

# BUSINESS INSIDER

## This lawyer fought for FedEx drivers and strippers. Now she's standing up for Uber drivers



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Shannon Liss-Riordan was having dinner in San Francisco when a friend insisted he show her this life-changing app.

He opened up Uber and walked her through the process: you set your location and a driver in their own car comes and picks you up. Everyone's private driver, as the company first advertised.



The app would change Liss-Riordan's life, but not for the reasons her friend was thinking.

Instead of being awed by its car-summoning abilities, Liss-Riordan's brain, like always, was focused on the people powering the business.

"I'm standing there looking at him, and he looks up at me and realizes what's going through my head. And he says 'No, don't you dare. You're going to put this company out of business, aren't you?'" Liss-Riordan told Business Insider. "That was my first introduction to Uber. I didn't actually sue them until a year or more after that."

Liss-Riordan, a Boston-based employment rights lawyer, waited until August 16, 2013, to be exact. She later filed a similar suit against Lyft. Both suits have since been whittled down to workers in California.

At the heart of the matter is a how these companies classify their workforce.

## The "1099 economy"

Uber and Lyft drivers claim their drivers are independent contractors, not employees. Seen through Silicon Valley's rose-colored lenses, these are self-fulfilling entrepreneurs sitting behind the wheel, taking control of their own destinies and filling their schedules with as little or as much work as they want.



*Bouchaib El Hassani, a happy Lyft driver, in 2014. Madeline Stone / Business Insider*

These folks make up the backbone of what's known as the "1099 economy," because these flexible workers fill out the tax form known as the 1099 MISC, used for freelancers and contractors, rather than a W2, used for full-time employees. They do the labor at most of the "[Uber for X](#)" companies that have proliferated in the last few years, particularly in the San Francisco Bay Area.

By using contractors instead of employees, companies are not responsible for things like payroll taxes, job expenses, anti-discrimination protections or overtime pay. For bootstrapped startups, it's a cost-saving measure that can mean life or death.

But Liss-Riordan isn't drinking the same venture-capital bought kool-aid as the startups who have built businesses around the 1099 economy. Rather, she views it as another example of companies using contract workers as a way to skirt their obligations as an employers.

"I don't believe this industry needs to be built on a system whereby the workers don't need to receive any of the protections that we have a society that workers need to receive," she said. "I just don't know how Uber can argue with a straight face that as a \$40 billion dollar company it can't afford to insure its drivers, pay minimum wage or

pay overtime, or be reimbursed for their expenses. This is not going to put Uber out of business."

## **What FedEx and strippers can teach Uber**

Liss-Riordan said she can see through Uber's smoke and mirrors because she has seen companies try to do the same thing before, whether it was FedEx misclassifying their drivers or night clubs doing the same with their exotic dancers.

"They try to claim that because they're providing services through an app they're somehow different from all these companies I've been suing for all these years," Liss-Riordan said. "I just don't believe that."

She first started looking into employment law after she worked with outspoken lawyer and former congresswoman Bella Abzug right out of college. After graduating from Harvard Law, she went to a labor union in Boston where she ended up embroiled in wage and hour disputes.



*Lichten & Liss-Riordan*

"One case led to another and before I knew it I had spent a decade representing wait staff against restaurants and hotels and country clubs," Liss-Riordan said. One particular case even led Liss-Riordan to buy part of a pizzeria and split the ownership with the employees. The pizzeria opened in 2013 with a new name: [The Just Crust](#).

It wasn't just wait staff that came to Liss-Riordan and her law firm, Lichten & Liss-Riordan.

Take the case of exotic dancers. Like Uber, the night clubs were arguing they were just a platform for dancers, despite keeping a percentage of the earnings and charging the dancers for each shift. Liss-Riordan [won the case for the strippers](#).

One of her most famous wins was a case against FedEx.

Like Uber, it had been classifying its delivery drivers as independent contractors and not employees, even though they wore FedEx uniforms and drove trucks with the FedEx logo. A Massachusetts judge ruled in Liss-Riordan's favor, and the case has been repeated in several other states. (FedEx has now [successfully appealed](#), and it is back in court.)



Flickr / Rob Nguyen

While Uber drivers don't wear uniforms or drive logo-emblazoned trucks around, they are arguably more monitored than the FedEx drivers are because of the constant rating system and the threat of termination if it drops too low, Liss-Riordan argued.

"Uber, like I have seen in a lot of these cases, is trying to argue that they are something different, that their drivers are something different. Just like FedEx tried to tell its drivers that. Just like strip clubs tried to tell their entertainers that," Liss-Riordan said. "But the truth is that they're not. They get in, they do the work and they're told how to do it and they have these rules they have to follow and they're evaluated on a real-time basis."

## Square pegs, round holes

There's no easy litmus test, though, as to determine who is an employee and who is an independent contractor. The California Department of Industrial Relations says on its website that there is "no clear definition" of the term independent contractor — signing a 1099 form doesn't mean you are one.

In cases of misclassification, it's up to the courts to decide. In March, two judges [ruled Liss-Riordan's Uber and Lyft cases will go to a trial by jury](#). Uber had been asking for a summary judgement because it argued that it was a technology company, not a transportation company.



YouTube

U.S. District Judge Edward Chen didn't buy it. "The idea that Uber is simply a software platform, I don't find that a very persuasive argument," he said in court.

In the Lyft case, U.S. District Judge Vince Chhabria said in his decision that he's not sure if Lyft drivers fit in either category of California's "outdated" employment codes.

"The jury in this case will be handed a square peg and asked to choose between two round holes," he wrote. "The test the California courts have developed over the 20th Century for classifying workers isn't very helpful in addressing this 21st Century problem."

Liss-Riordan doesn't buy that argument though.

"It's a new more convenient way to provide services," she said. "But it doesn't change anything about the basic fact that they are a company that provides a service and the workers that provide a service are under their control."

## A woman versus an industry

Liss-Riordan isn't out to take Uber down. Despite her friend's initial worry that she was going to put them out of business, she doesn't think she will.

"I think Uber will do just fine if they have to play by the rules. Silicon Valley will do just fine as well. Maybe some won't make it, but the market will figure it out," Liss-Riordan said. "It's important that we have these laws, and I still think they're good laws."

If Liss-Riordan wins, it also won't mean that the positions will evaporate, although it will take some "rejiggering" of the companies business models to convert everyone to employees, she said.

There are examples of on-demand companies who already hire part-time and full-time employees in what are normally contract worker positions.



*Managed By Q / An employee of Managed by Q, which treats its on-demand workers as employees, not contractors*

[Managed By Q](#), a New York-based office management startup, hired a full staff of cleaners because it was looking to retain happy employees and knew it wanted a W-2 workforce. It had to build a sophisticated labor planning model to build in flexibility and different hours, especially since office cleaning is normally an off peak job, said co-founder Dan Teran at the On Demand conference.

[Munchery](#), a food delivery startup in San Francisco, hires its drivers as employees and schedules them in delivery shifts. Because they are employees, it also means it pays out overtime when needed — something it happily [advertises on its job page](#).

"Employers across the country are providing flexibility to employees because a lot of employees are demanding it. Just because we win the case doesn't mean that will go away. It doesn't mean people will have to work on a 9-5 schedule," Liss-Riordan said.

"Our point is that if you are working and you are subject to rules that employees are subject to, then you are also need to have the rights that our legislature has said employees should have as well."