

ISSUE BRIEF

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Compulsory Union Representation Would Make Gig-Economy Jobs Less Flexible

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The city of Seattle has passed regulations unionizing rideshare drivers. Union activists in other cities have proposed similar measures. These ordinances violate federal law and are likely to be struck down in court. Even beyond the question of legality, however, these ordinances are simply bad policy. Compulsory union representation forces all workers to operate under the same contract. Unions typically design their contracts to benefit long-term, full-time workers at the expense of part-time workers. But most workers enter the gig economy precisely because regular 9–5 type jobs do not fit into their lives. Ridesharing allows them the freedom to fit work around their lives instead of vice versa. Unionizing rideshare drivers would eliminate much of the flexibility that workers seek in the gig economy.

Seattle Ordinance 124968

Seattle Ordinance 124968 creates a process for unionizing self-employed rideshare drivers. Under the ordinance and the city’s draft regulations unions can organize taxi, for-hire, and Transportation Network Company (TNC)¹ drivers classified as independent contractors. The regulations allow unions to organize drivers through publicly signed cards instead of through a secret-ballot election.

Once a union collects cards from a majority of driver-partners at a TNC (e.g., Uber or Lyft), it would become that TNC’s “exclusive representative.” This means the union contract applies to all of a company’s driver-partners. Workers who do not want union representation or the union contract must nonetheless accept the limitations that such arrangements impose on their freedom to set their own hours. Among other subjects, the regulations give unions the power to negotiate the following²:

- The nature and amount of payments to be made by the driver coordinator to the drivers,
- The nature and amount of payments to be withheld from the driver coordinator by the drivers,
- Minimum hours of work,
- Driver’s conditions of work, and
- Compulsory union dues.

Union activists have proposed similar policies elsewhere in New York City.³ However, only Seattle has actually passed legislation unionizing rideshare drivers.

Rideshare Unions Violate Federal Law

State or local laws unionizing rideshare drivers violate federal law. The National Labor Relations Act (NLRA) governs most private-sector unions⁴ and overrides almost all state and local regulations on private-sector unions.⁵ The NLRA expressly exempts independent contractors from collective bargaining.

This paper, in its entirety, can be found at <http://report.heritage.org/ib4637>

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Rideshare drivers are independent contractors. Legally, they work for themselves, locating clients through apps like Lyft and Uber. Congress has made a policy judgment to prohibit collective bargaining between independent contractors, and municipal governments have no authority of their own to require it.⁶ Furthermore, collective bargaining between independent contractors may also violate federal anti-trust law, which prohibits businesses (including the self-employed) from colluding to set prices.⁷ Federal courts are very likely to strike down Seattle's ordinance and any similar policies adopted by other cities.

In addition to these legal violations, local ordinances unionizing rideshare drivers are simply bad policy. Unions design their contracts to benefit long-term, full-time workers at the expense of part-time, short-term workers. Rideshare unions would consequently undermine the flexibility that gig-economy workers value.

Unions Prioritize Interests of Full-Time and Long-Term Drivers

Both the Seattle election process and union officer elections overrepresent full-time and long-term workers. Seattle's union-selection regulations limit participation to those with 52 or more rides over three months. This disenfranchises roughly one-third of

Seattle's driver-partners. Many part-time and intermittent drivers would have no say in the selection of the union that would negotiate on their behalf.

Moreover, turnout in union officer elections is quite low, often below 20 percent. Few employees take the time to become active in their unions and those who do vote are usually older workers with more seniority.⁸ This dynamic would be even more pronounced at TNC companies; most of their partners drive part time. Intermittent drivers have little incentive to devote time or energy into union officer campaigns. Full-time, long-term workers have much stronger incentives to participate. These workers tend to dominate union officer elections.

Knowing this, unions negotiate contracts that prioritize the interests of long-term, full-time workers. These contracts would restrict part-time drivers' flexibility and earnings. Compulsory union representation means eliminating much of what makes the gig economy unique.

