



Workers Compensation & Ridesharing

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New Terminology Has Emerged Since Mid-2000's

Sharing Economy AKA

- Peer to peer
- Mesh
- Collaborative economy
- Collaborative consumption

Origins

- Population growth
- Resource depletion
- Financial crisis
- Rising income inequality
- Growth of information technology/social media

Revolution In Way We Consume

- Expanded access to products, services and talents beyond ownership
- Goods that are owned can be shared or rented peer-to-peer
- Underutilized assets and resources can be turned into new jobs, income streams and community networks



Examples

- Home exchange
- Air B&B
- Pop up restaurants, supper clubs
- Bike sharing
- Ridesharing



Side by Side Comparison of Car Sharing and Ridesharing/TNC's

	Car Sharing	Ridesharing/Transportation Network Companies (TNC)
Booking	<ul style="list-style-type: none"> • Scheduled Reservations 	<ul style="list-style-type: none"> • On Demand Reservations
Duration of Use	<ul style="list-style-type: none"> • Rental of Hours to Months 	<ul style="list-style-type: none"> • Short Trips
Driver	<ul style="list-style-type: none"> • Third Party (Renter) 	<ul style="list-style-type: none"> • Owner
Vehicle Occupants	<ul style="list-style-type: none"> • Usually Solitary 	<ul style="list-style-type: none"> • Drive Plus One or More Passengers
Incumbent/Analogous Industries	<ul style="list-style-type: none"> • Traditional Rental Car • ZipCar 	<ul style="list-style-type: none"> • Taxi • Limousine • Community Carpooling
Example Services	<ul style="list-style-type: none"> • RelayRides • Getaround • FlightCar 	<ul style="list-style-type: none"> • Uber (UberX) • Lyft • Sidecar

Uber Business Model

- Uber – In December 2014, 5 year old company valued at \$41B (53 countries and more than 200 cities worldwide); Lyft closest valued at \$2.5B in March 2015 (65 cities in US)
- Uber profits by keeping 20% of the fare paid on most rides on its service and gives the rest to its drivers, who work as independent contractors.
- Global expansion – Uber moves into an area, offers incentives to sign up drivers, builds popularity with drivers and riders, hires lobbyists and lawyers to gird for legal challenges from taxi companies and regulators
- Uber executives say they are operating under outdated laws that they fully expect to change once lawmakers see the service's popularity with constituents



Support For/Against Uber Business Model

FOR

- Efficiency – drivers/passengers swiftly connected via mobile device
- Cheaper
- Nicer cars/more pleasant ride

AGAINST

- Ridesharing is an unlicensed taxi service
- Uber's driver screening process is not rigorous enough to protect consumers
- Insurance concerns



Workers Compensation Implications

- Are transportation network company (TNC) drivers employees or independent contractors?
- TNCs state that drivers are independent contractors
- Pending legislation:
 - Alaska (HB 120/SB 58) – Excludes TNCs from WC statute

Uber/Lyft Driver Qualifications

- You must be at least 21 years old
- You must own a 4 door car that is year 200X or newer in most cities (sometimes varies by company and city)
- You must have in-state insurance with your name on the policy
- Must have an in-state license
- In-state plates with a current registration (commercial plates are acceptable as well)
- Clean driving record
- Pass a background check
- Pass Uber/Lyft inspection of the vehicle



Ridesharing Workforce

- Uber Analysis - In December 2014, 162,037 “active drivers” completed at least four or more trips for the service. The number of new drivers signing up has doubled every six months for the past two years.
 - Uber drivers make more money than taxi drivers. Uber’s earnings data suggested that drivers in its biggest markets are making about \$6 an hour more than local taxi drivers and chauffeurs. Uber drivers earn as much as \$17 an hour in DC and Los Angeles, \$23 in San Francisco and \$30 in New York.
 - Nearly half of the Uber drivers surveyed had at least a college degree, compared with 19 percent for taxi drivers and chauffeurs as reflected in government occupational data.
 - Is it a sign that people who can’t find better jobs in a bad economy must settle instead for work as part-time “independent contractors” with a tech company that offers them no benefits?
 - Or is it the future of work in a digital age, where anyone with a car (or a home, or a service to offer) can be his own boss, choosing hours and determining income with a flexibility that makes other pursuits — like raising children or going back to school — more feasible?



When is a driver on the clock?

Three periods in the ridesharing model:

