Insight

Don’t Kill the Independent Contractor

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Bill de Blasio’s recent attempt to scuttle Uber’s growth in favor of incumbent taxis and “traffic management” is just the first public foray in the battle against the emerging “gig” economy. At all levels, regulators are planning a barrage of measures aiming to limit independent contractors and elevate the traditional employer-employee relationship. If the de Blasio fiasco has taught policymakers anything, it’s that the gig economy won’t be regulated out of existence.

Earlier this month, the Department of Labor (DOL) released supposedly non-binding guidance on “identification of employees who are misclassified as independent contractors.” The winding 15-page memo, designed to provide some clarity to the situation, was loaded with legal jargon and few clear answers. For example, there are no fewer than six factors that delineate between employee and independent contractor:

- Is the work an integral part of the employer’s business?
- Does the worker’s skill affect the opportunity for profit or loss?
- How does the employer’s investment compare to the employee’s?
- Does the work performed involve a special skill?
- Is the employer-employee relationship permanent or indefinite?
- What is the degree of the employer’s control?

Would these factors affect the independent contractor who has a widely profitable relationship with Uber and Airbnb management? Yes? No? Maybe? Uber now has more than 160,000 drivers, who average close to $30 an hour, and Airbnb has more than 1.5 million hosts who have found ways to make money in the new economy. To be attacked by the hotel and taxicab industries is to be expected. For policymakers to devise regulation that limits the growth of these young companies, however, is an unexpected development.

Take DOL’s recent guidance. Although it did not come attached with a particular cost for private entities, it will sow uncertainty. It now appears DOL is ready to charge forward as an aggressive regulator. The graph below, courtesy of the American Action Forum’s “Regulation Rodeo,” tracks the cost of proposed and final rules from DOL (in the billions of dollars).

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In 2015 alone, DOL has proposed more than $9.7 billion in regulatory burdens, easily its highest total from the past five years. For perspective, from 2011-2015 the agency has only finalized $5.8 billion in total burdens. DOL has grown more aggressive and the newest guidance on independent contractors is only the start.

Strangely, many of these attacks on independent contractor company models are not only borne from fear of a growing dynamic industry, but also how the gig economy will supposedly transform the American worker into an indentured servant, an independent contractor beholden to powerful corporate bosses. *The Nation* took the lead in this hysteria when it declared last winter: “Socialize Uber: It’s Easier than You Think.” They wrote, “A crucial first step for reform is to get these drivers recognized as *actual workers*, with proper rights and proper insurance.”

The critique on the gig economy is that one is not an actual worker unless one is bound by the traditional employer-employee relationship. Nevermind that the biggest obstacle between poverty and prosperity is a job. Those who attack on the new economy don’t want people just to have good paying jobs; they want a certain kind of job, otherwise one is not an “actual” employee.

What might actually be driving part-time work isn’t the plethora of new tech companies creating billions of dollars in wealth, it’s federal regulation. As the Congressional Budget Office found last year, the Affordable Care Act could eliminate 2.5 million full-time equivalent workers by 2024. This is not necessarily 2.5 million fewer people in the workforce, but it does indicate that there will be fewer hours worked because of the law. Expect new DOL regulations aimed at “protecting workers” to further reduce available hours.

Whether the work is full-time, part-time, or performed by an independent contractor, the nation should be applauding the gig economy’s ability to create new streams of employment and wealth. Among those who have a job, poverty is only seven percent; among the non-working it is more than triple that at 22 percent. Regulating the new economy won’t eliminate inequality or unleash innovation. It will do the opposite.