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## Suing the sharing economy: Q&A with Shannon Liss-Riordan



SUZANNE KREITER/GLOBE STAFF/FILE 2012

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So far, the highest-profile battle in the new sharing economy has been between the ride-hailing company Uber and the traditional taxi industry. At different times, Boston labor lawyer Shannon Liss-Riordan has sued both — in each case on the grounds that drivers were misclassified as independent contractors instead of employees. Earlier this year, the Massachusetts Supreme Judicial Court rejected her lawsuit against Boston taxi fleet owners, but startup companies and labor advocates around the country are keeping a close eye on her Uber suit. (That case, which also challenges the company's policy on tipping, is now before a federal court in California.)

Liss-Riordan gained renown in the Boston area with suits on behalf of airline skycaps, Starbucks baristas, and restaurant employees. I should underscore that, in the Uber

case, she's the lawyer for one side in an ongoing legal battle; Uber, to state the obvious, strongly disagrees with her arguments. Still, her interpretation of current labor laws could figure prominently in the emerging debate over how to regulate the sharing economy.

This interview has been condensed and edited for clarity.

**Q:** You're in the interesting position of having fought both Uber and the taxi industry. How did that come about?

**A:** The taxi drivers are in a very difficult circumstance. It's a largely immigrant workforce struggling to make minimum wage working 12-hour shifts, often six days, if not seven days, a week. Because of the way the system is set up they essentially have to pay to work, which is something I've been challenging in a host of industries — the cleaning industry, the trucking industry, adult entertainment, other industries. While we were litigating this, Uber burst on the scene. It looked to me just like the same situation we see with so many other companies: A company comes in and claims it's doing something a different way and is harnessing the labor of a whole lot of workers. None of them are its employees, so, conveniently, the company doesn't have to worry about all the labor costs involved.

**Q:** Has there always been such a tension around the difference between employees and independent contractors? Or is something new in the economy pushing companies to use more contractors?

**A:** These tensions have been around for a very long time. Unfortunately, I think there is this whole new wave of companies that think this is OK to use as a business model. I've been really heartened to also see a number of stories about companies that have decided to go the other way. Companies have made this conscious decision that they're not going to use the independent contractor model. Employees do a better job, provide better services, they're more loyal to the company.

**Q:** If I gave you a ride to the courthouse and you paid me \$10, that instinctively doesn't feel like a job. If I'm on call for 37½ hours a week, that does feel more like a job. But isn't there a gray area in between?

**A:** I cringe because I've heard a number of commentators suggest there maybe should be a third way, maybe not everyone is either an employee or independent contractor. Essentially that kind of discussion is about letting companies like Uber, at latest count a \$50 billion company, off the hook for ensuring labor protections for its workforce. Why do we as a society want to let companies like that off the hook? For better or for worse, we made a decision many decades ago that companies have an obligation to make sure workers have certain minimal protections: minimum wage, overtime, workers comp, unemployment.

**Q:** Let me push back against that. In the construction industry, there are multi-employer pension plans. The benefits follow you if you work on a different job with a different company. Isn't that a model?

**A:** So many of the workers I've been talking to, they really are dependent on a company — one company or maybe a few companies. The kind of system that you're envisioning would take away the responsibility from that big company and move it somewhere else. I don't think there's anything that needs to be tinkered with the laws that we have; they just need to be enforced more consistently.

**Q:** If you look at health care in Canada and much of Europe, the employer doesn't provide it; society does. Relying on employers to provide that in the United States adds pressure that a different set of social arrangements wouldn't, right?

**A:** Sure, it could have been done a different way. We could have passed single-payer health care in the United States, but I haven't seen all the backers of these on-demand companies on the street demanding a Canadian system of health care. There's a big enough backlash against Obamacare.

**Q:** There's a lot of discussion about the labor market and technology being in flux. Your bottom line seems to be that this is a smokescreen, and companies are just exploiting it.

**A:** Well, yes. There is a push and pull between employers and employees. Obviously employers are trying to make money for their founders and investors, and they're going

to push the limits as far as the law lets them in most cases. It's up to workers and workers' advocates to press for the laws to be as protective as they can be. It all comes out as a balance.

At our firm we think it's important that the workers' side of that equation have strong advocates fighting for them, or else they will just be walked all over. They will be exploited. That's inevitable. We've seen that forever.

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