



Fall 2021

Is Classifying Uber Drivers as Independent Contractors Really a Bad Thing?

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Recommended Citation

Dinnien, Kyleigh A., "Is Classifying Uber Drivers as Independent Contractors Really a Bad Thing?" (2021). *Student Publications*. 953.

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Abstract

Uber is a part of the gig economy providing individuals with the opportunity to earn cash by completing rides through the Uber platform. These drivers are classified as independent contractors, but there is a discussion on whether they should instead be determined as employees. Employees receive different types of benefits than do independent contractors which is often thought of as a good thing, but this independent contractor classification may be what is saving millions of people from being unemployed. There are reasons why Uber would like to continue classifying drivers as independent contractors and there are consequences to both categories of classification. This area of research focuses on the desired flexibility among American workers in the United States and what roles they are looking to obtain by working as a driver for Uber. Given those desired roles, one will discover what will be lost if drivers begin to be classified as employees.

Keywords

Uber, gig economy, unemployment, employee, independent contractor

Disciplines

Benefits and Compensation | Business | Human Resources Management

Comments

Written for MGT 405: Advanced Topics in OS

Is Classifying Uber Drivers as Independent Contractors Really a Bad Thing?

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MGT 405: Advanced Topics in IOD and OS: The Gig Economy

Dr. Brawley Newlin

December 3rd, 2021

Abstract

Uber is a part of the gig economy providing individuals with the opportunity to earn cash by completing rides through the Uber platform. These drivers are classified as independent contractors, but there is a discussion on whether they should instead be determined as employees. Employees receive different types of benefits than do independent contractors which is often thought of as a good thing, but this independent contractor classification may be what is saving millions of people from being unemployed. There are reasons why Uber would like to continue classifying drivers as independent contractors and there are consequences to both categories of classification. This area of research focuses on the desired flexibility among American workers in the United States and what roles they are looking to obtain by working as a driver for Uber. Given those desired roles, one will discover what will be lost if drivers begin to be classified as employees.

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Is Classifying Uber Drivers as Independent Contractors Really a Bad Thing?

The debate regarding whether Uber drivers are employees or independent contractors has existed since the creation of this gig platform. This issue has continued to persist due to insufficient answers or solutions to this disputable question. There is an argument to be made on both sides of whether Uber should classify drivers as employees or independent contractors. Even though it is frequently thought that drivers for Uber would be more well off if they are classified as employees due to benefits such as worker's compensation and other employee advantages, there is research that proves otherwise. If drivers were to be classified as employees there would be serious repercussions that would harm the majority of these gig economy workers because much of their income depends on being a driver on the Uber platform. These consequences range from loss of work, less flexibility, more commitment, etc. Understanding these consequences and comparing the costs and benefits of being either an employee or an independent contractor is important because according to Uber, as of 2018, there are over 3.9 million drivers whose livelihoods depend on this gig work ("Company Information," 2018). Although many drivers think that they want to be an employee, they should want to remain independent contractors. Whether one is a driver or a customer of Uber, one will quickly learn that if this classification change is made, it will affect millions of people.

Uber views itself simply as the technology behind the service, meaning that there is no form of an employment relationship between the company and drivers (Bales & Woo, 2017). They argue that the platform itself is not employing the drivers, it is only supplying the technology for them to do so (Buckley, 2021). Uber even refers to these drivers as "driver-partners" to disassociate them even further from anything relating to an employee status (Rosenblat & Stark, 2016). As Bensinger (2019) explains, regardless of the amount of money

drivers create for Uber, Uber does not view them as essential. Uber can make this argument because they claim to make all of their money from the licensing software of the technology (Rosenblat & Stark, 2016). Meaning that when drivers use this technology correctly the company receives compensation because of their compensation model (Rosenblat & Stark, 2016).

