

Capitol Journal Gig Economy Topic Webinar

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LexisNexis State Net Capitol Journal Gig Economy Topic Webinar

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Rich Ehsen: Part of this. How big of an issue is the worker misclassification issue? And I ask that because clearly, you know, the bill that we have here and there's a few other states that have them, you know, have been designed to try to get at this issue of properly classifying workers. So how big of an issue is this really in our economy?

And I'll start—Diane I'll start with you. Maybe I'll let you answer that first and then Kate can weigh in after.

Diane Mulcahy: Sure. Well the worker misclassification issue is a big one is what I would say for the short answer. It speaks to the worker because the way our labor market is structured now you're penalized if you're not a full-time worker.

So if you're not a full-time employee you immediately begin to lose rights, protections, benefits and subsidies that are only awarded to employees in traditional jobs. So if you're an independent contractor versus an employee you lose access to all that. So that's a big deal for the workers.

For companies it forces companies to take on a lot of risk because the classification system at the state level and the federal level is vague. It's subjective, it's unclear. So it makes it very difficult for companies

to determine who's an employee and who's an independent contractor. Obviously companies that want to arbitrage the difference between the two can use that subjectivity and vagueness to assert employment protections and benefits and rights.

But for companies that want to classify workers correctly or want to include independent workers as part of their workforce it makes it really challenging. Because they're always in—they're always on uncertain settings when it comes to the status of their workers.

So the classification issue is a large one. I think what's also becoming clear is that the classification system isn't really working given the way that people who are choosing to work or have to work. We really need to think about a different way to think about how we allocate benefits and rights and protections to all workers not just employees.

Rich Ehsen: Right. Well Kate I've been reading a lot of the research on these kinds of issues. I mean how—the worker classification issue is such a big deal to employees that they're the ones who are being misclassified. You know give me your perspective on this.

Kate Bahn: Yes. And you know I want to confirm what Diane saying. That it is a big issue. You know, the stats are hard to determine but we know some things like it does impact a significant portion of independent contractors who are temp economy as well as, you know, some studies show that 10 to 20 employers are misclassifying at least 1 employee.

And I think particularly with recent legislation we're really focusing on employers whose business model it is to mis-classify their employees.

But I think, you know, to provide some more context why this is happening and the broader trend this is part of is that employers have been undercutting wages for years by increasingly outsourcing work that was previously done by direct employees. This is a broad trend, it's done in a lot of different ways. Misclassification is one way that employers are doing that.

And they're doing it because it saves them money because they don't need to pay minimum wage or payroll taxes and they avoid a lot of the responsibility to uphold labor standards.

So when I see, you know, the role of legislation that is designed at stopping misclassification is to bring employer back to paying because for the value that they're contributing. The workers are contributing to production.

Rich Ehsen: You know let me follow-up on that.

Kate Bahn: Yes.

Rich Ehsen: The issue, you know, we do kind of get focused on the really big companies. And particularly right now we're focused on the ride share companies, Uber and Lyft or companies like DoorDash or what have you. And those are the ones that have done all the ink on this.

But yes, this is—this goes well beyond those companies. And we've talked to quite a few industries here in California with AB5 push for exemptions. Everybody from, you know, doctors, lawyers, real estate agents, you know, truckers etcetera, etcetera.

And quite a few of them did get the exemptions. An example I have a good friend who runs a pilates studio. All her instructors were contractors. Out of fear of being given a huge fine she made them all employees

well in advance of even the bill passing and it cost her a lot of money to do that of course, you know, how this goes.

But it really makes me wonder, you know, is part of this one size fits all application, is it really unfair to the smaller employers out there, the mom and pops out there that don't have maybe the financial leeway of the Ubers and the Lyfts of this world?

Kate Bahn: And so I see this issue especially, you know, as previously as I said before, that employers have been largely undercutting wages so there is a risk of labor costs go up as employers have been paying their workers less than minimum wage, probably no one should be paying less than minimum wage but there is evidence this happens to independent contract in general. But this—the thought is that this really reflects the real cost of business if you are paying workers, you know an equivalent to the value that they are helping you create.