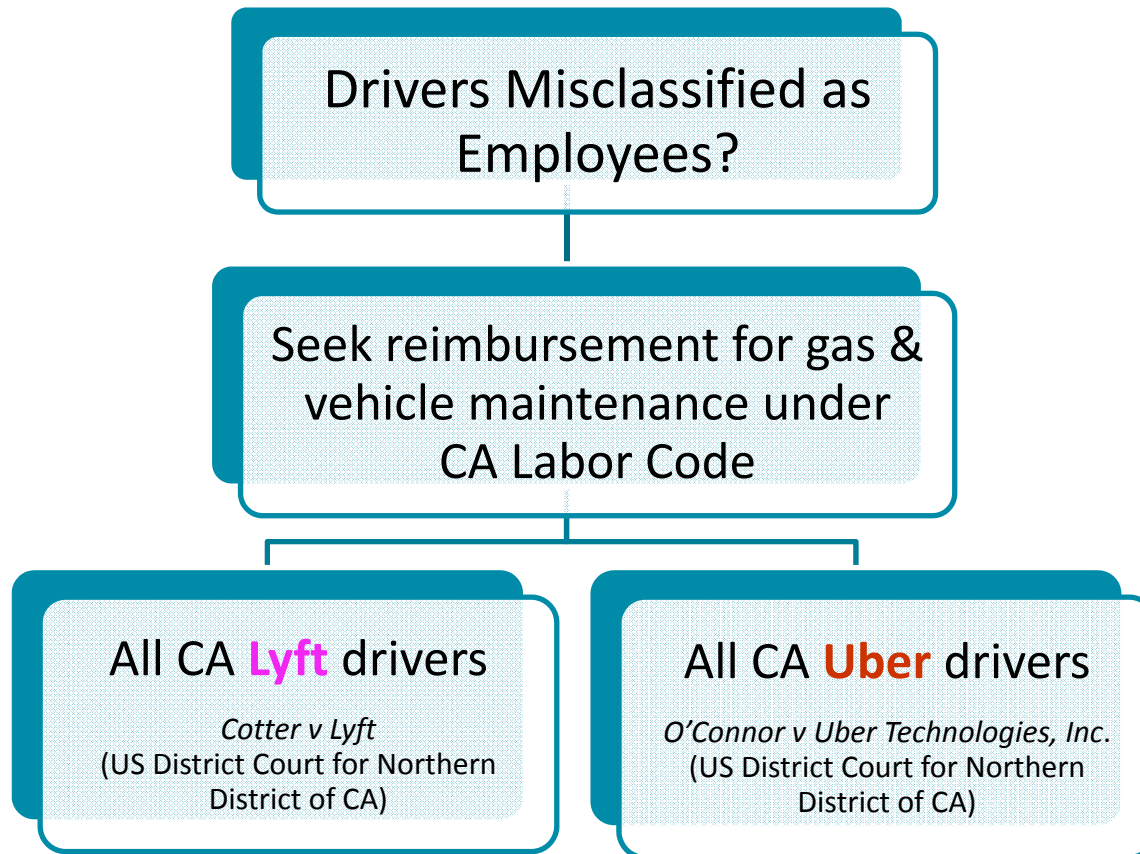
- 1. Your app is on and you're waiting for a passenger match
- 2. You've found a passenger match
- 3. The passenger is in your car



Examples of On the Job Injuries

- Los Angeles - An argument broke out between Uber driver and passenger; passenger hit the driver with a shiny object, broke his jaw in two places and landed him in the hospital for a week.
- Boston - An off-duty Boston cop assaulted his Uber driver, yelled racial slurs at him and stole his car.

Ride-Sharing: Pending CA Class Action Lawsuits



Ride-Sharing: Are Drivers Employees or Independent Contractors?

Employee

- Fares set
- Drivers screened
- Liability insurance
- Vehicle standards

Independent Contractor

- Technology company
- App matches drivers with potential customers
- Drivers hired as independent contractors

Employee v. Independent Contractor

- Primary test is CONTROL - How much control do TNCs have over their drivers?
- Taxi drivers usually determined to be employees when the taxi company provides the vehicle
- Some states specifically exclude taxi drivers from workers compensation law (AK, MA, VA)

Factors (Based on CA Law)

- Distinct occupation or business?
- Work done under direction of principal or by specialist without supervision?
- Skill required to do the job
- Who supplies tools and place to work?
- Length of time services are to be performed?
- Method of payment – by time or by the job?
- Is the work part of the regular business of the principal?
- Right to terminate at will?



Factors and TNCs

- TNC drivers use own vehicles
- TNC drivers may work for multiple companies
- TNC does not control drivers' hours
- TNC controls hiring
- TNC controls pricing



Ride-Sharing: Potential Impact of 2014 FedEx Cases

Drivers Misclassified as Independent Contractors

- **FedEx Sufficiently Controlled Drivers**
 - Grooming Standards
 - Uniforms
 - Delivery vehicle specifications
 - Number and type of deliveries
 - Timing of deliveries

Class Action Lawsuits - Why Were They Filed?

- Recover wages & benefits under KS Wage Payment Act
 - *Craig v FedEx Ground* (KS Supreme Court)
- Recover expenses & wages under CA Labor Code
 - *Alexander v FedEx Ground* (9th Circuit US Court of Appeals)

What if TNC Drivers are Employees?

- Appropriate Classification Codes?
- How to determine payroll?
- What if driver works for multiple TNCs?



NCCI Classification Codes

- TAXICAB CO
 - 7370 Taxicab Company & Drivers – all other than Garage Employees
 - 8385 Taxicab Company - Garage Employees

- LIMOUSINE CO
 - 7370 Limousine Company – Nonscheduled & Drivers – all other than Garage Employees
 - 7382 Limousine Company – Scheduled – all other than Garage Employees & Drivers
 - 8385 Limousine Company - Garage Employees

Calculating Payroll for Taxi

- The entire payroll of all taxicab drivers shall be included in calculating the premium.
- In the absence of verifiable payroll records, the premium charged will be determined on the basis of the amount per vehicle per policy year for employee-operated vehicles shown in the state rate pages under Miscellaneous Values.
- This amount is subject to pro rata adjustment only when a vehicle is owned by the insured for a portion of the policy period.
- These amounts are in consideration of gratuities, multiple shifts, downtime, vacation time, or other periods during which the vehicle is not in operation.

Next Steps

- NCCI is monitoring court cases and legislation
- NCOIL is drafting model law (focused on auto insurance)
- NAIC has established Sharing Economy Working Group which is considering drafting model law/white paper (focused on transportation sharing, house sharing and any emerging sharing products marketed to consumers)