Uber offers a certain level of both simplicity and flexibility when it comes to being a driver, which in turn is where the root of many of their misclassification problems are arising. The platform has drivers using their own vehicles and creating their own schedules of when they wish to give rides (Griffith, 2019). As Hicks (2017) found, drivers are constantly changing their driving schedules week to week to better fit their needs. Not only can drivers craft their own schedules, but they can choose when and where to be a driver, while also being free to be a driver under other companies' technologies (Kelly, 2019). This level of flexibility and lower level of control over drivers for Uber by the company allows Uber to label its drivers as independent contractors. By categorizing a person as an independent contractor as opposed to an employee, the company can escape having to pay a larger number of individual components such as workers' compensation and other federal employment benefits. This is important because there have been hundreds of lawsuits filed in the United States by drivers claiming that they are employees of Uber and should be labeled as such (Bales & Woo, 2017). Although Uber has settled most of these lawsuits privately as a way to avoid being brought to court, the settlements themselves do nothing to prevent this underlying classification problem from persisting (Izvanariu, 2016).

Uber drivers see themselves as essential to the company because without them Uber would not survive as a business (Bales & Wales, 2017). Bales and Woo (2017) go further to explain that these drivers have even interpreted their contracts with the company to think that

Uber can fire them at any time and for any reason, which is where the belief of being an employee comes into play. The IRS essentially explains that the classification of an individual is reliant on the level of control, meaning that an individual is more likely to be an employee if the employer is in more control of the terms of agreement and how the work is to be performed (Kelly, 2019). The study conducted by Rosenblat and Stark (2016) focuses on these indirect controls that Uber places upon drivers. For example, one way Uber has some degree of control over these drivers is that they require them to maintain both a low cancellation rate, around 5%, and a high acceptance rate, around 80% to 90% (Rosenblat & Stark, 2016). Uber has terminated drivers for low acceptance and high cancellations rates, arguably displaying that they possess a form of control an employer would have (Izvanariu, 2016). Another form of soft control outlined by both Rosenblat and Stark (2016) and Izvanariu (2016) is Uber's rating system. This rating system, among other things such as activities and locations, is constantly being monitored by Uber and can even lead to the termination of a driver (Izvanariu, 2016). It would appear that Uber does in fact have some degree of control over the drivers using the platform, but it does not seem to be enough for an employee classification.

In the United States, Uber enters markets in different states seeking a cooperative relationship with authority figures but will quickly turn confrontational if this approach is not accepted (Spicer et al., 2019). As Spicer et al. (2019) describe it, they use this approach to force the hands of political figures to escape their licensing problems in given cities. California is an example of a state that Uber had to use its confrontational approach and has also lost employee classification lawsuits (Spicer et al., 2019). When establishing the relationship between an individual and a gig economy platform, courts in California look to see if the individual is providing some form of service to the employer (Steinberger, 2018). If presented successfully

then the pressure is displaced to the employer to prove that the individual is instead an individual contractor (Steinberger, 2018). This is another time when the level of control that Izvanariu (2016), Kelly (2019), and Rosenblat and Stark (2016) mentions is crucial in evaluating the drivers' status in relation to Uber. In the state of California, the power to fire an individual as one wishes is strong enough evidence to indicate a relationship between employer and employee (Steinberger, 2018). In the specific case of *O'Connor v. Uber Technologies, Inc.*, several drivers claimed to be employees under Uber. The California district court decided that these drivers were entitled to employee status because they are providing a service for Uber in which without it Uber could not operate (Steinberger, 2018). In cases like such, Uber attempts to argue that drivers should be classified as 'consumers' of its software, like that of passengers (Zhang, 2019). The outcome of these cases, in addition to the new California Assembly Bill No. 5, which ensures individuals that are being misclassified as independent contractors are protected by the law and recognized as an employee if applicable, seems to make the classification of an employee under Uber in states such as California much more probable (Buckley, 2021). This would be of harm to drivers if drivers continue to take employment cases to court and win the title of "employee".

These cases contrast with court decisions in Florida where drivers were declared independent contractors. For instance, in the case of *McGillis v. Department of Economic Opportunity*. The court relied on both the title of the party's agreement where it was explicitly stated that the driver was an independent contractor and again on the control that Uber places over the drivers (Steinberger, 2018). This court decided that an employer would not give this level of flexibility to an individual if they were an employee for the company and that these drivers would not receive any form of reemployment assistance (Steinberger, 2018).