But I think it's also important to keep in mind the other side of this as well is that a lot of small businesses are actually (self-hires) or self-employed workers themselves that are at the receiving end of some of these sectors that are designed to independent contracting and more stable and secure employment.

So I think a lot of these will be independent model businesses if they are a self-employed or independent contractor may see themselves be somewhat more protected by labor laws when we have legislation like this.

And then also, you know, a second point is that when we do have a lot of exemptions that they need to be done with an eye to equity because in the past when we have those exemptions that carve out certain industries or certain types of employment, they've been done in ways that we enforce both racialize and gender disparities in the labor market so particularly domestic and agricultural workers are kind of (your) typical example of this because they were excluded in the Fair Labor Standards Act when that was passed in the 1930s.

So that is also part of the big risk because it really depends who is lobbying for those exemptions and why a lot of the exemptions do exist. It could be mom and pop shops and I'm sympathetic to those business

owners. It can also be big companies that are hoping to gain exemptions because they know that this is crucial to their business model is to underpay workers.

Rich Ehsen: Right, well Diane I—you know you're in Massachusetts. Massachusetts has had an ABC law for quite a long time. What's your perspective on what it has meant there? I mean is the law working there? Does it actually provide benefits to both workers and employers there?

Diane Mulcahy: Yes. Massachusetts has had the ABC Test as you said on the books for a decade. And it hasn't materially impacted the state of the independent contractors certainly not in the way that California is envisioning in terms of targeting the ride share and other platforms that mainly—that, you know, a majority of unskilled workers work on.

So I think it's interesting that California chose a law that's been in effect for such a long time and hasn't had an impact and replicated it without changing it in any material way. I mean the Attorney General in Massachusetts has put out a briefing talking about how it was difficult to enforce. And certainly a number of the key provisions of ABC Tests are as I said, they're vague or subjective, they're undefined. So it's challenging to enforce.

Also the only way to enforce the ABC Test is through a lawsuit. So the dynamics moving that you mentioned at the beginning of this conversation it's up to you and lawsuits will raise.

So again I think it's interesting that California chose the route of implementing legislation that requires a legal process to enforce. I'm sympathetic to their intent. But I think that good intent doesn't equal good policy.

And I—you know, what I am concerned about in California is that they implemented a policy that isn't going to have any real impact because it is vague. It's hard to enforce. It requires a legal process and they're not going to get where they want to go. And I think Massachusetts is a beacon of that kind of example. It just hasn't worked here in the way that California is hoping.

Rich Ehsen: Well you know along those lines I mean I think it's clear to a lot of workers out there and Diane you're a great example of this is, you know, really want

that independence, want the freedom to choose who they work for and when.

So how do we find that balance? You know what is being left out maybe of the challenge to try to find some—to give employees the freedom to make those decisions while also not, you know, being locked out of the benefit of being an employee? I mean we mentioned that earlier. What are we missing here in this regard?

Diane Mulcahy: To me that's the fundamental question and the crux of the problem. I mean AB5 is unfair to independent workers who choose to work this way.

And if you look at the various surveys and data and as you said, you know, none of the numbers are completely clear, accurate. There are varying definitions of the gig economy and a lot of problems with measurement.

But if you sort of aggregate the data that's out there, the majority of people who work independently choose to work independently. And the laws that force people to be classified as employees are unfair to that choice, to people who want to make a choice like that.

And as I said, I'm sympathetic to the point of view of protecting workers that are unskilled and poorly paid but there are many independent workers that are skilled, that are knowledge workers, that are professionals, that have expertise and that charge fully loaded rates. And companies really aren't saving anything by working with an independent worker. Are getting other types of benefits from that worker whether it's access to talent or the ability to step up or down, whatever it may be.

But I think the key is to think about how do we extend the same right protections and benefits that we only award to employees to all workers? You know how can we make it so that the choice to work independently isn't a choice that penalizes you?

Right now if somebody leaves their full-time job and they choose to go out and work independently, become self-employed, they are taxed additionally through the dedicated self-employment tax. And they lose access to, you know, federal subsidies or employer provided health insurance. They lose access to basic labor protections.

