The Sharing Economy’s New Gig

As the gig economy evolves and workers file lawsuits to strengthen their rights, companies are seeing their business model challenged and face increasing risk exposure.

The sharing economy – in concept – has allowed companies and individuals to leverage excess assets to generate additional revenue. Those “excess assets” can be as ethereal as spare time that could be used to earn extra money running errands or driving a car, or as concrete as a second home that is rarely used and is rented out.

This sharing concept over time has morphed into a standalone business model, which increasingly provides individuals the ability to create their own schedule, changing the face of the economy as we’ve known it. Companies like Lyft, Airbnb, Task Rabbit, Home Away and Uber – leaders in the gig or sharing economy – are changing the way people work and earn money.

While the concept of the sharing economy has evolved, the education and risk profiles associated with these business models have not. Recently, companies such as Uber and Lyft have become targets of lawsuits that challenge the independent contractor status of their drivers, forcing them to defend their business model in court. Lyft recently settled a lawsuit with drivers in California and Uber is currently involved in two more lawsuits in California and Massachusetts. In the case of both Lyft and Uber, the underlying legal question has been: do the drivers should legally be considered employees of Uber/Lyft, rather than independent contractors.

Today, many startups – particularly those in the sharing economy – employ freelance contractors (commonly known as 1099 workers) rather than full-time employees. The idea is that workers can make a living picking up ad hoc “gigs,” as opposed to working under the traditional employer/employee model. Since 1099 workers are not be determined in the near term, there are many other issues these companies must work to proactively address.

Risk assessment
First, companies must evaluate and address their risk exposure. While the gig economy often empowers individuals to operate as single-person businesses it also opens these individuals to risk – and in turn, the companies they contract with. They, the workers, may not be equipped to manage risks as effectively as an organization might.

Risk profiles of companies and workers in the gig economy are materially different from those working in a traditional business environment. Organisations operating in the gig economy have less control over the workers they employ or the risks the workers expose them to, leaving both parties vulnerable.

Additionally, these platforms along with other companies who employ 1099 workers, may be more vulnerable to cyber liability and cyber terrorism due to their inability to streamline and implement cyber practices through third parties where they do not have a specific contractual liability.

As another example, for home sharing sites, additional liability issues may exist to adhere to requirements that previously did not pertain to them. Funding issues and newly mandated employee benefits would be costly and may have fatal ramifications on many of the organisations operating within the gig economy model who now face a significant increase in overhead.

As a risk manager, we must identify these risk areas early to moderate the impact to these businesses and the larger economy – transferring or mitigating risks.

Second, as industry leaders continue to settle lawsuits pertaining to the classification of workers, a domino effect could occur and open the floodgates to similar lawsuits: in fact, similar lawsuits in Europe are already underway. And the United States is not far behind.

Under the ACA, workers who work more than 30 hours a week are health care-eligible and should be covered. As lawsuits are brought against these companies, they are fighting to make sure their workers continue to be legally considered 1099 contractors and not full-time employees.

While the final decision may be some way off, as proactive risk managers we should ask ourselves, what will it mean for our client and the industry if the verdict goes one way versus the other?

Overall, these companies may need to adhere to requirements that previously did not pertain to them. Funding these requirements and newly mandated employee benefits would be costly and may have fatal ramifications on many of the organisations operating within the gig economy model who now face a significant increase in overhead.

An alternative solution could be to limit the number of hours worked by employers, eliminating the need to treat them as full-time employees. Either way, these services that many have come to rely on would likely change due to either increases in employee costs or decreases in worker supply.

While none of these scenarios sound ideal, it would behoove gig employers to be proactive in helping workers understand the risks of being 1099 contractors and developing the most cost effective ways to provide the workers with plausible solutions to mitigate these risks. In an environment where healthcare costs are increasing at a fast pace – solutions managing healthcare costs are the need of the hour.

The capture play
In addition to understanding the risks, mitigating them through prevention and contracting, a potential solution to this funding challenge is using a captive to transfer the risk. Many organisations are already familiar with captive insurance companies and use them to better manage traditional property and casualty risks.

Captive provide a unique solution that can greatly reduce the financial impact of having to provide employee benefits to 1099 workers in the future. Captives are a modular solution which can be leveraged to take a proactive role in developing a solution to help workers understand and manage risks, health-care and others in the gig economy.

Through the use of a captive insurance company, these disruptive models could create an entity that would allow them to spread their risk so that it is more manageable and would minimise insurance company frictional costs. By utilising a captive insurance company, the organisation would be able to fund and provide the necessary property and casualty and employee benefits at a much lower cost than without the use of a captive.

The gig economy’s next move with regards to funding insurance will be indicative of how this sector of our economy will act moving forward. If these companies are truly as innovative and pioneering as the apps and services they have created, we expect to see the use of more and more programs like captives come into play.

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