



## Unions Are Looking To Organize Your Workers

Insights

6.01.16

The paradigm shift in labor and employment laws forced by the gig economy continues to develop as quickly as our technology. With the monumental decline in union organization over the past few decades, national unions recognize the potential for increasing membership by exploring how to unionize these new age workspaces. As recently reported by Fast Company, the International Association of Machinists appears to lead in these efforts, having reached a first of its kind agreement with a gig business – creation of a “guild” to allow gig workers a forum for appealing a termination decision and to participate in discounted benefit programs.

By utilizing a variety of methods over the past several years, gig businesses have effectively created a new potential category of worker – the “gig worker,” hired on a task-by-task basis from a digital platform. Companies reap the benefits of the global market and maximize potential profits, while gig workers are attracted to the model because of the flexibility and independence these jobs provide.

While this arrangement appears to be a “win-win-win” for all involved, it exists in a world where our labor and employment laws are based on the traditional notion of an employee and the legal distinction of independent contractors. To be clear, courts continue to grapple with how to treat these gig workers and all that can be determined at this point is that gig workers are the square peg that doesn’t fit in either the round hole of employee or that of independent contractor. And, while our legislators begin to consider revising or creating new laws to govern gig workers, gig businesses will continue to evolve in a manner that will require traditional companies to transform some of their operational components into gig platforms in order to remain competitive and viable.

In the current legal environment, successful gig businesses are best positioned to dictate the viability of union organizing efforts of the gig worker. To the extent these companies can effectively prevent court decisions in cases involving the delineation of a gig worker as either an employee or an independent contractor, unionization efforts will continue to be thwarted. Similarly, appealing unions with agreements that provide some level of benefit without officially unionizing the workplace will also prevent the labor movement from securing a solid foothold in the gig economy.

Most importantly, all union representation petitions before the NLRB should be aggressively defended, with an emphasis on challenging jurisdiction. Until the law catches up with how the business-worker dynamic has evolved, gig businesses should tread carefully on how they address

all workplace decisions and their legal positions in any court challenge or administrative action initiated by workers or unions under local, state and federal labor and employment laws.