Mandatory Minimum Hours Limit Workers' Freedom to Work Part Time

Seattle's draft regulations expressly allow unions to negotiate minimum hours of work.⁹ This does not mean guaranteeing a minimum number of work hours. TNC drivers already have the freedom

1. Also known more colloquially as a "rideshare."

2. City of Seattle, "Proposed Rule FHDR-4: Subjects of Bargaining between a Driver Coordinator and an Exclusive Representative," <http://www.seattle.gov/Documents/Departments/FAS/RegulatoryServices/collective-bargaining/FHDR-4-subjects-of-bargaining-proposed.pdf> (accessed December 8, 2016).

3. Matthew Flamm, "Union Seeks to Organize Rideshare Drivers in NYC," *Crain's New York Business*, September 26, 2016, <http://www.craigslist.com/article/20160926/TRANSPORTATION/160929902/amalgamated-transit-union-local-1181-seeks-to-organize-uber-drivers-in-nyc> (accessed December 8, 2016).

4. Railway and airline employees are governed by the Railway Labor Act.

5. Section 14(b) of the National Labor Relations Act expressly exempts right-to-work laws from federal preemption.

6. The Supreme Court has held that states may not regulate conduct that is within a zone of activity which Congress intended to be left open to economic forces. See *Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132, 149-50 (1976). "Our decisions hold that Congress meant that these activities, whether of employer or employees, were not to be regulable by States any more than by the NLRB, for neither States nor the Board is 'afforded flexibility in picking and choosing which economic devices of labor and management shall be branded unlawful.' Rather, both are without authority to attempt to 'introduce some standard of properly balanced bargaining power,' or to define 'what economic sanctions might be permitted negotiating parties in an "ideal" or "balanced" state of collective bargaining.' To sanction state regulation of such economic pressure deemed by the federal Act 'desirab[ly]...left for the free play of contending economic forces,...is not merely [to fill] a gap [by] outlaw[ing] what federal law fails to outlaw; it is denying one party to an economic contest a weapon that Congress meant him to have available.'" (Citations omitted)

7. "[A] party seeking refuge in the statutory exemption [from federal antitrust laws] must be a bona fide labor organization, and not an independent contractor or entrepreneur." *H. A. Artists & Assoc., Inc. v. Actors' Equity Ass'n*, 451 U.S. 704, 717 (1981), n. 20.

8. Daniel DiSalvo, "Are Unions Democratic: The Internal Politics of Labor Unions and their Implications," The Manhattan Institute, *Report No. 91*, September 10, 2014, <https://www.manhattan-institute.org/html/are-unions-democratic-internal-politics-labor-unions-and-their-implications-5819.html> (accessed December 8, 2016).

9. City of Seattle, "Proposed Rule FHDR-4."

to work as much as they want. Rather, this means requiring drivers to work a minimum number of hours to remain on the platform.

Mandatory minimum hours would hurt the majority of rideshare driver-partners who drive part time. Fifty-five percent of Uber's driver-partners work fewer than 16 hours a week.¹⁰ These drivers do not earn their living from Uber or Lyft. Rather, they use the platforms to supplement their income, fitting in rides around their schedule.

Hours requirements curtail this flexibility. Consider a union contract that required at least 10 hours of weekly driving. Many part-time drivers would have to put in extra hours, losing some of their ability to work on their own terms. This mandate would inconvenience many drivers and cause some to quit.

The mandatory hours would benefit full-time drivers, since they already exceed whatever minimum threshold the contract would require. Furthermore, they will get more rides as some part-time drivers leave the platform. Compulsory TNC union representation allows unions to impose terms that benefit full-time workers at the expense of part-time drivers.

Limiting Locations and Times

Moreover, union contracts are likely to limit the most valuable locations and times to full-time drivers. Seattle's proposed regulations expressly allow unions to negotiate "driver's conditions of work."¹¹ Those conditions include where and when they drive. Some work locations and hours are more lucrative than others, being more likely to feature surge pricing or more client requests (or both).

