

THE “RIGHTS ON DEMAND” SERIES

On-Demand Workers Should Be Covered By Workers’ Compensation

More and more, America’s workers are seeing their jobs deliver less and less of what they need to get by. For many, the hope of attaining a good job with an adequate social safety net is giving way to the reality of piece-rate work in part-time, hours-long and be-your-own-boss short-term “gigs.” In the on-demand economy, online and app-based companies connect workers with short-term jobs that involve driving, cleaning, delivering food, doing odd jobs or performing tasks online, often for very little money, with no job security and no labor protections at all. The on-demand sector is a tiny part of the economy overall, but it has grown ten-fold in the last three years.¹

With more people engaging in work for on-demand companies such as Uber (driving), Care.com (child care and home care), TaskRabbit (home services) and Postmates (delivery), the question of whether workers are “employees” or “independent contractors” has become a central one. On-demand companies, especially those operating in highly dangerous sectors, should be required to provide workers’ compensation to those who work for them.

On-demand businesses often label their workers “independent contractors,” saying they are in business for themselves. In many cases, this label is wrong and illegal. This policy brief explains why workers in the on-demand economy—no matter what the businesses they work for choose to call them—should be and can be covered by workers’ compensation laws.

Why Do On-Demand Workers Need Workers’ Compensation?

On-demand jobs are among the most dangerous in the country. Three of the most common sectors in on-demand businesses are transportation, delivery, and home services, including domestic work like caregiving. The job-related dangers to which these workers are exposed make it critical that they be covered by workers’ compensation.

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In particular, for-hire transportation, the largest segment of on-demand work, is a very hazardous industry. Taxi drivers and chauffeurs are killed on the job at a rate five times higher than the average for all other workers.² They are among the highest risk of all jobs for occupational fatalities from homicides and motor vehicle accidents.

Researchers have known for decades that taxi drivers face one of the highest homicide rates of any occupation—over 20 times greater than for other

workers.³ According to the Occupational Safety and Health Administration, the key risk factors behind these high rates are working with cash, alone and in isolated areas, at night in poorly lit settings, in high crime areas, and with people under the influence of alcohol.⁴

Taxi drivers are also killed in transportation incidents. In 2014, more than one-third of all workplace deaths among taxi drivers and chauffeurs were from transportation incidents (slightly over one-half are homicides).⁵ Transportation and workplace violence incidents can also result in serious, sometimes catastrophic injuries with accompanying lost work time and growing medical bills. In fact, taxi drivers suffer higher rates of serious injuries involving lost work days than other workers.⁶ Musculoskeletal injuries are also common among taxi drivers, including back and neck injuries from handling passenger luggage and from long hours behind the wheel.

On-demand workers perform other hazardous jobs, like domestic work, delivery, and home repair and improvement, and there is ample evidence that these, too, are dangerous sectors. For example, a national survey of domestic workers found that 38 percent had suffered work-related wrist, shoulder, elbow, or hip pain in the prior 12 months; 29 percent of housecleaners suffered from skin irritation; and 29 percent of caregivers suffered a back injury in the prior 12 months.⁷ So too, bicycle-based delivery services, like UberFlash and Postmates, are among the most dangerous jobs. A study of bike messengers in Boston found that 70 percent had suffered an injury resulting in medical attention or lost work, including fractures, sprains, and strains.⁸

Workplace Injuries Can Be Devastating to Workers and Their Families

Serious work-related injuries can run up steep medical bills and result in many days and months of missed work. For example, an [Uber driver](#) who was the victim of a violent passenger attack, in which he suffered a broken nose and puncture wounds to the mouth and chin from a sharp object used in the attack, missed two months of work and could miss more work due to continued medical needs.

Workers' Compensation Protects Injured Workers from Financial Ruin and the Public, Placing Responsibility on Companies as a Cost of Doing Business

Medical bills and lost time from a work-related injury can be an enormous burden on workers and their families.⁹ Losing a family member to a work-related death can have devastating consequence to a family's financial security. That is why the American worker's compensation system was created at the turn of the last century. The basic principle—often called the Grand Bargain—is that employers assume responsibility for providing insurance that pays out certain benefits for workers injured on the job without regard to fault, and in return are protected from personal injury or other liability for workplace injuries or illnesses.

