



Do Unions Have A Place In The Gig Economy?

Insights

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When considering the place of unions in the gig economy, many jump to the conclusion that the National Labor Relations Act does not apply because gig workers are usually independent contractors. While it is true that the NLRA does not apply to independent contractors, businesses should not discount the ability of gig workers to find ways to bargain for certain working conditions and get similar protections.

A recent study from the University of California, Los Angeles (UCLA) suggests that eight out of 10 Los Angeles ride-hailing drivers would be interested in joining an organization that would fight for better working conditions and pay. Although these numbers may be overstated given the prevalence of part-time drivers (who are usually less interested in organizing) in the ride-hailing market, unionizing of a contingent workforce would not be unprecedented.

Actors and actresses, who work on contingent and short-term assignments in the movie industry, previously encountered some of the same issues that gig workers face today. Despite those obstacles, actors today are largely represented by a union that negotiates with the major movie studios to provide certain working conditions. For this reason, parallels have been drawn between the gig industry and the Hollywood experience.

Although there are marked differences with the Hollywood experience—such as the involvement of influential individuals—there are similarities. Workers in both industries rely on a skill set that greatly varies among individual workers, and varying dynamics come into play when it comes to worker classification. More skilled workers are starting to join the gig workforce and the debate regarding proper classification rages on, both of which could change the calculus down the line when it comes to unionizing the gig workforce. But for now, even without formal union representation, there are still organizations that are engaging in union-type negotiations for what they view as more favorable working conditions through other backdoor means.

There are already several organizations embroiled in their own battle to represent drivers in the gig economy. These organizations have each had their own successes, and while some of those successes are limited to a specific geographic region, some of their efforts may result in nationwide changes.

For instance, the efforts of the Independent Drivers Guild resulted in increasing minimum fares in New York City, allowing drivers to opt-out of certain Uber pools, and adding a “destination filter” to

the app. The Guild also attributes Uber's nationwide move to add in-app tipping to the pressure it exerted on the company.

Meanwhile, the Teamsters in the state of Washington recently pioneered legislation in Seattle that would authorize a collective bargaining process of drivers and requires employers to bargain with if drivers vote in the union. As we have previously reported, the 9th Circuit issued a temporary victory for ride-sharing companies when it ruled that the Seattle ordinance could be challenged under federal antitrust law. The future of this ordinance is still uncertain and legal proceedings continue, but there could be another potential downside: organizations could use the 9th Circuit's opinion as a roadmap to survive similar legal challenges and propose similar laws in other geographic locations.

While these union-type efforts have largely focused on workers in the ride-sharing space, it is easy to see how successes in one industry could result in an expansion to any other industry. Given the success of contingent workers unionizing in other industries in the past and the efforts that organizations are undertaking to represent drivers in today's contingent workforce through other informal means, it may just be a matter of time before companies relying on gig workers find themselves negotiating the working conditions of their gig workers.