These cases expose the vast differences in legislation and justification just between two states. Meanwhile, the outcomes and provisions enacted in all legal disputes vary between every jurisdiction in the United States. This continues to lead drivers down a road of uncertainty regarding their employment status, but more importantly, creates confusion towards what status is more beneficial to these individual drivers. It is understood why Uber needs to avoid classifying drivers as employees and make sure it is known that they are independent contractors for their own benefit, but would it be harmful to the drivers if they were to be classified as employees as well?

If Uber begins classifying drivers as employees, there will be powerful impacts not only on Uber but on the drivers as well that many people fail to consider. While being classified as an employee gives these drivers some protection and grants them opportunities for things such as minimum wage, if classified as an employee we should expect the majority of these gig drivers to be let go. The reasons for this vary from drivers no longer being able to meet the time commitment of hours demanded by federal recordkeeping law, Uber not being able to keep over one million drivers employed on a fixed salary, and there no longer being the degree of flexibility that made this ride-sharing job so desirable prior to employee classification.

Looking at the federal recordkeeping laws by The Fair Labor Standards Act of 1938, Higgins (2020) and Kerr (2020) specify that if Uber must classify drivers as employees, around 75% would no longer be able to drive for Uber. Federal law in the United States requires workers to have set employee schedules by employers in the case that they exceed 40+ hours of work a week in order to be granted overtime (Higgins, 2020). According to Benson & GS Strategy Group's "App-Based Driver Survey" (Markel & Strimple, 2020) of 1,002 Uber drivers, the average gig platform driver contributed 26 working hours per week to their gig platform before

Covid-19. These hours decreased to only 10 working hours after the Covid-19 outbreak (Markel & Strimple, 2020). Strict scheduling, like what would be imposed by federal law if drivers are employees, is disliked by drivers because rideshare platforms are often used as a way of making extra money by contributing just a few hours a week (Higgins, 2020). According to Uber Newsroom, Uber's official newsroom for the company's latest announcements, the classifying of employees would cause hundreds of thousands of drivers to lose their position with the company overnight if this classification were to be imposed (Khosrowshahi, 2020). The court cases referenced prior where drivers are suing over their classifications has failed to consider this outcome.

In California specifically, only nine percent of drivers for Uber use the ride-sharing app for 40+ hours per week (Higgin, 2020). A large portion of drivers, around 42 percent, in California spend 25 hours or less on the ride-sharing app (Higgins, 2020). Alongside this, California has over 200,000 Uber drivers, of which 76% would face losing their position working with Uber if classified as employees (Helling, 2021; Kerr, 2020; Khosrowshahi, 2020). Uber would be forced into an employment model limiting the number of individuals accepted to be drivers because of a necessary shift in focus on the ways the company would manage its costs per employee (Kerr, 2020). A shift to an employment model would mean Uber merging working hours among a smaller number of drivers to maintain a fixed pay per employee (Stein, 2020a). According to Uber's CEO Dara Khosrowshahi (2020), if drivers were to be classified as employees, then Uber would only give out 260,000 full-time employment spots, leaving 926,000 drivers in the United States no longer able to make money from this ride-sharing company. Given this data, this would mean nearly three-fourths of individuals using the ride-sharing platform as a way to earn money will now be denied this opportunity of work (Khosrowshahi,

2020). Using the statistics from the U.S. Bureau of Labor Statistics (2021) on 2020 annual averages by hours of work to look at the average share of part-time workers, Uber would still only be able to provide a total of 280,000 jobs. As stated by Khosrowshahi (2020), part-time drivers would be more difficult and more expensive to employ since the employee benefits they would be receiving would be spread over a much shorter span of working hours. With Uber now having to maintain record-keeping logs, the company would no longer be able to assist those drivers who only work a few hours per week and in turn, this will contribute to the rising unemployment rate in the United States.