And I think as we step back and look at this trend and the growth of independent work and assume that the future looks like a much more blended workforce then we need to come up with a better way to provide those basic protections, the rights and benefits to all workers not just employees.

Kate Bahn: Let me add.

Rich Ehsen: Yes. Please. Go ahead Kate.

Kate Bahn: Yes. So I mean I think what Diane is saying is really correct. But I think that, you know, we need to keep in mind that there is a lot of variation with the independent contracting workforce. And there are of course, there are consultants, there are doctors, there are lawyers. There are many people who are working very—jobs that give them a lot of freedom and they really are able to set the terms of the projects they work on. They're able to set their pay rates. They're able to set their hours.

And those workers, you know, by large if the law is implemented well, would not affect those workers. So the other class of workers that have really—that the bill is targeted towards, they have said in surveys they value flexible work schedules. But there's nothing that prevents employers from allowing for flexible work schedules that will allow them to attract workers who value these arrangements.

But the fact of the matter is this is not actually what the gig economy is providing for these workers. They're not actually afforded the freedom to choose when they work and for whom they work. They have an unpredictable and irregular work schedules, which is really not the same thing as a flexible work schedule. So I think sometimes folks confuse those two things that having an unpredictable schedule is fundamentally different than having a flexible schedule when you're allowed to arrange your work around say going to school or preparing for children or something else. And in terms of unpredictable schedule you can't do those things.

So for example the groups of independent contractors are things like the construction workers. They're not really able to decide the schedule that they're working. And they're not able to set the pay or (working for the) project that they're working on. They're really working on someone else's terms.

But I wouldn't say Uber and Lyft, you know, are even that drastically different but because of the business model that these platforms are using they need drivers to be able to be flexible and respond to they're choosing the pattern.

So it's unlikely they would want to or be able to take away that flexibility from drivers when they become employees. So if they do that's a choice that the companies are making that they in the law prevent companies from allowing employees to work a flexible schedule.

Rich Ehsen: Right. Well, you know, we have talked a little bit here about the affordability of the benefits. And, you know, some of the things that we've seen are kind of positive things that we've seen in the workplace in recent years. Effort to increase paid family leave have been implemented in many states. Raising minimum wage has occurred in several states, any number of other things that have been designed to help workers.

And, you know, it does seem like these are things that are not available of course to gig workers. So how do we make benefits portable? And is portability of benefits really the answer to a lot of these problems that we're talking about?

Kate Bahn: I do think a lot of the sort of access to benefits and what that mean and I mean broadly for the economy, so I think that all workers should have access to benefits like paid time off and protection from nonexploitative wages. And I think this is a really important thing for us to have in the economy broadly because when workers have sort of a financial security. That they know that they can take time off to care for a sick loved one or care for themselves that they are more able to sort of invest in their careers and make power decisions for themselves and their families.

So, you know, there's evidence that when workers for example had other access to healthcare through Medicaid extension following, you know, the Affordable Care Act, there was less of what the economists call job lock so workers don't stay locked in a job that's not fit for them just because they're worried about losing health insurance.

And so we give more access to benefits broadly. Workers move around jobs. They move around to different occupations and they're going to higher paying jobs. We definitely know that this has a broad positive effect for the overall economy when workers have access to these sort of benefits.

And I think part of the benefits move in this direction, they're giving independent contractors and other gig economy workers who may be holding multiple jobs the security provided by access to benefits.

But at the same time, portable benefits still do not solve key problems for self-employment and independent contracting where, you know, workers can't make minimum wage. They can't earn overtime. They don't have protection against discrimination and they don't have job benefits like unemployment insurance and right to unionize.

So I think, you know, we have portable benefit model risks legalizing denying a significant portion, a significant amount of workers these types of rights and enshrining into law that there is a large group of workers, who cannot benefit from the labor protections of the past few years. For example, you know I've said before with domestic servant or agricultural workers.

Diane Mulcahy: Yes. And I would totally agree with what Kate's saying. And I think we run into problems where we start de-marketing workers. Like if you're this kind of worker you get access to these things but if you don't work that way you lose access, right. That makes it really challenging for people to access the full spectrum of choice about how they want to work.

