

THE  
**HAMILTON**  
PROJECT

**MODERNIZING LABOR LAWS IN THE  
ONLINE GIG ECONOMY**

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**THE IMPACT OF THE GIG ECONOMY ON  
WORK AND WORKERS**

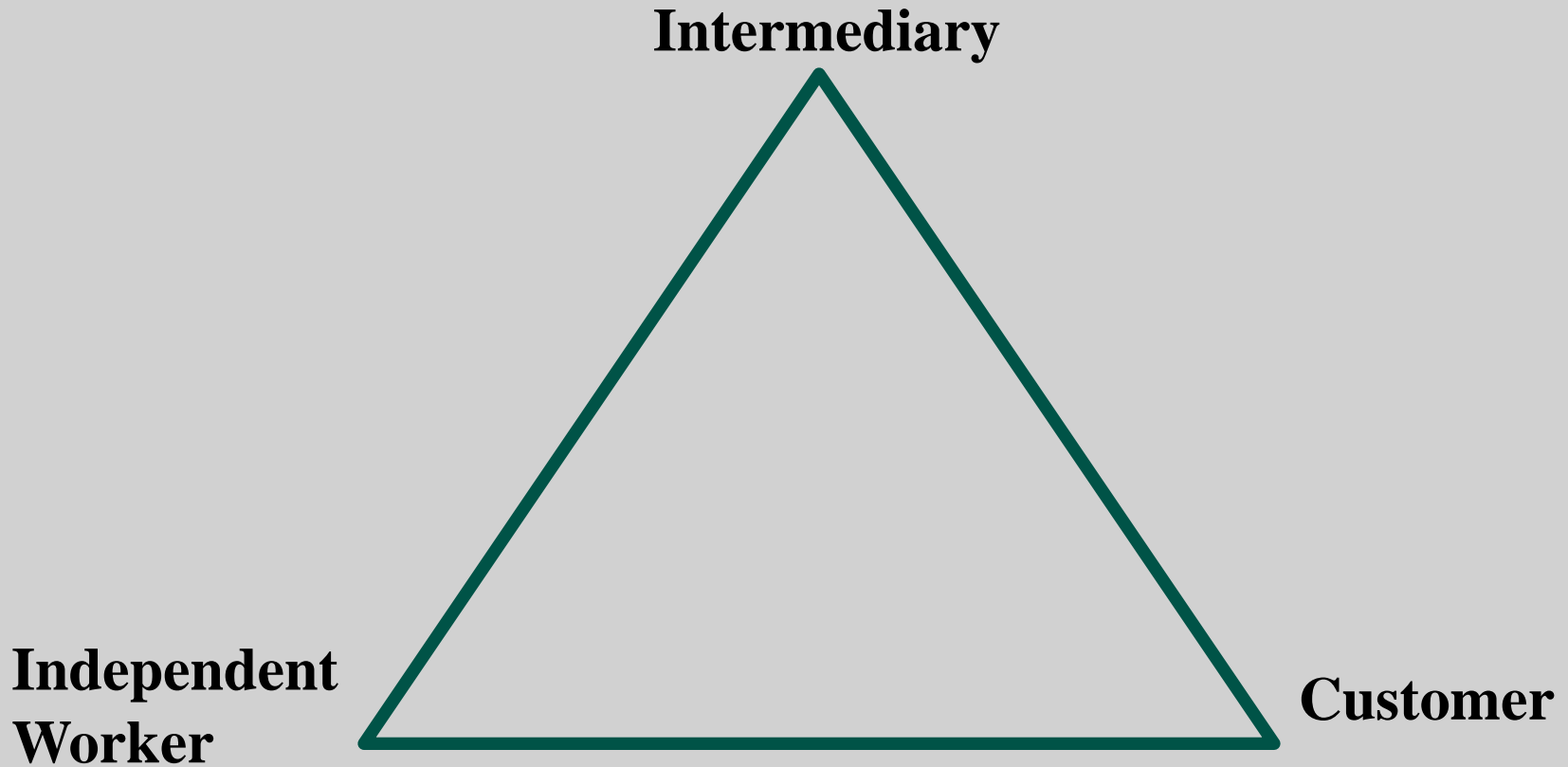
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A PROPOSAL FOR MODERNIZING LABOR LAWS  
FOR TWENTY-FIRST-CENTURY WORK:  
THE “INDEPENDENT WORKER”