Unemployment rates remain high through the Covid-19 pandemic with 6.3% of the nation unemployed at the beginning of 2021 (National Conference of State Legislatures, 2021). During a time such as Covid-19, Uber and its platform of Uber Eats was able to keep drivers employed and also help promote the continued use of businesses that were attempting to stay afloat. When individuals are suffering from a loss of work, working in the gig economy with platforms such as Uber is a fast and easy way to continue producing labor as an independent contractor and continue earning money (Malos et al., 2018). A study conducted at Cornell University in 2020 analyzed these digital platforms and how influential the technology was for both workers and businesses (Raj et al., 2020). The research conducted by Raj et al. (2020) determined that Uber Eats helped mitigate the adverse effects of economic shock and showed how critical of a role this digital technology serves. Khosrowshahi (2020) noticed the task that these drivers had to take on in becoming nearly essential parts of the economy and he explains that with 12 million Americans unemployed in the United States these drivers need to be protected from being added to this climbing number. States with high unemployment rates, such as California and Massachusetts, would be destined to lose tens of thousands of more jobs if a

switch is made over to employee classification. If a shift to employee classification was determined an estimated 76% of current workers would be fired (Stein, 2020b). Unemployment is not a new issue in the United States and income security is a large aspect of anyone's livelihood. Adriaanse (2016) attacks Uber for taking advantage of individuals' lack of labor market security in times when long-term job security is not obtainable, but giving workers an independent contractor title gives millions of individuals a chance at earning some money for their time while seeking other work. The majority of individuals driving for Uber recognize that this is not a full-time job, but that it works as supplemental income (Higgins, 2020). According to Malos et al. (2018), over 60% of Uber drivers have a supplemental job in addition to their role with Uber. Many recognize that gig work helps to mitigate economic risk by creating different sources for income, but individuals even feel more secure knowing that they have the option to gain additional earnings whenever they please (Kuhn, 2016). Uber drivers have said that the degree of flexibility to control their schedules and dependability on the platform puts them at an ease and even gives them an opportunity for personal growth (Hall & Krueger, 2018). Hall and Krueger (2018) go further to explain that 81% of those individuals who did work a full-time job before joining Uber continued working in those places of employment after joining the ride-sharing platform. Uber's current model is extremely successful because it gives what the majority of drivers desire, flexibility and short-term commitments (Adriaanse, 2016).

One of the many benefits of being a driver on the platform Uber is the level of flexibility that one has when choosing to drive and for how long. Drivers have gone as far as to say they often feel that driving for Uber feels more like play than it does work because the position is self-governing and can even provide a source of entertainment for them (Malin & Chandler, 2017). If these drivers are now being classified as employees for Uber, Uber will be required to

keep logged records of the number of hours worked and those wages made (United States Department of Labor, 2008). This will lead to more of a regular schedule of work shifts and these drivers would now lose that flexibility that is so desirable. Uber would inevitably approve fewer people to become drivers and have those that are approved working much longer hours than before. This would likely turn into a full-time job for those looking to continue being drivers and leave those using Uber as a way of making extra money having to look for work opportunities elsewhere. Specifically, 70% of drivers said they would no longer continue driving for Uber if their employment classification was changed to employee because they need flexibility to continue driving (Markel & Strimple, 2020). Stein (2020b) explains that people who choose to drive for Uber do so because of how different it is from being an employee. As Malin and Chandler (2017) describe it, drivers have even embraced the status of being an independent contractor because of its laid-back ability to choose when to work. Furthermore, in 2020, Uber sent out a survey to every driver and delivery person in the United States who made a trip in that year. 98,410 people responded to the survey, of which 76% answered that they were most satisfied with the flexibility given when driving (Uber, 2021). Morales (2021) explains that 77% of drivers prefer having flexibility when it comes to working rather than receiving more benefits. This also helps to show a clear preference by the drivers that they wish to keep this independent contractor classification and flexible working schedule (Morales, 2021). There have been several other studies done on the patterns of working hours by drivers to display the importance of this flexibility. Chen et al. (2019) determined that Uber drivers are much more likely to be working between the hours of 7:00 pm and 8:00 pm than between 2:00 pm and 3:00 pm due to having a primary job between those hours. This observation also held true when gathering data for patterns on the weekends versus the weekdays, seeing many more drivers performing trips on a