And I think when it comes to access to benefits, you know, if you're leaving a full-time job, you can put together a safety net of benefit that generally mimics what you would get from an employer. It's expensive. It requires a lot of legwork. It's not easy to do.

But by and large you can get there. There are some things that will, you know, you take a short-term disability for example on the individual market. But by and large you can get access to health insurance, retirement savings, disability, life insurance, you know, the basic package of what your employer provides.

But I think that when you look at even independent workers and part-time workers we need to think about a solution that gives more workers access to benefits without making it so expensive and time and energy consuming.

And what, you know, I think what an interesting solution could be is requiring employers to simply pay on a pro rata basis for workers that they employ. And this goes for this like income insurance. You know, employment insurance probably needs to look differently and protect the income of all workers not just full-time employees that have jobs.

So we need to think about our benefits a little bit differently. And then we can extend the existing system so that a whole group of workers aren't exempt from it. And employers are still on the hook for paying their share of worker benefits. To me, that seems to make a lot of sense and solves the problem of independent workers really losing access to benefits when they leave their full-time job.

Rich Ehsen: You know a lot of proponents of gig economy will tell you that the gig has been a real boom to women who in our society are still disproportionately responsible for things like caring for kids or family members or what have you.

In your perspective on this, I mean because I think you both lay out some very good pros and some very concerning cons here. You know overall has the gig economy in your perspective been good for women in the workforce?

Diane Mulcahy: Yes. I'll take this one. I think the data is mixed on this. I think on—in terms of ability to access work when you're not interested in taking on a full-time job the gig economy has opened up a lot more opportunities for people who were generally more on the fringes of the labor market so whether that's stay at home parents or students or the disabled or retired people that want to remain active but don't want the constraints of a full-time job.

So I think in terms of opportunities there's a lot more, less than full-time opportunities available as a result of the growth in the gig economy and independent work.

In terms of pay I think the data is mixed. I think there's some data that shows that the pay gap between men and women persists even if you're an independent contractor and are setting your own rate.

So I think in some sense this makes sense because you're still working for companies. And companies still have the say biases that they have towards their employees. There's no reason to think that magically to figure if you work for a company as an independent contractor all the biases go away and there's equal pay for equal work.

So I think there's some data that suggests that the pay gap persists between men and women even if their employment status changes. There's other data that suggests that women who work for themselves do make a similar amount as men do with the same experience because they have the ability to set their own rate and they are able to look for, negotiate and get work that pays them an equivalent amount of compensation.

So I feel like the data, the jury is still out. The gig economy is still a relatively new trend. Working independently on a broad scale is still relatively new. I think there's more data coming out over time. So there's some pause, a hope. And then there's some figures that suggest that the status quo is persevering. I think the jury is still out on that.

Kate Bahn: Yes. And I just want to add some additional points too around sort of what I was mentioning before around scheduling. And so when we talk about why this may be really important for women, as you noted, women are still disproportionately responsible—for caring for family members. What they need is for flexible but predictable work hours. That's crucially important.

So we know from research out in California out of UC-Berkeley there has been research around what it means to have a really unpredictable work schedule for families. And not just for the worker. You know type of workers but also for workers that are trying to take care of their families. It is really hard to have an unpredictable work schedule, it's really hard to figure out care for your children if you don't know what your schedule is going to be so you rely on informal family care giving when you can get it its hard to get kids

into other forms of day care if you—if you can't control your own schedule.

And that is what a lot of these independent contractors and gig workers are dealing with is a schedule that they cannot control themselves. So it's not actually giving them the type of flexibility that they need to balance family caregiver responsibilities particularly for those lower income gig workers.

And then a second unrelated but sort of an important point as well is particularly some of the sort of platform based gig work relies on review systems that can also exacerbate racist and sexist bias and discrimination.

So if, you know, if you take something like (care.com) .com that might rely on some review based system and has primarily seen a workforce that could be a sort of bias against certain groups of workers. Maybe they're, you know, non-native English speaker or something like that and because the clients and the customers can, you know, rate workers. And the worker well being is based on their ratings and reviews. It can actually sort of exacerbate the bias' the workers face in society.

Rich Ehsen: Right. I think, you know, that's interesting.

