



The 1099 Economy

Is Uber Taking Its Drivers for a Ride?

By Nick Fouriezos

Why you should care

In just a few years, the sharing economy has become part of our daily lives, but contractor issues could derail it.

Never mind that Uber and its sharing economy brethren are valued at \$30 billion easy, or that they've worked a seismic shift in how we pay for everyday services. The fast-growing empire rests on a shaky precipice, and a couple of pending lawsuits could well take it over the brink.

The question at their heart: Is Uber taking its drivers for a ride?

While sharing economy companies have fended off a pile of lawsuits and regulatory attempts, the latest challenges strike at their very profit centers. In Massachusetts and California, Uber drivers allege they're not independent contractors, as the company would have it, but full-fledged employees. The outcome will affect much more than which tax forms Uber drivers file. It could put a serious dent in the entire sharing economy empire, from Homejoy housecleaners to Instacart grocery shoppers to BloomThat flower deliverers.

"If the whole business model is predicated on contract workers, and the courts change the system, it will screw up these companies," said Zev Eigen, a labor law professor at Northwestern University.

For businesses in the sharing economy, the cases raise no less than an existential question: What kind of companies are they? Uber, for instance, has long insisted it's a technology company that connects drivers and riders, not a transportation company. It doesn't own cars, and, Uber maintains, it doesn't employ drivers.

Power labor lawyer Shannon Liss-Riordan, mastermind of the California and Massachusetts suits, disagrees: Calling drivers "contractors," not "employees," is self-serving semantics.

"It's the newest spin to avoid employee classification," Liss-Riordan told the *Boston Globe*. "By not classifying its drivers as employees, Uber is shifting the expenses of running a business to its workers." Those expenses include benefits like health insurance, of course, but also Social Security taxes, unemployment insurance and workers' compensation, said Ross Eisenbrey, vice president of the left-leaning Economic Policy Institute: "There are all sorts of costs they avoid."

By trading those heavy burdens for the relative flexibility of hundreds of loosely affiliated contractors, share companies can drastically undercut the prices of their more traditional competitors. They can also dodge responsibility when their contractors mess up, as Uber did when the company argued it shouldn't be liable for the death of a San Francisco girl because the driver who ran her over was not an employee.

Indeed, it's almost impossible to ignore how heavily share companies rely on contractors for their profits — which is one reason investors find them so attractive. As *New York* magazine noted recently, the "1099 economy" is no longer a pejorative but "a way to praise the innovative labor practices of Silicon Valley start-ups." Many contractors, meanwhile, appreciate the chance to put their services to use and to circumvent the high barriers to entry that prevail in, say, the taxi industry.

Last year, *Forbes* predicted that revenues for the share economy would surpass \$3.5 billion in 2013, even though the industry was barely out of toddlerhood. It's been only five years since Uber started revolutionizing the way we get from point A to point B. Two

years since Lyft got into the rideshare game, Instacart began delivering groceries to our front doors and Postmates and its courier service shoved us into the rabbit hole of smartphone shopping and instant, just-one-app-away gratification. A widely circulated analysis by PwC projected that global revenues for the sharing economy could top \$300 billion by 2025.

Slow and ponderous, labor law could yet disrupt the young disruptors. The IRS has a 20-factor test differentiating contractors from employees, and its code originated with the 1930s-era Davis-Bacon Act, according to Northwestern's Eigen. The point was to stop companies from exploiting workers in the service industry. "If you were a restaurant, you couldn't just say you're trying to connect meals with eaters," Eigen said.

Most sharing companies argue they comply with federal contractor guidelines by giving workers power over their hours, hands-off oversight and little use of company equipment. But labor advocates argue that sharing companies also give workers tips on how to dress, how to work with customers and how to operate most efficiently — all "suggestions" more typically appropriate for employees.

"The degree of control the employer exerts over its workers is a major factor" in worker classification, said Veena Dubal, a Stanford fellow who researches the San Francisco taxi industry and ride-sharing business. She said she's heard from rideshare drivers who have been told to avoid discussing policies, or to refrain from listening to foreign music or speaking in a foreign language. With "these 'independent contract' drivers, ... these companies are already at risk," she argued.

There is recent precedent for the class-action suits against Uber. In August, FedEx was ruled to have misclassified 2,663 of its California and Oregon drivers from 2000 to 2007. The shipping giant owed its workers unpaid health care, workers' comp, sick leave and vacation, plus a host of other work-related costs.

Whatever the outcome of the pending suits, it seems that the sharing economy's reliance on contractors is the "elephant in the room," said San Francisco tax lawyer Rob Wood. "There is no universal answer," Wood said, "but I do think more scrutiny is coming."