

How the Uber Settlement Hurts Workers

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The use of independent contractors has long been an issue plaguing workers in California, forcing them to at times work for less than minimum wage and forfeit employee benefits, such as health insurance, while the companies they work for continue to receive tax incentives for classifying these workers as independent contractors. With no clear-cut determination for classification, workers are left facing an uphill battle in challenging their classification.

Last week's Uber proposed settlement is another case which encourages the use (or misuse) of independent contractors, especially among companies employing the "gig economy" business model. If Uber drivers were classified as employees as opposed to independent contractors, that classification had the potential to alter the valuation of sharing economy businesses who utilize independent contractors, thus forcing change in the way these companies conducted business. Instead, the settlement is nothing more than a slap on the wrist for Uber, and continues to encourage the use of independent contractors in sharing economy businesses, only hurting Uber drivers and other workers classified as such. And how does that affect working men and women throughout California?

Under the terms of the proposed settlement, Uber will pay up to \$100 million to the 385,000 drivers involved in the lawsuit, who fought to be reclassified as employees instead of independent contractors. Although many drivers might initially see the settlement as a victory, the recovery only provides temporary relief, since the drivers will not be reclassified as employees and will not be entitled to receive any health insurance or retirement benefits from Uber.

Moreover, the "up to \$100 million" settlement can instead be seen as a victory for Uber, which does not have to reevaluate its business model, as it can continue to classify its drivers as independent contractors. While \$100 million sounds at first blush like a substantial figure for settlement, it likely has little impact on Uber, which is estimated to be valued at around \$70 billion.

Still, the more troubling issue with regard to the settlement remains the potential impact on Uber drivers and other workers working for companies using the sharing economy business model, who are classified as independent contractors. Companies generally have more of an incentive to use independent contractors, because, if it were legal, companies are not required to pay certain taxes for independent contractors, such as social security, Medicare, and unemployment taxes. Furthermore, companies do not have to provide independent contractors with any employee benefits, leaving independent contractors without the opportunity to receive health insurance or retirement benefits from the companies they work for. The profound impact that is often overlooked is that injuries on the job and expenses incurred for performing the job become the independent contractors' burden, leaving companies free from many of the risks incurred by hiring employees and leaving workers vulnerable to substantial expenses for a job they may be relying upon to survive.

Although there are factors which the courts must weigh in determining whether an employee or independent contractor relationship exists, there remains no clear cut determination on status, leaving workers vulnerable to companies looking to cut down on costs by classifying employees as independent contractors.

In the case of the Uber lawsuits, the possibility of reclassification continues to have a chance at success in California, where the California Labor Commission ruled just last year that an Uber driver was misclassified as an independent contractor. Uber appealed this ruling on two occasions, but was unsuccessful. Still, the lawyer representing the putative class of Uber drivers chose to forfeit their fight for reclassification as employees in exchange for what may not be a substantial award in their favor. This is troubling for several reasons. Drivers will still be responsible for fuel-related expenses and for maintenance of their vehicles and are not owed minimum wages for their time logged into the Uber application. This is especially harmful for Uber drivers who work on a full-time basis and independent contractor relationship exists, there remains no clear cut determination on status, leaving workers vulnerable to companies looking to cut down on costs by classifying employees as independent contractors.

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In addition, the terms of the settlement aimed to protect the rights of drivers offer little benefit to offset the costs of being classified as independent contractors. For example, under the terms of the settlement, drivers will receive warnings prior to having their accounts deactivated, and will now be able to solicit tips, which are admittedly victories for drivers. However, tips and warnings do little to offset the many miles drivers put on their personal vehicles while working for Uber, the maintenance and fuel expenses they incur, the time they spend waiting for ride requests, or the lack of insurance benefits.

Lastly, the failure to address the core issue of classification of employee versus independent contractor in the context of the shared economy businesses will likely have a ripple effect on businesses utilizing this business model. The Uber settlement sets the example that companies using independent contractors to facilitate their shared economy businesses will be able to use the Uber settlement (if ultimately approved) as an example of a successful way to continue to utilize independent contractors in the context of their gig economy businesses. This result is that companies will continue to earn huge profits, while the workers they classify as independent contractors will continue to be deprived of the benefits they deserve.

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