Diane Mulcahy: You know I'd like to just ...

Diane Mulcahy: ...make one comment on the predictable work schedule because that is something that has come up in the interviews that I've done as part of the research for my book.

For lower skilled workers in particular often times their best alternative is to work entry level positions in let's say, you know, fast food chains or retail establishments, part-time jobs. And one of the challenges with part-time jobs is that they don't have any control over their schedule. On a week-to-week basis it really varies.

So they're subject to being assigned shifts that occur on different days and times every week. And they might go in for a shift and then be sent home if things are slow or if there's too much staffing. So they really don't have control over one, how much they work and therefore, two, how much they make. And that's a real

issue. So it's the unpredictability of the schedule and the lack of control over the schedule and therefore the income.

So when I have talked with lower income and lower skilled workers one of the things that they appreciate about working independently is that they do have that control. They have the ability to say okay, I can do early morning but not late night. Or I'm going to work weekends to earn more, you know, for this bill or this event or this vacation or whatever it is. And that that's a benefit that they realize and see over the next best alternative which is often a part-time job.

Rich Ehsen: Diane let me follow-up on that because it does make me question the ABC Test because I mean if you follow those guidelines, you know, essentially if you work in that field you're going to have to be considered an employee if I understand it correctly. And because otherwise it's going to work has to be outside the hirer's or business.

And so then we're seeing then to list these possibilities for somebody who is maybe a construction worker or whatever the field is who work in that field as an independent contractor and set their own work hours, et cetera, and charge, you know, rates that they want to charge because they're going to be automatically block out as already being skilled in that area.

Am I interpreting that correctly?

Diane Mulcahy: Well AB5 doesn't automatically reclassify everybody. It sets up a new test to determine whether a worker is classified as an employee or an independent contractor. And that test has to be enforced through legal action.

So it's nothing as immediate or as a block as I think what you're describing. I mean to me one of the challenges about ABC because the obvious ones that are ineffective in Massachusetts is it's the vagueness of the test.

And in particular Test C where the person is customarily engaged in an independently established trade, I mean if you're a driver and you're driving for Uber and Lyft and you're delivering for DoorDash, I mean does that constitute an independent established trade?

And if that's what you're doing for most of your working time but you're driving for a variety of different clients, does that mean that you are working as an independently established trade? I think that's unclear and it's vague.

And that's not something that was as prevalent when the ABC Test was first implemented. It was really designed to capture people who are, you know, could be classified as an employee in the traditional sense, working for a single employer. And it didn't do a good job contemplating a situation where you could work independently for a variety of clients doing the same kind of tasks or business. So I think the bill falls down there.

Rich Ehsen: Here in California we of course like to say things like oh, it's California though, so those in the country, I don't know if that's really true but we like to think that here in California and we've sort of all heard that.

But here is a question. You know there is I guess because of the size of the state and the sheer number of gig workers that we have here in California, you know, I mean there's certainly reason to believe that this could influence out of state.

So let me I guess think to ask, what do you see with AB to influence of having a state as large as this one with the number of gig workers that we have in this state impacting how others go about addressing gig workers in their own state or is this way too early to tell yet if that's something that could happen?

Kate Bahn: I'll say something here. So I do think there are good examples of California sort of being at the cutting edge of a lot of new exciting policies. I think Massachusetts also does that. And I'm also from Massachusetts so I am proud that it is a state that does pass ABC Test. But California has also historically done things like that. For example California has a new universal paid leave policy. But, you know, from my vantage point working in DC in the policy world, we often look to California and look at California as a good example too and carefully measure the impact of some of these policies.

So we are able to say that, you know, it had good essential workers and an overall good economy and we can look at that and view that as the example to how to help advocate in other states that may be interested in similar policies and then also at the federal level. So that is something that has been exciting for me to see working in the labor policy in DC is that there are a lot more exciting labor law reforms that are being proposed.

So in the Protecting the Right to Organize Work Act I think is something like that. It was introduced this past May on how there is an ABC Test in that federal legislation in addition to a whole other rule of measures that are sort of modernize labor law in a way that will protect workers more—And so we look to places like California has as well as Massachusetts to make an argument that these are feasible laws.