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Workers' compensation benefits include medical care, rehabilitation, and reimbursement for lost wages for work-related injuries. Workers' compensation also pays benefits to families of workers who die from work-related causes. Each state regulates its own workers' compensation system. With a few exceptions, workers' compensation is financed by employers either through purchased insurance from private insurers or a state insurance fund; some large employers may self-insure.¹⁰

Because workers' compensation is a social insurance program, universal coverage of employees is an important prerequisite to its success. More than 129 million workers in the country are covered by workers' compensation. Workers in job structures similar to those typical of the on-demand economy are covered by workers' compensation. For example, labor intermediaries like staffing agencies and home care agencies must carry workers' compensation policies for workers they dispatch to other physical locations. And in a majority of states, multiple jobholders who are injured in one job can receive compensation that takes into consideration the wages they have lost in other jobs.¹¹

Why Don't On-Demand Companies Provide Workers' Compensation?

The purpose of workers' compensation is to protect injured workers and their families by ensuring access to good medical care and disability payments while they are off work, regardless of fault, while at the same time protecting employers from unpredictable tort liability. Shifting the cost of workers' compensation onto the backs of workers (or onto the public) goes against the very principle of workers' compensation.

But many on-demand companies do not pay workers' compensation for their workers because they classify them as independent contractors. Businesses are not required to carry workers' compensation for persons who are not their employees. Companies that label their

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workers in this way avoid paying premiums associated with workers' compensation and pass on the cost of injuries to workers themselves and the general public. In many cases, this practice is illegal. The practice can increase company profits, but it presents real costs to the

workers hired by these companies, creates an uneven playing field for competitors who treat their workers as employees, and can shift the cost of injuries and deaths onto the public at large.

A number of on-demand companies, such as Uber and Lyft, the house cleaning services Handy and Homejoy, and the delivery services Postmates, TryCaviar, and Amazon PrimeNow, are now or have been the subjects of litigation challenging their practice of treating workers as independent contractors.¹² In addition to defending their practices in court, some companies are fighting to change the laws in order to erase or limit their obligations to comply with labor standards or contribute to workers' compensation funds. In fact, nearly half of the states have enacted laws that exempt transportation network companies from "employer" status under various state laws. In the context of workers' compensation, these companies are relieved of the obligation to pay payroll taxes that other businesses bear.¹³

What Should State Agencies Do to Ensure On-Demand Companies Provide Workers' Compensation?

A first step is for state agencies to enforce existing workers' compensation laws that cover employees, including those called "independent contractors." Some state agencies have already held that the companies' characterization of certain on-demand workers as independent contractors is unlawful. In Oregon, the Bureau of Labor and Industries has issued guidance saying that transportation network drivers are employees for purposes of its minimum wage, workers' compensation, and other protections.¹⁴ In the fall of 2015, Uber settled a claim with the Alaska Department of Labor and Workforce Development in which it agreed not to operate in Alaska if it continued to classify its workers as independent contractors.¹⁵ In summer of 2015, both the California Employment Development Department and Department of Labor Standards Enforcement found, in separate individual cases, Uber drivers to be employees for purposes of unemployment benefits and wage and hour law.¹⁶ These rulings, which closely assessed the relationship between the companies and the workers, serve as models for state agencies enforcing their workers' compensation laws and suggest that as more claims are adjudicated under long-standing labor protections, more findings of employee status will follow.

What Should Policymakers Do to Ensure On-Demand Companies Provide Workers' Compensation?

