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Progressives, don't force 20th-century rules on 21st-century workers

Gig work is facing death by a thousand regulatory cuts.

di C. Jarrett Dieterle

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For close to a decade now, policymakers have been locked in a battle over how to regulate [workers in the gig economy](#). These debates have played out in courtrooms, state legislatures, federal agencies and the [halls of Congress](#). To date, most of the arguments have focused on how gig workers [should be classified](#) — as independent contractors, like they were traditionally recognized to be, or as full-time employees.

But as recent legislative efforts in states such as [New York](#) and [California make clear](#), the debate is evolving. Rather than simply pursuing the forcible reclassification of gig workers into full-time employees, the political left is seeking to accomplish the same end by different means. These regulatory attacks are likely to hurt not only companies but also the people progressives claim to be helping: gig workers themselves.

Starting with a state [Supreme Court decision](#) in 2018 — and [followed by legislation](#) known by its bill number, AB5 — California has led the way in the progressive fight against gig work, advancing a stringent version of the “[ABC test](#)” for worker classification. The ABC test has various facets, but the upshot is that it makes it [significantly more difficult](#) to classify workers as independent contractors.

While early indications suggested that other states would pursue California-style ABC tests, the effort appears to have [lost some steam](#). The ABC test's fate was even relatively short-lived in California, as state voters passed a [ballot initiative](#) in 2020 that exempted its application to the gig economy. Likewise, attempts to push a stringent ABC test at the [federal level](#) seem to have stalled.

But this doesn't mean liberal lawmakers interested in reclassification have suddenly abandoned their efforts. Instead, they've adopted a piecemeal strategy of death by a thousand regulatory cuts. Under this strategy, progressive city councils and state legislatures across the country are enacting a growing number of rules that apply employee-style regulations to gig workers.

Within the past few years, cities [such as Seattle](#) and [New York have enacted](#) minimum wage laws for app-based car-share and delivery drivers. These rules have created a [host of consequences](#), including higher delivery and food prices and even reduced take-home pay for drivers in many contexts. The federal minimum wage was [established in the 1930s](#), but its application to car-sharing and app-based delivery represents a novel application of traditional employment rules to independent contracting arrangements.

The effort to attach employee-style regulations to gig workers hasn't merely stopped with compensation. Earlier this year, the New York City Council [introduced a bill](#) that would functionally eliminate the at-will employment arrangement that gig workers — and most independent contractors writ large — have long operated under. The legislation would convert the at-will arrangement to a [“just cause” one](#), under which gig companies would have to establish cause to do something as simple as deactivating a delivery driver from their platforms.

Recently, state lawmakers in California [passed a law](#) allowing for the unionization of gig workers. Under the law, an election to certify a union can be called if 10 percent of car-share drivers in the Golden State support the effort. Ultimately, a union can be certified with a mere 30 percent of driver support. Using a concept known as sectoral bargaining, a certified union would be able to negotiate with all car-sharing companies in the state, thereby setting work arrangements for the entire sector.

Establishing a minimum wage, eliminating at-will employment and permitting unionization and sectoral bargaining are all policies that commonly attach to full-scale employer-employee relationships — which is indeed the point. If reclassification is not possible, the effort to functionally convert gig workers to full-time employees can simply be pursued through other means.

These various rules do not just hurt large companies. They ultimately hurt gig workers, too. According to surveys, gig workers [prioritize flexibility](#) and autonomy. Imposing one-size-fits-all rules will result in outcomes such as [arranged scheduling](#) for car-share drivers.

In other words, drivers will have less ability to spontaneously log into their apps and earn extra cash whenever they can fit it in. Many companies are likely to restrict and control the number of drivers allowed on their platforms at any one time to manage heightened labor costs under the new rules.

Ultimately, there are better options for helping gig workers. Concepts such as a [portable benefits model](#), which establishes flexible benefit funds that operate similarly to retirement accounts for the self-employed, would allow drivers access to more of the benefits available to full-scale employees without unduly restricting flexibility. A bevy of states, including [deep-red Tennessee](#), [deep-blue Maryland](#) and [purple Pennsylvania](#), have launched portable benefit pilot programs in recent years, underscoring the bipartisan potential of this alternative model.

The reclassification wars for gig work are starting to evolve, but the political left remains stubbornly wedded to 20th-century-employee-style rules for a quintessentially 21st-century sector. Workers themselves would bear the brunt of this outmoded ideology.