Diane Mulcahy: Yes. And I would agree. I think California is often at the forefront of legislation and new laws. As is Massachusetts and New York. They're certainly progressive creative states. I think the AB5 even if it turns out to be relatively ineffective, has done a great job raising the visibility around the issues of independent work and how we need to think about providing all workers with basic labor protections and rights and with access to key benefits.

So it definitely has taken a state debate and turned it national. I feel like everybody is kind of aware, much more aware of these sorts of issues. I think it's also created an interesting debate around what laws, you know, how should we approach these issues and what kinds of laws will be effective.

One of the things that's interesting about California is they actually have a lot on the books that makes it unlawful for companies to misclassify workers. It's Senate Bill 459. Jerry Brown signed it. The state hasn't enforced it.

And I think what's interesting is trying to figure out, you know, what is the intent of the California's legislation. And what are they really willing to do around implementation and enforcement and exposing that disparity.

I think that is a lesson for other states that are thinking about legislation. You know it's one thing to have laws on the books. It's another thing to really go out and implement and enforce, which is something that we've seen a dearth of.

And I agree with Kate. I think it's really raised the issue at the federal level and made the point that look, if we're not going to fix our labor market in a way that reforms it to support all workers, not just employees, then states are going to start taking it on. And start innovating and creating new solutions and tapping legislation.

So if the federal government is complacent the states are going to take the wheel.

Kate Bahn: And I just want to add another thing that's important, an important role for the states. And, you know I agree with that sort of how it should be done that state are integrators because the policies that are exciting and experimental that have results that you can show proof of concept on the federal level.

But I think, you know, Diane is right that we have some research that shows the positive impacts with some of these laws that I think are the next level of importance to keep continuing to do researches on the effectiveness of enforcement because that is a really key part of it.

I really loved earlier when Diane said that good intent doesn't equal good policy. And I wrote that down. Because I think that is something that we always need to remind ourselves that well intention policy doesn't always end up having the desired impact. Because if it's not enforced it is not going to uniformly end well.

Rich Ehsen: You know it's—that's it. I was going to ask actually about federal policy here because, you know, I think they put forth all these habits that, you know this interaction with the federal government when it comes to any kind of law, really. You know what is happening at the federal level? Is there anything happening at the federal level?

I know Kate you mentioned some policies stuff going on in the hill. You know what is happening at the federal level in this area? Is there anything that we, you know, that is going to impact how the states go about addressing the gig economies in their space?

Kate Bahn: I think the protecting the right to work organize act is a good example of that. I also personally really and, you know, a lot of Presidential Campaign Platforms have really strong labor policy through proposals that they're putting forward. So while that may not be the same as lobbying has at the federal level, for example the laws in the state level. And I think that is signifying a growing consensus that we need to reform these laws.

Diane Mulcahy: You know and my take on federal policy is that the discussions are nascent given the rapid growth of this trend. I'm surprised that there hasn't been more of a reaction. I think certainly that this Administration, the signaling has been that, you know, that the federal government is not interested in doing anything about worker classifications or extending benefits like health insurance or the massive federal subsidiaries or employer provided health insurance to independent workers.

So where we are now I think there's not a lot happening. I agree with Kate. It's heartening to see that this has become a topic of the Presidential Election and debate that the candidates are paying attention to independent workers and putting out solutions for how they should be treated more equitably and relative to employees. I think that that's promising. I'm cautiously hopeful but I do think it's a step in the right direction.

Rich Ehsen: I only got one more and then we're going to—we have some questions that we're going to—from our listeners that I'm going to give you.

But, you know, we've been talking a lot about the challenges and some of the opportunities in the gig economy. You know really what this comes down to as we're looking out to the future of work and we know that there's a lot of factors that are changing the American workforce, technology of course being one that we talk about a lot.

Tell me I guess where you see all this going. You know, clearly I think we all expect the gig economy to continue to grow in terms of the number of workers and its maybe the percentage of, you know, of them—in the economy. Give me your perspective. What do you see in the near term maybe or even the long-term for this evolution?