**Seth D. Harris and Alan B. Krueger**

# “Independent Workers” are in a Triangular Relationship with Intermediary and Customers

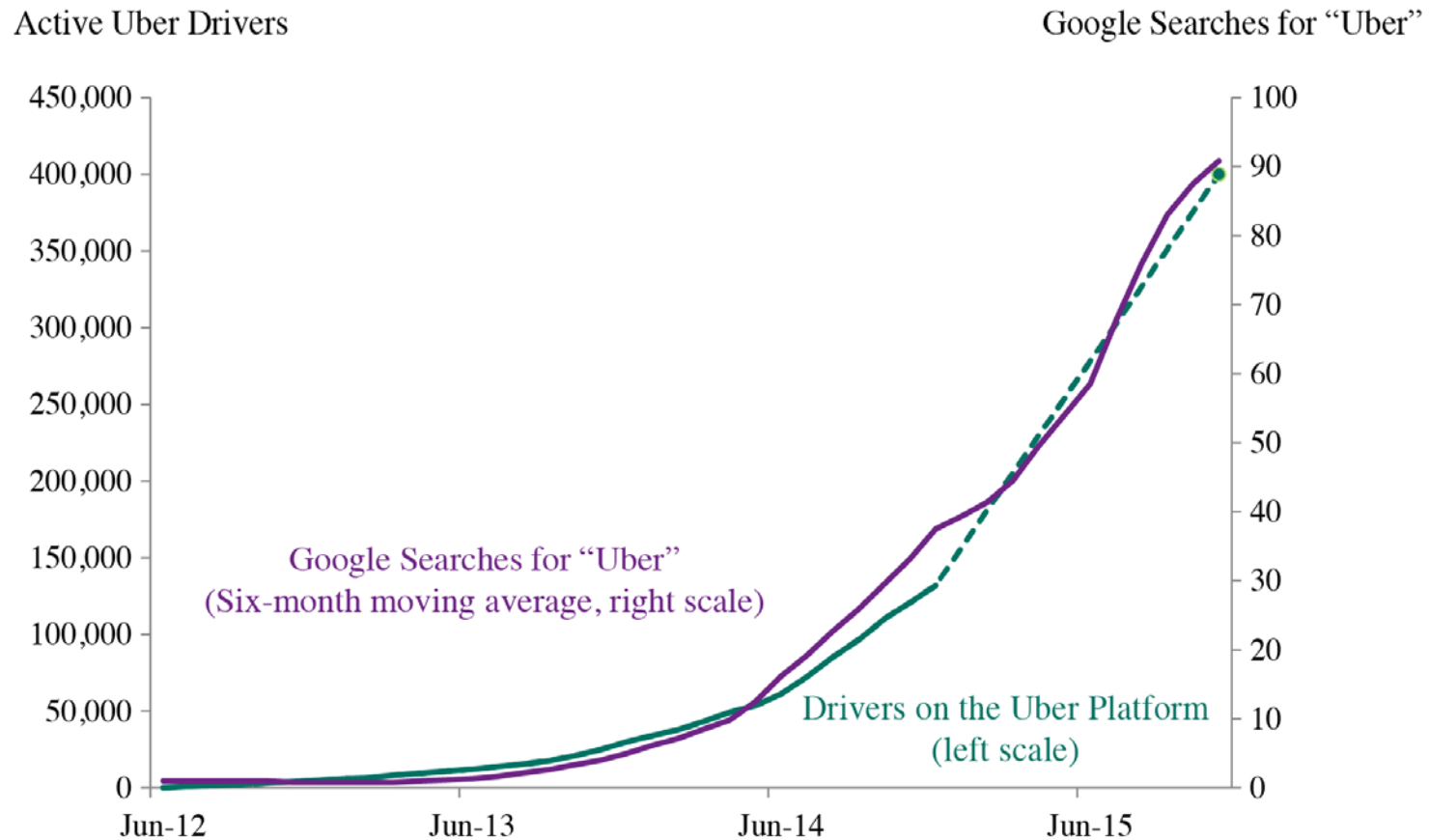


# *Independent Workers* Fall in Gray Area of Labor and Employment Law

- *Independent Workers* can choose their own hours of work, and whether to work at all.
- Independent workers can work for multiple intermediaries simultaneously, or engage in personal tasks while working (“waiting to engage” vs. “engaged to wait”); their hours are easy to measure with technology but often conceptually impossible to assign to an employer.
- Intermediary exerts some control over independent workers, such as over fees or how work is conducted.
- Independent workers can work with online or offline intermediaries.
- Current “employee” or “independent contractor” legal dichotomy is inefficient and creates much legal uncertainty for workers and intermediaries.
- Classifying independent workers as employees jeopardizes benefits of flexibility and innovation, but classifying independent workers as independent contractors could jeopardize the social compact.
- **Our proposal:** A new legal classification of independent workers, with requirements on intermediaries that are: 1) appropriate for independent workers; 2) economically efficient; 3) neutral with respect to choosing independent worker over employee status.

# Number of Uber Drivers Has Grown Exponentially

- Uber is the largest online intermediary in the country.



Source: Cramer (2015), Hall and Krueger (2015), <https://newsroom.uber.com/2015/11/1776/>.

# Uber Drivers Have Flexibility in Choosing When, Whether and How Much to Work

- 43% of drivers work 50% more or 50% less from one week to the next
- 61% have another full-time or part-time job
- 51% work only 15 hours or less a week for Uber