Union contracts typically allocate premium working conditions on the basis of seniority. For example, the United Steel Workers (USW) represents approximately 1,800 taxi drivers in Las Vegas and southern Nevada. The USW contract assigns preferred shifts

on the basis of seniority.¹² A TNC union would probably follow a similar policy, giving workers with the greatest seniority first preference for the best times and locations and forbidding less senior drivers from working then. Junior drivers would either have to accept these terms or quit.

Redistributing Pension and Health Benefits

Union contracts would also cut short-term driver benefits to boost long-term driver compensation. This would occur through vesting requirements. Workers do not qualify for most union-negotiated pensions until they accumulate enough seniority, often between 5 and 10 years.¹³ Many union health plans also have vesting requirements, although they are usually shorter than for pensions.

Vesting systematically redistributes pay from short-term to long-term workers. Union contracts typically require employers to contribute on behalf of each employee into health and pension funds. These contributions are part of the workers' total compensation. Unions negotiate for greater benefit contributions in lieu of higher wages.

However, workers who leave the union before they vest get no benefit from their contributions. Their payments simply boost the pension and health funds' finances. This allows the funds to pay out higher benefits to long-term workers who have vested. Union contracts impose financial sacrifices on short-term workers to increase benefits for long-term workers.

This problem would be even worse for rideshare drivers. The TNC sector has very high turnover. Two-thirds of Uber's driver-partners leave the platform within two years; one-tenth stop driving after a month.¹⁴ A union contract would probably require these short-term drivers to pay into health and pension funds they will never collect from.

10. Jonathan Hall and Alan Krueger, "An Analysis of the Labor Market for Uber's Driver-Partners in the U.S.," National Bureau of Economic Research *Working Paper* No. 22843, November 2016, Table 4, <http://www.nber.org/papers/w22843> (accessed December 9, 2016).

11. City of Seattle, "Proposed Rule FHDR-4."

12. Richard N. Velotta, "Potential Taxicab Strike Could Put Clark County in 'Emergency Situation,'" *Vegas Inc.*, November 1, 2012, <http://vegasinc.com/business/real-estate/2012/nov/01/potential-taxi-cab-strike-could-put-clark-county-e/> (accessed December 8, 2016).

13. See, for example, the Laborer's National Pension Fund, which has a five-year vesting requirement. Details available at Laborer's National Pension Fund, "Basic Info," <https://www.lnpf.org/BasicInfo.asp> (accessed December 8, 2016). See also the United Teamster's pension fund, which also has a five-year vesting requirement. Details available at United Teamster Fund, "Summary of the United Teamster Pension Fund 'A,'" January 1, 2007, http://www.utfonline.com/SPD-A%20html/UTPF-A.htm#_Toc164744702 (accessed December 8, 2016).

14. Hall and Krueger, "An Analysis of the Labor Market for Uber's Driver-Partners in the U.S.," p. 18.

Short-term drivers would be much better served by defined contribution plans, such as payments into an IRA. Nonetheless unions generally oppose defined contribution plans and insist on vested pensions.

Shifting Costs to Part-Time Drivers

Compulsory union representation would likewise enable unions to shift fees onto part-time and intermittent drivers. Rideshare companies like Uber and Lyft currently do not discriminate between full-time and part-time drivers. They charge all drivers the same percentage commissions on each ride. A driver working 40 hours a week pays roughly 10 times as much as a driver working four hours a week. Most taxi companies use a different model. Taxi drivers typically pay a flat fee to lease a taxi for a set period of time (e.g., 12 hours). The driver keeps all earnings over and above that amount.

A flat fee structure would cost full-time TNC drivers less than part-time drivers. Full-time drivers put in more hours, so on an hourly basis they would pay less than part-time drivers. A TNC union could insist on flat fees in negotiations, or it could bargain for lower percentage commissions for full-time than part-time drivers. The Seattle TNC regulations expressly allow unions to negotiate “the nature and amount of payments to be made by, or withheld from, the driver coordinator to or by the drivers.”¹⁵ Mandatory union representation empowers unions to shift costs onto drivers with less influence in the union.