Diane Mulcahy: I mean I'll take that. I—what I see is that this is a trend that is here. It's here to stay. And it's growing. So if we look out into the future I think that the gig economy and independent work will become more prevalent, more effective, more normal and hopefully with better policy and an updated labor market a better experience for workers. But I don't think this is going away. I think if you look at what I always say is work—traditional work is right for this election. There's so many pain points in traditional work. You know when you look at the data from employees they are, you know, unhappy but engaged. They're not productive at work. They don't find their work meaningful. They live unhealthy lifestyles with long commutes, they sit in expensive real estate. And when you look at data from independent workers it's exactly the opposite. So gig economy work, independent work isn't for everybody. But neither is traditional work.

And I think what's important is to have a labor market and a workforce that supports both so workers have choices about how they want and choose to work. So ideally in my ideal work, that's what the future would look like is that and maybe there's even more ways to work that will emerge. We'll be seeing a lot more with remote work, with digital nomads. More and more people are finding ways to work that suits their lives, their whole lives.

And I think that's a really positive and exciting trend. And I hope it continues. But I think the future looks much more like independent work or blended workforce than it does, you know, going back 20 or 30 years when 90% of people, you know, were full-time employees or they were out of the workforce. I don't think we're going back to that.

Kate Bahn: I also think one sort of important piece of this is that there are certainly many positive things about independent work and gig work as, you know, Diane has noted.

But this sort of phenomenon is also part of a much larger trend in the economy which is commonly called fissuring of the workplace where formerly traditional employer/employee relationships within one big firm have sort of broken down. So independent contracting is one example of this phenomenon. It is not the only one so market outsourcing is another one.

And so that would be maybe you used to work as an office cleaner working for the exact same firm or company that the desk worker worked for. And now you work for an janitorial services company who is employed by the property manager who is employed by the owner of the building who has subleased space to a sort of other business with office workers. And so that would be another example of fissuring of the workplaces. And so a lot of what used to be traditionally sort of single firm employment level no longer exists. So there can be positive things associated with that.

And there's always a whole lot of negative things that's associated with that. And I think a lot of it comes down to worker power. Some of the workers do have the power to set their own pay, around schedules, choose the jobs that they want to work or you do you see positive outcomes.

And so you things like there's research that shows workers who are sort of the professional level jobs so maybe working as a lawyer or a doctor where they switch from being an employee to being an independent contractor, they do see those benefits. They see their pay go up. They're probably happier to do that.

And then say at the other end of the spectrum workers who were in employee relationships—who have employee relationships at the other end of the spectrum who are maybe also called work skilled workers and they switched from being an employee to being an independent contractor, they see their pay go down. They see worse employment conditions.

And a lot of that—if there are contractors like, you know, power, if those workers end up in a relatively disempowered position where they cannot get those types of workplace benefits they value and that they need in order to have a level of, you know, security and care for their families.

So I think, you know, it comes back to the modernizing labor law not only to allow for these classified workers to be recognized as employees but to be more generally—to make sure that workers have the bargaining power so that they can sort of share economic growth that they are generating within companies as well as in the economy more broadly.

Rich Ehsen: Okay. That goes actually to one of the questions that we received. And I think you both touched on it a little bit. But I'll put it out there formally.

If an independent contractor provides services to multiple employers who should be responsible for their benefits?

And I know we talked about that. We've kind of talked around this and through it. And maybe you can summarize that for me. You know what's your perspective on how we handle that, again the benefits issue for an independent contractor who's working for a lot of different employers?

Diane Mulcahy: Well right now we have pushed that to the individual. I mean there are basically three potential providers. There's the individual themselves, you know, organizes their own benefits package and pay for it. There's employers who can provide benefits to their workers. Or there's the government, you know, and, you know, Europe has gone on with a more government oriented approach where your benefits are not tied to your employer or to your job. We have traditionally in the U.S. relied on employers.

In the gig economy that has restricted to relying on the individuals to put together their own benefit package. I think if there's going to be a change in how we allocate benefits to workers we are likely to go back to looking to employers to extend their benefits to all of the workers that they employ regardless of their status on a pro rata basis.

