

Uber Settlement First Step in Evolving Labor Market Relationships

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MarketWatch Blog by Alicia H. Munnell



Alicia H. Munnell is a columnist for *MarketWatch* and director of the Center for Retirement Research at Boston College.

Finding a way to provide some traditional worker benefits to non-traditional workers.

I was very interested in the recent settlement in two class action lawsuits against Uber, because I had been reading **a proposal** from the Hamilton Center at Brookings for a new class of worker – “independent worker” – that falls between “employee” and “independent contractor.”

Employees give up control over their jobs in exchange for the right to organize and bargain collectively as well as an array of mandated benefits. Employers must pay at least the minimum wage and overtime; they cannot discriminate in hiring or firing; they must maintain a safe workplace; they must pay payroll taxes for unemployment insurance, Social Security, and Medicare; they must provide workers’ compensation; and the Affordable Care Act requires many employers to provide health insurance or pay a penalty.

Independent contractors do not give up control over their jobs; their relationships with customers typically are limited to finishing a specific task.

They control how they work, invest in their operations, and may employ others. They receive none of the benefits of employees, but can help set the terms of their employment relationships by negotiating with their clients.

Seth Harris and Alan Krueger writing for the Hamilton Project argue that the “independent workers” in the “online gig economy,” where workers find customers through an intermediary, fall in between independent contractors and employees. Like independent contractors, they can choose their hours and work for multiple intermediaries, so work hours often cannot be attributed to a specific employer. Like traditional employees, they surrender some control to the intermediary, who determines their fees and can “fire” them by eliminating their access to the network.

Harris and Krueger contend that independent workers should qualify for some employee protections such as the ability to collectively bargain, civil rights protections, tax withholding, and employer payroll tax contributions. But, because work hours cannot be allocated to a specific intermediary, they would not qualify for benefits based on hours – such as overtime – and unemployment insurance is not really relevant. Harris and Krueger also suggest that intermediaries should be able to pool independent workers to buy insurance and other benefits without creating an employment relationship. The authors’ notion is that extending many of the legal benefits found in employment relationships to independent workers would not only improve their protections but also reduce legal uncertainty around the current relationship.

Interestingly, the recent Uber settlement moved in the direction suggested by Harris and Krueger. While the two sides agreed that the drivers would remain as independent contractors, Uber would make more information available about the individual ratings of drivers and introduce a policy to

explain the circumstances under which drivers can be fired. Uber would also work to create a driver association in each state (the suits were filed in California and Massachusetts) where the intermediary would discuss pending issues. Although not part of the agreement, it seems like these associations might also serve as a basis for purchasing benefits at a lower cost.

The labor market is changing rapidly, and it's nice to see that the institutional arrangements are beginning to evolve to reflect that change.