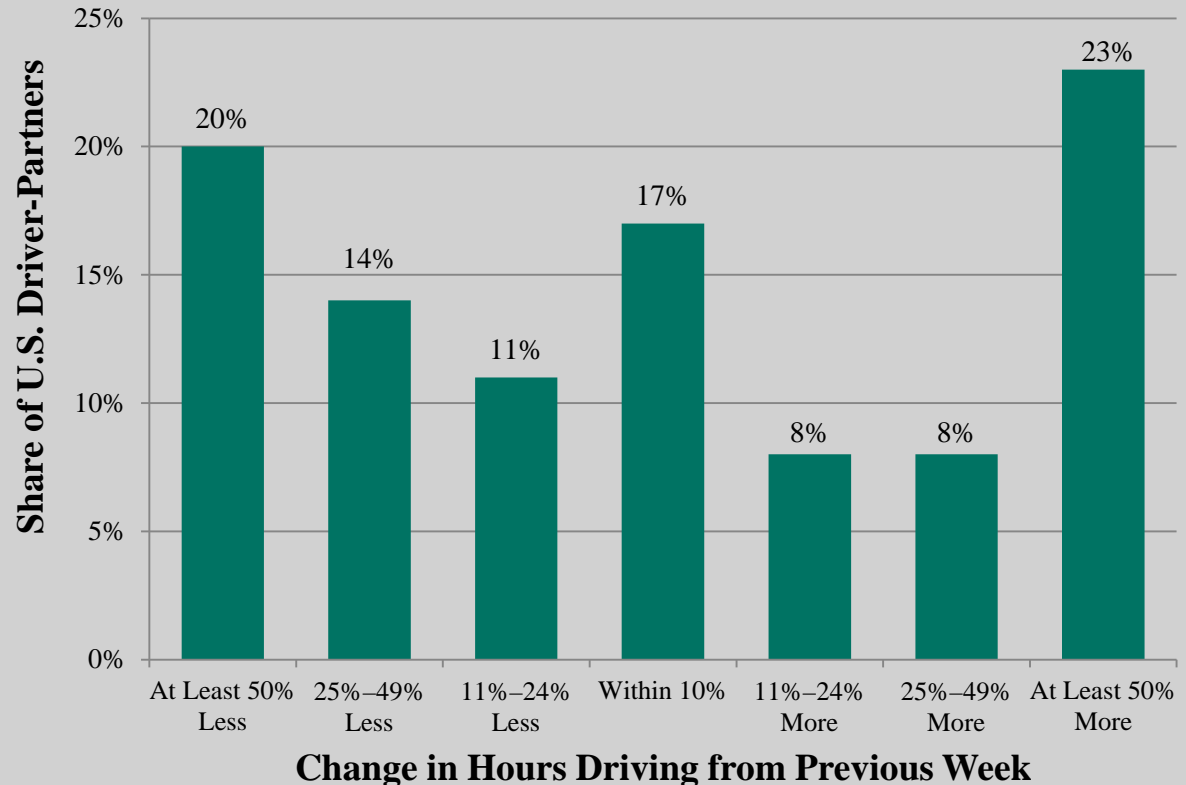