So that would mean that employers that choose to have a blended workforce, bring on independent workers or contractors are responsible for paying some portion of their various benefits. I think that's the direction where we have the infrastructure and the culture to go in.

But, you know, who knows. We'll see how the future plays out. But I think that's the likely course of action.

Rich Ehsen: We have someone who's asking, this is an interesting question. I think I know the answer but so, you know how does the gig worker working for a California company but living not in California, I guess the question is how does that fit in with AB5?

I guess my initial thought would be the ABC Tests would apply regardless of where the worker is. Is that how you would see that as well?

I mean Diane I'll ask you because you come from a state where there is ABC Test . Does it matter where a worker is actually working in terms of how the qualification tests are applied?

Diane Mulcahy: Yes. You know I'm not a lawyer. And you unfortunately be to this ABC Test through lawsuit. But I think that it doesn't depend but I'm not sure about that.

Kate Bahn: Yes. I'm not sure either. I'm also not a lawyer.

Rich Ehsen: Yes. No, I—that was my thought, my first thought is I wish now that I had thought to brought up on the legal elements of all of this, like I could probably use with that one.

So I want to get through a few things before we close out here. But before any of that I want to say thank you guys very much, fabulous discussion. Before I do let you go I will ask you, is there anything we missed here? Is there something that you think is an important point to be made here that maybe we didn't talk about? I'll give you each a chance to share that if you would like to.

Kate Bahn: I think I sort of gone through it so I'll be very quick. But, you know, I think it just requires broader economy trends. And so when you think about just some other policy (for financial) where this fits in larger trends in the labor market so especially, you know, the workplace and to define worker bargaining powers or there's a lot of different things that led to that, probably made a lot of different labor policies to address those issues.

Diane Mulcahy: I mean what I would say is, you know, when I write about the gig economy and the future of work one of the things I like to do in my head is to step back and imagine that I was designing a labor market today from scratch and what that would look like. Because I think it allows us to leave kind of the past and the legacy way of working behind and just look out at the landscape and say okay given the economy that we're in, the global economy, the way companies are operating, the way workers are making choices about how to structure their professional

lives, how would we create a labor market and what's important. What's fundamentally important about the labor market?

And what I think is and what's fundamentally important is and a priority is to extend basic rights and protections and benefits to everyone who works.

So I think the job of a labor market is to support workers, everyone who works not just employees. So to me that's a fundamental tenet.

And then from there you can go to the question, well how do we want to provide those and what does those policies look like and is it better to promulgate those legislations and laws at the federal law or at the state level? And how do we involve companies and how do we protect workers?

But I think fundamentally, you know, I think that's a useful exercise for policy debate, for crafting legislation and for discussing corporate policies. You know, what would we do if we were just starting from scratch and what are the fundamental priorities of whatever we design?

Rich Ehsen: Bear with me one second here. I'm getting a question about workers compensation now. This is—I don't think we talked about. But I believe that it falls under the same umbrella of benefits that we've been talking about all along whether it's paid leave or minimum wage or what have you. Is there anything that would make workers compensation benefits different in that discussion or is that another question that should be asked of a lawyer?

Kate Bahn: Probably something for employment lawyer.

Rich Ehsen: Right.

Diane Mulcahy: Right.

Diane Mulcahy: It feels that way.

Rich Ehsen: Well let me just say then thank you again to Diane Mulcahy and Kate Bahn. I really appreciate you joining us today and sharing your wealth of expertise. Greatly appreciated, calling in from your offices in Boston and Washington, D.C. Thank you very much. We're going to go ahead and let you go now. Have a great day.

I will tell all of our listeners please fill out the survey that we're going to send you afterwards, give us some feedback here. I'll also tease you a little bit. We're going to be setting up our next one soon. But take a look at the 2020 Legislative year. We always do a three part legislative preview at the Journal. We're going to be looking to take—turn—from that into our next webinar. Date is still being finalized so stay tuned for that.

And then we'll also be sending out slide deck and a link to this recording for anybody who would like to have it. So from all of us to all of you thank you very much. Thank you Diane, thank you Kate and we're going to sign off. Have a great rest of the week.

Kate Bahn: And thanks much for having me.

Diane Mulcahy: Thanks.