



Call for Federal Legislative Changes Growing in the Gig Arena

Insights

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As I wrote previously, it is no secret that labor laws have been unable to keep pace with the changing economy, despite challenges from the bench to address the needs of the gig economy. Certain state legislatures (e.g. Washington) have taken steps to address needs of gig workers, with their 'Paid Family and Medical Leave' program expanded to include self-employed workers. And efforts to make portable benefits available to the gig workforce are ongoing, mostly at the state level. However, federal legislative and regulatory entities are seemingly mulling their options and allowing the change to occur from the bottom. Voices from the gig upper strata are becoming impatient, and want immediate legislative change, at the top.

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. I also discussed the bipartisan effort to create "experimental federalism" wherein waivers from federal laws are afforded to allow for innovation at the State, local, and individual firm levels.

State legislatures are beginning to broaden the reach of certain benefits programs to include self-employed workers. Notwithstanding the handful of state programs aimed at the gig workforce, the legislative changes have been very slow to develop. The din of discontent continues to grow. Indeed, Diane Mulcahy, an author on the gig economy, proposes several changes to federal laws to level the playing field for gig workers.

Ms. Mulcahy's thrust is to eliminate the inconsistency between our nation's historical support for entrepreneurship and our tax and labor policies, which she says "reward full-time employees and penalize everyone else." Her proposed solutions are threefold:

- eliminate the 'Self-Employment Tax' (wherein self-employed individuals pay both the 'employee' and 'employer' portions of the Social Security and Medicare taxes);
- extend health insurance tax breaks to the self-employed; and
- extend income protection and protection from discrimination and harassment to the self-employed.

Ms. Mulcahy's proposals all include some tradeoffs for the gig companies, and the conversation will no doubt revolve around the impacts on the classification of gig workers. Josh Silverman, CEO of

Etsy, suggests a few solutions in the same hot-button areas of income protection, taxes, and benefits. However, his perspective, as an executive, is grounded in the maintenance of the business model. Mr. Silverman proposes a quarterly administration of the Earned Income Tax Credit as well as streamlining tax-advantaged savings accounts, to assist with the volatility of incomes for gig workers. Mr. Silverman also proposes a simplified tax code to ease the administrative burden on gig workers. Finally, Mr. Silverman lends his support for the portable benefits programs and automatic tax withholding for 1099s.

As the states' efforts begin to create a record, and real-world impacts are felt by gig workers and gig companies alike, it remains to be seen how federal legislative and regulatory entities will respond. Will they address the issues in a vacuum, or move more swiftly to seek input from those ground-level sources? Either way, it behooves gig companies to follow these developments closely.

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