State legislatures can take action to prevent and correct misclassification and reduce litigation over employee status. State legislatures should explicitly clarify that on-demand companies are obligated to provide workers' compensation to their workers by either specifically naming them as "employers" for the purposes of workers' compensation coverage, and/or naming the workers in certain jobs as covered "employees." A provision in the Social Security Act already requires certain businesses, no matter how they label certain workers (including delivery workers, insurance sales agents, homeworkers, and traveling salespeople), to contribute to those workers' Social Security accounts.¹⁷

Another model, creating workers' compensation coverage that is paid for by a surcharge on fares, is imposed on the for-hire transportation industry in New York State. Under this provision, workers are covered by workers' compensation even if such companies characterize their drivers as independent contractors.¹⁸ All so-called black car bases in New

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York, including Uber and other transportation network companies, must provide workers' compensation coverage for their drivers through membership in the so-called Black Car Fund.¹⁹ For most, workers' compensation payments are funded through an added surcharge of 2.44 percent onto all fares, payable to the state-established fund.²⁰

Uber clearly acknowledges that its drivers work in a dangerous environment. In deference to the serious job hazards, it is already providing increased auto insurance to its drivers.²¹ According to the Uber website, since 2013, Uber has purchased insurance to cover auto accidents involving its drivers. All drivers are expected to have their own personal auto insurance, but Uber offers \$1 million of coverage per incident when its drivers are liable as well as when the other party is uninsured or lacks adequate coverage.

This insurance is not as comprehensive as workers' compensation, and it does not cover any serious injuries or fatalities from passenger violence. This is not because Uber is under any illusion that its drivers never face the threat of violence on the job. Uber is very aware of the threat of violence, especially the rising number of assaults from drunken riders. Instead, here is Uber's solution: the company is studying using a children's toy to distract drunk passengers so they don't attack their drivers. The Center for Disease Control's safety research agency (the National Institute for Occupational Safety and Health) has studied violence prevention in taxi cabs and recommends cameras as the most effective safety equipment.²²

Conclusion

Technology has improved the lives of businesses, consumers, and workers. But use of new technology should not be an excuse for companies to engage in old-style gaming of the core institutions that created the American middle class. Instead, as new technology develops, it must be harnessed to build a more inclusive economy—one that delivers a secure income, social protections, and the right to engage in collective action to all of America's workers.

It is possible, and necessary, to cover on-demand workers under state workers' compensation systems, due to the hazardous nature of many on-demand jobs. Doing so fulfills the purpose of workers' compensation to ensure that the costs of doing business in a particular industry are paid by that industry, not workers or the general public. State agencies in California, Alaska, and Oregon are already ruling that transportation network companies are employers, and more should do so. The New York Black Car Fund provides a model for coverage of on-demand workers in a state workers' compensation system.

The National Employment Law Project aspires to build an economy that embodies and advances principles of inclusion and fairness, justice, sustainability and shared prosperity. The “Rights on Demand” series focuses on issues confronting workers in the on-demand economy, as part of our broader campaign to ensure that all workers, regardless of how their employers classify them, receive fair wages and benefits in a safe and healthy work environment.

Endnotes

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- ¹⁴ Bureau of Labor and Industries, Advisory Opinion of the Commissioner of the Bureau of Labor and Industries of the State of Oregon, Regarding the employment status of Uber Drivers, Oct 14, 2015, <http://uberlawsuit.com/Oregon.pdf>.
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- ¹⁶ Uber has apparently claimed that other state agencies have found its drivers to be independent contractors, but those decisions are not publically available. See Ashley Venover, *California Employment Department Rules Uber Driver is Not Contractor*, Top Class Actions, (Sep 29, 2015), <http://topclassactions.com/lawsuit-settlements/lawsuit-news/161802-calif-employment-dept-rules-uber-driver-is-not-contractor/>. In addition, in Colorado, a recent statutory change gives the state agency the authority to determine by rule whether transportation network company drivers are “employees” under state law. C. R. S. § 8-41-211.
- ¹⁷ See IRS, *Statutory Employees*, <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Statutory-Employees>.
- ¹⁸ New York Executive - Article 6-F New York Black Car Operators' Injury Compensation Fund, Inc.
- ¹⁹ The compensation fund includes any company that operates through a central dispatch facility that does 90 percent or more its business on a non-cash basis and owns less than half of its affiliated vehicles. See, New York Executive - Article 6-F - § 160-CC(1) and (3).
- ²⁰ See New York Executive - Article 6-F - § 160-CC-00.
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