes. In Boston in particular, study evidence — which utilized controlled routes, controlled passengers, and recorded key performance metrics — showed that drivers often took female passengers for longer, more expensive rides.

Does the law protect sharing economy customers in such a situation? It just might.

The Civil Rights Act prohibits discrimination or segregation in places of public accommodation. The definition of a “public accommodation” may vary, but generally the label applies to most businesses or buildings that are open to (or offer services to) the general public — think restaurants, hotels, gas stations, cabs, and movie theaters. Is an Uber driver’s car or an Airbnb host’s vacation home a “place of public accommodation”? If it is, who is responsible for the driver or home owner’s discrimination?

These questions will eventually be answered by courts and arbitrators across the nation; indeed, Airbnb has already seen a discrimination lawsuit filed against it as the inevitable outcome of a viral Twitter campaign under the hashtag #AirbnbWhileBlack.

Short of hoping that a court finds in their favor after lengthy, taxing litigation, what is an on-demand platform to do? For all sharing economy businesses that hope to cut into or maintain their share in a market flooded with alternative options, an effective response to discrimination claims is necessary to make sure customers don’t swipe left on your business model. To protect yourself, sharing economy companies should take the following steps:

- Have a clear anti-harassment and antidiscrimination policy distributed to all independent workers when they initially sign up to provide services that specifically addresses your position on how customers are to be treated. See, for instance, Airbnb’s new “Community Commitment” and nondiscrimination policy, rolled out just two weeks ago.
- Provide customers with a means to report discriminatory or harassing actions by independent workers, outside of or in addition to the existing rating systems.
- Because many sharing economy apps provide pictures of customers and employees, as well as names that could be interpreted as more Anglo- or African-American, consider whether the inclusion of such photographs is necessary to the operation of the business. It could allow customers to inappropriately “screen” employees based on protected categories. For instance, Innclusive, a peer-to-peer accommodation platform developed as an alternative to Airbnb, does not show a profile picture or personal information until hosts agree to a booking.
- While this is not as practical for independent drivers, Ben Edelman, an associate professor at Harvard Business School recommends that ride-sharing companies could consider delaying delivery of the profile picture and name until the driver was within a half mile of the customer, decreasing the likelihood that the driver would reject the customer given their investment of time and gas.

Of course, if sharing economy companies don’t take the lead, at least one U.S. Senator has suggested he will take action to end discrimination in the sharing economy, “whether intentional or unconscious.” No doubt, customers, independent workers, companies, and Senators can all agree it would be best if the nascent sharing economy was able to solve this quandary on their own.