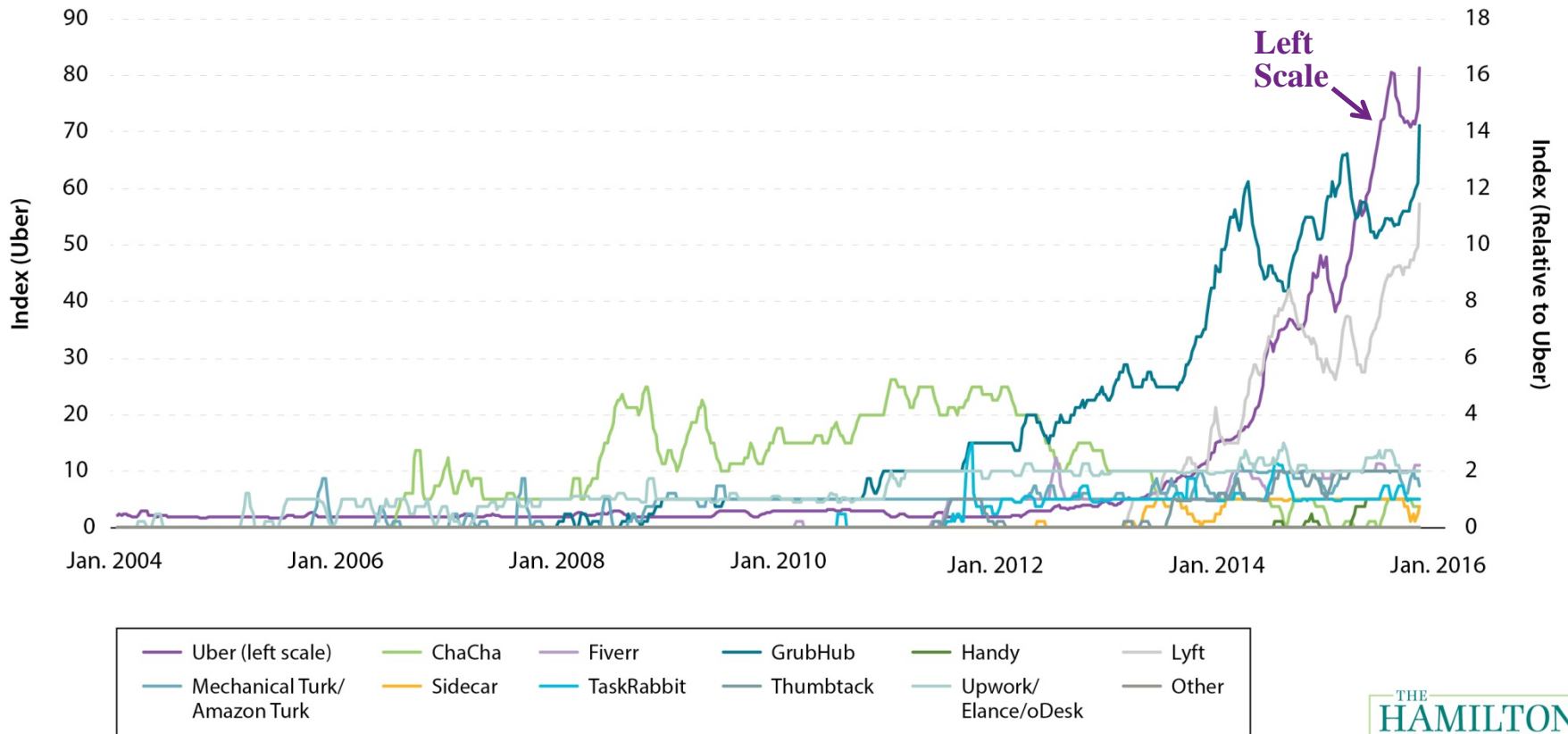


