Handy Proposal May Solve Sharing Economy Business Woes

Insights
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As startups from Silicon Valley to Silicon Forest continue to flood the market with competing on-demand service platforms "staffed" with independent workers, these same businesses – implementing one of the most disruptive, innovative technological advances of the last decade – have been faced with mounting growing pains. Stuck between rigid 20th Century employment classifications and the more complex realities of modern work, many gig employers have found themselves facing "former employees" in court that they never hired, fired, met, or even worked with in a traditional capacity. For some companies, the pain is too much to stomach.

For instance, in 2015, the housecleaning start-up Homejoy publicly said that the four lawsuits it faced from workers who claimed they were misclassified as independent contractors were "the deciding factor" in the reason it shut down. Trying to avoid a similar fate, Instacart went in a radically different direction, offering some of its 1099 grocery shoppers the option of becoming part-time employees. Meanwhile, just last month the New York State Department of Labor announced that it had awarded unemployment benefits to two Uber drivers after finding that they were actually employees rather than independent workers, as all drivers who use the platform to find customers are classified. It's a brave new world out there, and no one is altogether sure how to navigate it.

In the face of so much uncertainty, disruption, and risk, the web-based home cleaning services company Handy has offered a small suggestion that may pay off big. Handy has quietly shopped a proposed bill that – although far from final – proposes a significant step towards compromise to the no-end-in-sight worker misclassification fight being duked out in courts and arbitrations across the country. Rather than hope that the U.S. Congress will take action any time soon, Handy hopes that New York will volunteer to be a test case for a proposal that sounds very much like a reverse settlement.

What do we mean? Instead of waiting to get sued, battling it out for years, paying attorneys' fees, and eventually ponying up some money to a group of workers claiming to be "employees," Handy has proposed that independent workers be given the option from day one to acknowledge in writing that they are correctly classified as independent workers. In exchange, they would receive an additional 2.5% of the fee for each job that would be placed into an individual health savings account for the worker. The worker could then use that pre-tax money to buy health insurance or other benefits.

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Notably, this is quite different from the DIY contracts that Old World employers are used to using with great frequency, hoping that a simple, similar agreement between private parties would bar a later misclassification lawsuit. Handy's proposal, if passed and implemented, would mean that these agreements would have the imprimatur of contractual consideration (read: $$$) and New York's lawmakers themselves – which means it would be much harder for a judge to set them aside compared to commonplace "independent contractor agreements" between the parties that an unfriendly judge or government agency could dismiss as a mere sham.

If New York lawmakers move forward, they would be the first in the country to authorize portable benefits across the gig economy, and the outcome would inevitably serve as a model – or a cautionary tale, depending on how reality plays out – for other states or jurisdictions. We will monitor this one closely.

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