Ridesharing Benefits Workers Who Value Flexibility

Flexibility is the key feature of the gig economy. Rideshare drivers set their own schedules and drive as much as they choose. They are free to work when they want and stop working when they want. This allows workers with pre-existing obligations to schedule work around those obligations. Few traditional jobs permit this.

Alan Krueger, former Chairman of the Council of Economic Advisers, finds that most Uber driv-

ers also have a regular full-time or part-time job and that they drive with Uber to supplement their income. Other Uber drivers are students or stay-at-home parents.¹⁶ Work, family, and school obligations make it difficult—if not impossible—for such workers to commit to regular hours.

Ridesharing allows workers who cannot commit to a fixed schedule to nonetheless work. Indeed, over one-third of Uber driver-partners report they were not looking for work before they began ridesharing.¹⁷ In the absence of the sharing economy, many of these individuals could not work or would not work outside their main job.

The variability of rideshare drivers’ work hours illustrate this:

- Two-thirds of rideshare drivers drive at least 25 percent more or fewer hours than they did the week before.
- Over two-fifths drive 50 percent more or fewer hours than the previous week.¹⁸

Most “regular” jobs cannot accommodate workers who want to shift their schedules so greatly. Gig-economy jobs do.

Gig-Economy Workers Like Their Jobs Now

Surveys show that ridesharing drivers like the freedom and flexibility of their jobs—a lot. When asked why they partnered with Uber:

- 87 percent said “to be my own boss and set my own schedule”;
- 85 percent said “to have more flexibility in my schedule and balance my work with my life and family”; and
- 74 percent said “to help maintain a steady income because other sources of income are unstable/unpredictable.”¹⁹

15. City of Seattle, “Proposed Rule FHDR-4.”

16. Hall and Krueger, “An Analysis of the Labor Market for Uber’s Driver-Partners in the U.S.,” pp. 9-10.

17. *Ibid.*, p. 10.

18. *Ibid.*, Figure 9.

19. *Ibid.*, p. 11.

Another survey question asked: “If both were available to you, at this point in your life, would you rather have a steady 9-to-5 job with some benefits and a set salary or a job where you choose your own schedule and [are] your own boss?” Three-quarters of Uber driver-partners preferred being their own boss.²⁰

The gig economy has filled a hole in the labor market, making flexible jobs more available than ever before. Workers who need flexibility seek out these jobs and are very happy with them. By a margin of 74 percent to 5 percent, drivers report that partnering with Uber has improved their lives.²¹

Compulsory union representation means turning ridesharing into something similar to a traditional 9-to-5 job. A union would determine when and where drivers can work and structure compensation to encourage full-time schedules. This would undermine much of what attracts workers to ride-sharing and the gig economy.

Traditional 9-to-5 jobs do not work for everyone. Local governments should not attempt to impose them on rideshare drivers.

Conclusion

Local ordinances unionizing rideshare drivers violate federal law and are simply bad policy. Compulsory union representation limits rideshare drivers’ flexibility. Union contracts would impose work hours mandates while assigning shifts on the basis of seniority and would redistribute income from part-time to full-time drivers. These changes would undermine the flexibility that gig-economy workers value. Polls show rideshare drivers are happy with their jobs—especially with the ability to set their own hours. Union contracts restricting this freedom would hurt them and the industry.

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20. Jonathan Hall and Alan Krueger, “An Analysis of the Labor Market for Uber’s Driver-Partners in the United States,” Princeton University Industrial Relations Section, January 22, 2015, p. 11, <https://irs.princeton.edu/sites/irs/files/An%20Analysis%20of%20the%20Labor%20Market%20for%20Uber%E2%80%99s%20Driver-Partners%20in%20the%20United%20States%20587.pdf> (accessed December 8, 2016).

21. *Ibid.*, p. 11.