FIGURE 1.  
 Google Trends: Four-Week Moving Average of Web Searches



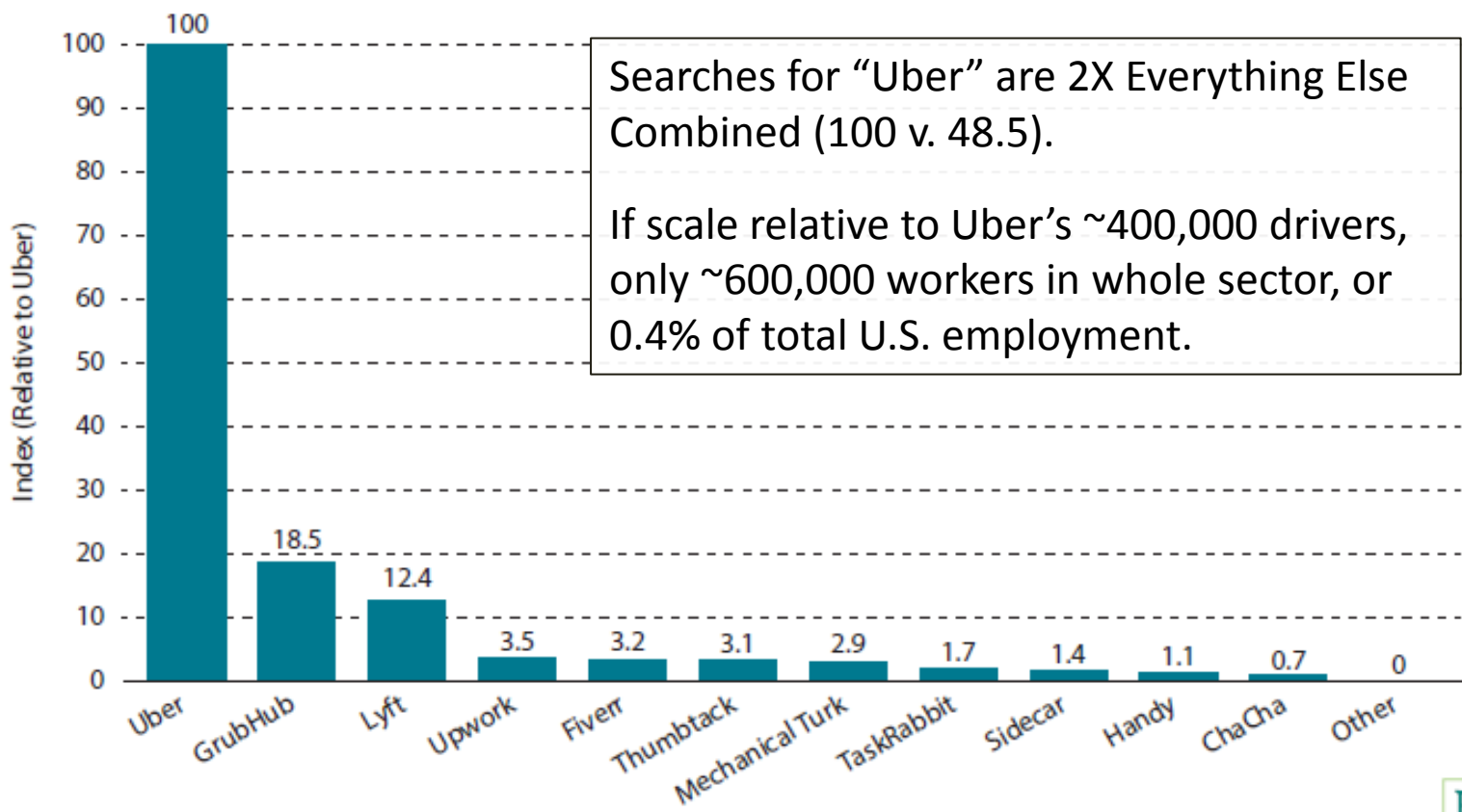
Source: Google Trends analysis by authors.

