



# Could Labor Law Waivers Foster Legislative Change And Spur The Gig Economy?

Insights

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It is no secret that labor laws have been unable to keep pace with the changing economy. Recently, however, it appears the effort to spur change has been resuscitated, as proposals come in from the left (former SIEU head Andrew Stern) and the right (R Street Institute's Eli Lehrer and Garret Watson), and pressure is applied from the bench (eastern Pennsylvania federal judge Hon. Michael Baylson).

In a previous post here, I discussed Judge Baylson's not-so subtle suggestion that lawmakers and regulatory agencies are better suited to drive change in the treatment of gig economy workers than the courts. Now, pundits on both sides of the political spectrum have jumped into the fray, seeing flexibility as the key to success. Watson, in a blog post on The Hill's website, argues that increased flexibility via 'benefits exchanges' that follow gig workers would allow new sectors to engage in the gig economy, thereby making up for some of the job loss created by technological change.

In a bipartisan effort (rare in today's political climate), Stern and Lehrer teamed up to draft an essay for National Affairs, suggesting that flexibility in the legislative process itself, via "experimental federalism," would provide a boost to the legislative change necessary to keep up with the changing workplace and workforce. They argue, broadly, that "states, localities, and even individual firms could serve as true laboratories of democracy, trying now and innovative models for worker-employer relations."

Their proposal is to broaden the waiver process already utilized in right-to-work and minimum-wage laws, creating a bottom-up driver for change, more closely tied to the industries in need. The biggest change from the existing waiver process is the source of the request. Rather than originating from a governmental unit, individual firms and labor organizations would be permitted to apply. Applicable to gig employers, a waiver could be provided allowing gig firms to provide workers compensation without being declared "full-time" employers. Another proposal is to allow unions to offer benefits administration to non-union employers and even individual non-union workers, allowing the workers to obtain benefits at cheaper rates than on the private market. Stern and Lehrer argue that waivers would allow employers to experiment with new ways to create value without the one-size-fits-all approach of state and federal legislation.

Even if waivers on a large scale do not take hold, it is worthwhile to think about new ways to partner with traditional adversaries, such as unions, by understanding that their interests in developing and retaining membership align with gig companies' interest in maintaining a healthy and productive workforce.

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