Saturday afternoon as opposed to a weekday afternoon (Chen et al., 2021). The current Uber model allows for these drivers to adapt their driving schedules to specific needs and not be constrained by things such as set working hours (Chen et al., 2021). Chen et al. (2021) recognize that there may be downsides to those who do use this platform as a full-time career because they are missing out on a structured payment plan, but the overwhelming majority of drivers on the Uber platform do not fall into that category.

The level of time commitment, Uber's inability to maintain a fixed salary, and the lowered flexibility across all Uber drivers if classified as employees should begin to lead people to think that being classified as an independent contractor is not so bad after all. An employment classification change would even be reflected on passengers because this gig economy service is only able to provide much lower prices than its more traditional counterparts because of the money the company can save by classifying drivers as independent contractors (Lee et al., 2018). Although, like most things in life, there come the costs and benefits. Being that the vast majority use this platform as a supplemental source of income and do not expect to be driving long-term, it is fair to assess that the costs of becoming an employee for Uber are exponential in comparison to the benefits.

This area of future research includes many hypothetical components that piece together to create answers to pressing arguments. Knowing exactly what unemployment may look like in the case of Uber would involve the classification of drivers as employees and years of data afterward to measure its effects. Without those implications, there are other factors that can be considered to grasp an estimate of the impact of change in classification. In order to continue gathering information on the costs and benefits of drivers being classified as employees versus independent contractors, researchers should look to measure more factors than just desired flexibility when it

comes to important employment decisions. One of those factors could include things such as how many people currently have forms of federal benefits. This could be valuable to research being that a large argument for an employee classification is that drivers are being stripped from the ability to receive federal benefits. If many drivers already have a primary job that supplies them with these benefits, then this change would not be beneficial to them. Another area that could be expanded in for the sake of unveiling data is from platforms in the gig economy, beside Uber, of which classify their workers as employees and see how many jobs those individuals work. Finding out if on other gig economy platforms workers are using this as a supplemental job as well would likely tell that being able to be a driver while working a primary job is of importance. Another thing that could be measured is how the salaries of those competing platforms, such as Lyft, compares to those working for Uber. This could provide insight into real outcomes of the differences between classification. Currently, the most challenging part of further implicating this research is the rapidly changing economy and the unpredictable world we live in. With the Covid-19 pandemic shedding light on how uncertain employment can be to millions of people, it is important to not strip away some of the limited opportunities that are still being offered to anyone privileged enough to own a device enabling them to drive for Uber.

Another crucial aspect of future research has to do with opening an international perspective. Values vary around the world and with how prevalent Uber has grown to be in different countries, it must be established whether the same framework that is most beneficial to drivers in one country will hold true in another. This means learning if the Uber model is currently successful in various countries and determining if so, what is it attributed to. Determining if a country's success is like the United States in that the role of flexibility is something that is highly valued by everyone across the world or if another large factor should be

identified could be crucial in measuring the overall success of Uber's current business model.

This could be done by studying the different functioning's of the economies that Uber is present in and comparing what drivers really seek from being a driver on the Uber platform. Compiling those desires and comparing them across various countries could be telling of Uber's purpose in different cultures.

Further research into the classification of Uber drivers is important to the gig economy overall because Uber is one of the largest competitors in this environment and millions of people are consumers of this technology in some respect. The classification Uber must abide by legally will likely determine what other ride-sharing platforms must follow for their workers as well. The current debate over this classification of Uber drivers has deeper implications than just a job title. Uber is a part of millions of people's livelihoods around the world and without understanding what is truly important to those people, opportunities could be stripped away instantly from thinking something is desirable when in actuality, it is not. This classification has the power to decide if drivers get to keep flexibility at the cost of fewer employment benefits or as Stein (2020b) states, it has the power to make a small group of drivers employees while putting the rest out of work.

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