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Modernizing Labor Laws in the Gig Economy

Through technological advances, businesses today are able to connect customers to services more seamlessly than ever before. However, the workers that provide these services are difficult to classify within the traditional labor-law dichotomy of employees and independent contractors, leaving questions about which benefits and legal protections are appropriate. This creates uncertainty for both businesses and workers, leading to costly legal battles and inefficiency that threaten future innovation. Popularly discussed as the "online gig economy," this emerging form of labor centers around a web-based intermediary that enables workers to perform small "gigs" for a fee set by the intermediary. These workers do not fit neatly into existing categories and as a result, attempts by judges to classify them have led to varying and inefficient outcomes.

A Proposal for Modernizing Labor Laws for 21st-Century Work: The "Independent Worker"*
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The rise of technological intermediaries enabling workers to engage in the gig economy has resulted in protracted legal battles over whether to classify these workers as "employees" or "independent contractors." These workers may choose whether and when to work but they receive a pre-determined percentage of fees paid by customers and follow specific requirements set forth by the intermediary. In this paper, Harris and Krueger propose a new legal category of workers, called "independent workers," who occupy a middle ground between these two statuses.

The authors propose assigning benefits and protections to independent workers according to whether or not the new benefits meet three primary considerations. First, the new benefits would need to be neutral with respect to the existing categories; that is, employers would not have motivation to shift existing employees or independent contractors to this status. Second, because hours for independent workers tend to be immeasurable, the appropriate benefits would not be tied to hours worked. Finally, the new benefits should be efficient. As an example, independent workers would not be eligible for overtime pay given the immeasurability of their hours, but they would be eligible for health insurance because pooling the risk of a group like Uber drivers is more efficient than each driver purchasing their insurance independently.

The proposal seeks to address several growing issues in the labor market. First, the authors emphasize that innovation is good for the economy as long as new firms are not free-riding, that is, exploiting the benefits provided by existing firms; the neutrality aspect of the proposal aims to address this issue. Additionally, the proposal would allow the workers to organize and pool benefits that increase efficiency in the relationship between firms and workers, without the firms facing the risk of these workers being considered full employees.