Insight

Former Labor Secretary Elaine Chao's Remarks Before AAF Event On Online Gig Economy

ELAINE CHAO | NOVEMBER 20, 2015

Thank you, Doug *[Holtz-Eakin]*, for inviting me to be here today to discuss the emerging new world of social commerce.

In a few short decades, digital communication has revolutionized the supply chain, created a global market place, and made it possible to reach and serve individual customers as never before. There is hardly any aspect of the marketplace it hasn't touched. It is also changing the workplace, creating new structures that allow workers unprecedented freedom, flexibility and mobility. This is especially true for the so-called "gig" and "sharing" economies, which allow workers maximum flexibility in deciding how much they work, when they work, where they work, and what they make.

Some view the gig and sharing economies as unprecedented. But, in fact, the shift to more flexible, customized working arrangements is not new. It has been evolving for a long time. As U.S. Secretary of Labor, one of the things that impressed me was the tremendous mobility of the American workforce. Even in the traditional economy, the average American worker held more than ten jobs by the time he or she reached 50 years of age. And the entrance of large numbers of women into the workforce in the 1970's accelerated the trend of workers moving in and out of the labor force. Today, millennials change jobs even more frequently. Often, they view a job not as a career opportunity, but as a way to try something new until they discover what they want to do.

Policy makers have acknowledged these realities by supporting the development of portable instruments that benefit a workforce on the move. The creation of the 401 (k) retirement account was a step in this direction, allowing workers to take their retirement assets with them. In the previous administration, we proposed another portable benefit– Association Health Plans. These plans would have allowed self-employed individuals and those in alternative work arrangements to join large, private insurance pools that could negotiate favorable rates for members. In general, I believe this kind of flexible, private-sector based approach is a good fit for today's gig and sharing economies.

Let me illustrate the challenges of trying to impose the old paradigm on the new workforce by sharing a few details about the regulatory process. The U.S. Department of Labor administers more than 180 laws that regulate every aspect of employment. This includes the hours employees may work, how much they are paid, who is entitled to overtime and how much, child labor protections, the health and safety of the workplace including mines, veterans re-employment rights, the workplace rights of Americans with disabilities and compliance with federal contractor regulations. The department also regulates every private pension and health benefit plan in America, and has special judicial panels settling workers compensation and whistleblower claims. And this is not an exhaustive list.

Most of the major laws creating these programs were enacted during the depression era, the 1950's or the 1970's. At the time, they addressed important social issues such as child labor, industrial accidents, and the need to strengthen union democracy. But the Fair Labor Standards Act of 1938, which created the 40 hour workweek among other key reforms, is 77 years old. The Landrum Griffin Act mandating union financial transparency is 56 years old. The Occupational Health and Safety Act of 1970 is 45 years old. And the pension protection law commonly known as ERISA is 41 years old. Updating the regulations supporting these laws is difficult, expensive, time consuming and requires a lot of political capital.

For example, during my tenure it became clear that the FLSA overtime regulations hadn't been updated in a meaningful way in 30 years. The regulations referred to jobs that no longer existed and the resulting confusion had created an onslaught of class action lawsuits. Updating these regulations in a common sense way that did not hamper job creation took years. It involved consulting numerous stakeholders, brokering compromises among competing interests, publishing hundreds of pages in the federal register, reviewing thousands of responses and then issuing a final set of regulations. This wasn't the end of the process. It was just the beginning.

The Department developed tools to help the regulated community understand and comply with the new regulations. Then there were the inevitable legal challenges to deal with, as well as the on-going process of investigating complaints and initiating enforcement actions. For the regulated community, the impact of government regulations is profound. They devote significant resources to anticipating, assessing, evaluating, monitoring, commenting, complying with– and sometimes litigating—the regulatory process.

Another lesson learned was that some stakeholders prefer the certainty of outdated standards to the churn that comes with changing them. This mindset is the antithesis of the digital culture, which places the highest value on rapid, ongoing, transformative change. Indeed, the authors of our country's major workplace laws never envisioned a 21st century digital economy filled with hundreds of thousands of micro-entrepreneurs, or independent-minded workers who want to set their own terms of employment and compensation.

Literally millions of people today participate in the digitally-enabled, peer-to-peer economy. Despite its attraction for workers, however, some suggest the sharing economy is not a 21st century construct at all, but a new version of the 19th century "piece work" economy. This ignores some basic realities, including who is working in the new economy, what type of work they are performing, and why.

Take the ride sharing company Uber, which published an analysis of a representative sample of its workforce of more than 160,000 drivers in 2015. Nearly half of the Uber drivers surveyed had a college degree or higher. 62% had another full-time or part-time job. Nearly half had health insurance coverage through another job, spouse or family member. More than two-thirds reported having financial dependents at home. So it's no surprise drivers cited the flexibility to set their own schedule as one of the principle reasons for partnering with Uber. Another frequently cited reason was the need to supplement fluctuating income from other sources. The survey also uncovered interesting compensation data. The after-tax, net hourly earnings of Uber drivers were generally equal to or higher than the average hourly earnings of traditional taxi drivers or chauffeurs. This is despite the fact that nearly one-third of taxi drivers and chauffeurs work 50 hours a week or more, compared with only 7% of Uber drivers.

You can find similar profiles in other peer-to-peer enterprises. Online marketplaces such as Etsy, Bonanza, Ebay, Amazon, Craigslist, eCrater, Ruby Lane and Zibbet cater to the hundreds of thousands of people who want to sell online. There's a lot of information out there about Etsy's approximately 290,877 sellers, so let's take a look at them. A 2012 company survey found that– much like Uber– more than half of Etsy's sellers are college educated. Only 18 percent of Etsy sellers worked full time at their online business. The remainder used Etsy to supplement household income. And since it's a site for specialized crafts, it's not a surprise that 88 percent of Etsy entrepreneurs are women working out of their homes.

Here's another example: Airbnb connects travelers with private citizens who have rooms to rent, allowing them to capitalize the excess capacity in their homes. 90% of Airbnb participants rent rooms in their primary residence. In July 2010, the company received 300 letters from homeowners who said they were able to avoid foreclosure because of the extra income derived from Airbnb rentals. It's just one example of how workers are using the sharing economy as a bridge during challenging economic times.

So let me conclude by summarizing some of the issues facing policy makers looking at this sector. As mentioned earlier, many of the government's workplace regulations were created during an era when workers spent the majority of their lives in one establishment or one profession. That's no longer the case today. So it is legitimate to ask if the regulatory solutions of the past– crafted by big government for big business– are appropriate for a peer-to-peer economy that is fluid, flexible and filled with workers who prefer independent arrangements. I believe there is room in our economy for a variety of approaches. We need to preserve the protections of the past for those who need them, while crafting new solutions that better fit the preferences of workers in the sharing economy. The digitally-enabled, peer- to- peer economy has provided an important safety net for many families during difficult times. At a minimum, government policies must not stifle the innovation that has made this sector such an explosive driver of job growth and opportunity.

Thank you.