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Debate

Independent Contractors or Employees?

ISSUE: Should workers under the sharing economy model be classified as employees rather than independent contractors?

In just a few short years, the sharing economy has become a fact of life. Uber and Airbnb have become household names. The sharing economy is based on an economic model that depends on the sharing of underutilized resources. The idea is to allow private individuals with underutilized resources to "rent" out these resources for money, essentially becoming entrepreneurs running their own businesses. Individuals that work under Airbnb rent out lodging, while those working under Uber use their cars to transport passengers to their destinations. Often this translates into lower costs for customers than renting a hotel or taking a taxi.

A major concept behind the sharing economy is the ability to be your own boss. Although sharing firms such as Instacart are moving from an independent contractor model to an employee model, most of these firms use independent contractors to do the work. Independent contractors differ from employees in that the firm does not have to pay health insurance, retirement, overtime, paid time off, unemployment insurance, worker's compensation, or taxes. However, in return the contractor has the ability to perform the assigned work as he or she sees fit. Contractors use their own resources to get the work done and can work whenever or wherever they want. They are essentially their own employers. An employee, in contrast, often works a set amount of hours and uses the employer's resources to get the job done. The organization is able to dictate the terms of the work and how it should be completed.

There are advantages and disadvantages to being an independent contractor. Advantages include being able to run your own business according to your preferences. Many individuals—particularly those of an entrepreneurial bent—claim they dislike working an average 9-to-5-per-day job and desire the flexibility to make their own work decisions. Additionally, independent contractors can often get more money for their services as the employer does not have to take out taxes or benefits. These savings are passed on to the contractor. The company also has more resources available to recruit additional independent contractors. Between 2010 and 2014, 28.8 percent of jobs added in the recovery involved independent contractors, so this type of work is clearly booming. In fact, many young people who recently graduated from college and cannot yet find jobs often work for a company operating under a sharing economy model to earn income.

However, there are several disadvantages to independent contracting as well. Possibly the biggest disadvantage—and the one individuals are most critical about—is the fact that since the organization does not have to pay taxes, independent contractors are responsible for paying all payroll taxes and social security, as well as obtaining their own healthcare and retirement plan. Because workers must pay for their own taxes and healthcare, these additional costs mean that their overall pay could be less than if they worked as employees. In other words, although they might get paid more initially as independent contractors, overall their pay might be less after paying for these additional costs.

For this reason, the government has strict policies concerning who classifies as an independent contractor and who classifies as an employee. The intent is to keep companies from misclassifying employees so they do not have to take out taxes or pay benefits. Often the onus is on the employer to show that its workers qualify as independent contractors. Uber, probably the most well-known sharing company with operations in over 300 cities in 67 countries, has come under fire recently when a California Labor Commissioner's Office determined that one of its drivers classified as an employee rather than as an independent contractor. Uber was ordered to pay more than $4,000 to this driver to compensate her for gas and wear and tear on her car. Although Uber appealed twice, the ruling was upheld. Drivers in California have also been given the ability to file a class-action lawsuit against Uber for back pay and reimbursement of expenses.

Uber argues that drivers qualify as independent contractors because they can choose their own hours and when to drive. According to the company, its smartphone app simply connects passengers and drivers. Drivers own their own vehicles and are responsible for their upkeep. Some states appear to agree. North Carolina, Arkansas, and Indiana have passed laws that require an independent contractor designation for "transportation network companies" such as Uber. Ohio and Florida are moving ahead with similar regulations.

However, according to California regulators who heard the appeal, Uber has enough control over independent contractors to classify them more as employees. For instance, Uber has the sole ability to determine fares. The firm can deactivate drivers' accounts, forbid drivers from picking people up who do not use the Uber app, and even charge a cancellation fee if the driver refuses to transport a passenger. All of these elements—they argue—are stipulations that employers exert over their employees. Conversely, because independent contractors are entrepreneurs that run their own businesses, they should be able to set their own prices and operate however they want.

It is clear that the nation itself is divided on this issue, with some states ruling that Uber drivers are employees and others developing regulations to keep them as contractors. The question that concerns many is what will happen if these sharing firms are forced to hire contractors as employees? For housecleaning startup Homejoy, it meant going out of business. Homejoy depended upon the sharing economy model, and after four workers filed lawsuits claiming they were employees misclassified as contractors, the company shuttered its doors (however, others assert that there were fundamental problems with the startup's business model and its employee issues were just one factor involved).

If Uber is forced to classify drivers as employees, the firm would have to pay penalties, back taxes, back wages, and more. This can be costly—it is estimated that firms had to pay $79 million in back wages to employees misclassified as contractors during a one-year period. Uber would have to pay much more in labor costs, and although employees might make more overall, these costs would most likely be passed onto customers. On the other hand, Uber could also change its operations and give up some of its requirements and controls for drivers. With less corporate control and more autonomy for drivers, Uber could further support its argument that drivers operate their own businesses. This comes with its own sets of risks, however, as less control means more opportunities for deviation from standards. More recently, when Uber has hired drivers, it has asked them to sign a contract saying they would agree to settle disputes in arbitration rather than in the courts. However, a federal judge ruled that these drivers can join the class-action lawsuit in spite of whether they signed the contracts—a decision that Uber plans to appeal.

There are two sides to every issue:

1. Under the sharing economy model, workers are independent contractors and not employees because they have the autonomy and flexibility of entrepreneurs running their own businesses.

2. Under the sharing economy model, most workers are misclassified as independent contractors instead of employees despite the fact that the organizations maintain significant control over their activities.

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