Notes: "Other" includes agentanything, axiom law, clickworker, Eden McCallum, Gengo, Gocurb/TaxiMagic, hourly nerd, Instacart, medicast, Red Beacon, Samasource, Shyp, Skillshare, trycaviar/caviar delivery, and Washio. Search period spans January 1, 2015- November 7, 2015. Google Trends normalizes the data for each term specified relative to the total number of Google searches conducted in that week, so that the time period with the most searches for Uber equals 100.



FIGURE 2.

# Google Trends: Cumulative Web Searches in 2015



Searches for “Uber” are 2X Everything Else Combined (100 v. 48.5).  
If scale relative to Uber’s ~400,000 drivers, only ~600,000 workers in whole sector, or 0.4% of total U.S. employment.



Source: Google Trends analysis by authors.

Notes: “Other” includes Agent Anything, Axiom, Caviar, Clickworker, Curb, Eden McCallum, Gengo, Hourly Nerd, Instacart, Medicast, Red Beacon, Samasource, Shyp, Skillshare, and Washio. Search period spans January 1, 2015- November 7, 2015. Google Trends normalizes the data for each term specified relative to the total number of Google searches conducted in that week, so that the period with the most searches for Uber equals 100.

# Our Guiding Principles for Proposed Benefits and Protections for Independent Workers

→ Maintain and Expand Social Compact

- Appropriate for workers whose hours cannot be assigned to an employer
- Efficient
- Neutral with respect to employment status

# Benefits and Protections for Independent Workers

## Required

- Right to Organize
- Civil Rights Protection
- Tax Withholding
- Contribute half of FICA tax
- Contribution to ACA based on earnings
- Intermediaries could pool workers for provision of benefits (e.g., insurance, retirement accounts)

## Not Required

- Overtime
- Minimum Wage
- Unemployment Insurance
- Workers' comp is not required but intermediary could opt in and be exempted from tort suits

# Conclusions

- The number of jobs in the online gig economy is small but growing fast.
- Careful thought needs to go into reforming labor laws to support innovation *and* maintain the social compact.
- We propose tailoring benefits and employment protections to *independent workers* in a way that is: 1) appropriate for workers who can choose their own hours or whether to work; 2) efficient; 3) neutral with respect employment status.

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# “Employee” vs. “Independent Contractor

- **“Employee”**

Social compact = exchanging economic dependence on employer, manifest through employer control of work, for legally mandated/encouraged modicum of economic security and legal protections.

- **“Independent Contractor”**

Individual compact = Independent businesses with arms-length business relationships and bargaining power.

- **“Independent Worker”**

Some employer control, but not over means, methods, or hours of work, and some worker independence = *What’s their compact?*

# The Substance of Independent Workers' Compact

## Required

- *Right to Organize*
- *Civil Rights Protection*
- Tax Withholding
- Contribute half of FICA tax
- Contribution to ACA based on earnings
- Intermediaries could pool workers for provision of benefits (e.g., insurance, retirement accounts)

## Not Required

- *Overtime*
- *Minimum Wage*
- *Unemployment Insurance*
- *Workers' comp is not required but intermediary could opt in and be exempted from tort suits*

# Organizing and Bargaining Collectively

Core: Workers aggregate individual bargaining power into collective power to bargain with intermediaries over fees/ commissions, time, and other terms.

Means:

- Remove antitrust law as a barrier,
- Workers free to organize using every-day info tech without an overarching legal structure; or
- National Labor Relations Act.



# Civil Rights Protections

Core: No illicit discrimination in independent worker relationships – inefficient, wrong

Means:

- Include independent workers in existing workplace anti-discrimination laws (e.g., Title VII, ADA, Equal Pay Act, ADEA)

# Minimum Wage, Overtime, and Unemployment Insurance

Core: Distinguishing work from nonwork, and assigning responsibility for time, impossible or too conceptually difficult.

## Means:

- No legal minimum wage or overtime obligation; no government UI system, but pooling permitted.
- Independent workers, through their organizations, bargain over these issues.

# Workers Compensation

Core: Workers should be compensated for work-related injury, illness, or fatality.

Means:

- Tort system.
- Pooling to provide workers' comp insurance.
- Texas/Oklahoma schemes not possible.

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