

Biden Labor Department Undermines Gig Economy

Why should government at any level have the power to overrule how workers and companies define their relationships? This question has become more important than previously with the rise of the gig economy, in which workers such as Uber and Lyft drivers are regarded by their companies and themselves as independent contractors rather than conventional employees.

The Biden administration thinks the central government, not private parties, ought to set the rules no matter what those parties want. So his labor department has cancelled a Trump-era rule that left this decision in the private sector. Why? For the good of the workers. Or so we're told.

According to Labor Secretary Marty Walsh, "By withdrawing the Independent Contractor Rule, we will help preserve essential worker rights and stop the erosion of worker protections that would have occurred had the rule gone into effect.... [T]oo often, workers lose important wage and related protections when employers misclassify them as independent contractors."

Among said protections are the minimum wage and overtime compensation under the national Fair Labor Standards Act.

Walsh also says the gig economy is inconsistent with "the economic realities test and court decisions requiring a review of the totality of the circumstances related to the employment relationship."

That is, individual freedom must take a backseat to judicial and bureaucratic rules that interfere with freedom of association. What are the grounds for that assertion?

Walsh seems uninterested in the attraction that gig jobs obviously have for those who opt for them over conventional employment. Gig drivers work when they want and have other leeway that hourly employees tend not have. Does Biden and Walsh not care if those attractions disappear when they ban the gig arrangement? How is that good for workers who would lose options they now have and willingly chose? Whatever benefits gig workers give up, they apparently prefer what they get in return. Every choice in life has trade-offs. It is classic arrogance and paternalism when bureaucrats claim to know better what trade-offs should be made and then force their will on others.

Walsh mercifully says that "in a lot of cases"—why not all cases?—gig workers should be classified as employees. But why should bureaucrats have the power to decide which cases those will be?

In 2019 the California legislature passed and the governor signed a law to make classifying workers as independent contractors tougher. Companies like Uber and Lyft managed to get a proposition on the 2020 ballot, and Californians voted 58 to 42 percent to exempt some workers, particularly drivers for companies like Uber, which claim they are technology companies not employers of drivers. In other words, they they provide not transport service but the technological infrastructure in which drivers and riders can find and coordinate with each other.

Technology stimulates innovations in the production and distribution of goods and services, innovations that by definition defy old forms. As long as innovative firms get no favors from the government, they must satisfy consumers to thrive. If the well-being of all concerned is the priority, we should reject a regulatory regime in which innovation requires the permission of bureaucrats before it can be tried. Do we really want bureaucracies overseeing our lives?

Keep in mind, also, that an innovation will often be opposed by people who are invested in the old ways to doing things. Taxi companies are notoriously protected oligopolies if not monopolies in most places. Existing companies enjoy shelter from competition; for example, often they can veto applications by aspiring competitors, making the limited number of existing licenses highly valuable. Gig firms challenge the old form by enabling riders and independent drivers (who may work for more than one company) to find each other through a mobile-phone app. This revolution in taxi service has been a hit with consumers, and people looking to make a living or to supplement their income seem happy to have the option.

Anyone who holds individual freedom as a priority will wonder why anyone of good faith would want to hamper such innovations.