



The Purge: Gig Economy

Insights

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The year is 2020. In a futuristic America plagued by employment lawsuits, the federal government sanctions a three-year period in which all gig economy companies are exempt from labor and employment laws. Internet-based platforms connecting workers with eager consumers must try to not only survive but thrive through the temporary exemption without compromising their moral code.

If this suspension of the rule of law sounds like a prospective installment of the popular social science fiction horror film franchise *The Purge*, you're not too far off.

This is exactly the future that the Information Technology & Innovation Foundation (ITIF) has proposed to solve the rising tide of worker misclassification class action lawsuits, cases that have in recent months resulted in \$100 million dollar and \$27 million settlements that attempt to maintain workers' current classification as independent contractors.

Under the ITIF's radical yet intriguing proposal, a gig-economy Purge would look something like this:

The internet platform would be allowed to handle payments, set prices, keep ratings of both parties, and remove bad workers and users, because these activities increase the total value of the transaction. Lawmakers could then see whether gig platform providers voluntarily provide their workers with a range of helpful services such as training, business advice, tax preparation, and affordable insurance. If they do, then this experience could guide Congress in modernizing labor law to reflect the far greater number of workers in alternative arrangements. If they don't, then Congress could let the exemption expire with little harm.

Whether or not a sunset-provisioned suspension of most laws strikes you as extreme, the gig economy has fed the legal system a problem that existing case law and statutes can't digest. If you need more assurance of this, look no further than what Judge Vince Chhabria, the judge in the Lyft lawsuit, wrote last year:

"At first glance, Lyft drivers don't seem much like employees," he said. "But Lyft drivers don't seem much like independent contractors either," he added later. "The jury in this case will be handed a square peg and asked to choose between two round holes. The test the courts have developed over the 20th Century for classifying workers isn't very helpful in addressing this 21st Century problem."

the 20th Century for classifying workers isn't very helpful in addressing this 21st Century problem. Of course, if the idea of *Purge*-like suspension is making you feel a little stabby, know that there are at least two other options beyond putting our heads in the sand and hoping that the lawsuits stop. (They won't.)

ITIF also proposes that the Congress could consider amending every major employment law statute from the Americans with Disabilities Act to the Uniformed Services Employment and Reemployment — literally from A to Z — to reflect the fact that the new task-based workers are neither contractors nor employees. Alternatively, Congress could amend existing laws to create a new, third category of worker between “employee” and “independent contractor” — the “dependent contractor.”

Regardless of what path is chosen, it's clear that the gig economy can't and won't wait for permission from a backlogged Congress. In 2010, the IRS received roughly 82 million 1099-MISC forms. In 2014, it received 91 million. The gig economy is here to stay; it's time for the law to catch up.

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