

Meet the lawyer taking on Uber and the rest of the on-demand economy

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Several years ago, Boston lawyer Shannon Liss-Riordan was visiting family and friends in San Francisco. While she was out at a restaurant in the West Portal, one of her friends pulled out his smartphone. “You have to see this, Shannon. It’s a new thing and it’s changed my life,” she recalls him saying. The friend fired up Uber, the car-hailing app. “You push a button and a car comes to pick you up.”

Then, Liss-Riordan says, her friend looked at her. “He saw what was going through my mind. Then he said, ‘Don’t you dare. You’re going to put them out of business.’”

Liss-Riordan, 45, has spent her entire legal career going after employers for allegedly short-changing their employees. She specializes in worker misclassification lawsuits—the illegal practice of companies who classify their workers as independent contractors, rather than normal employees, in order to avoid paying them benefits they’re owed under federal law. She’s filed class-action lawsuits on behalf of truck drivers, waiters, delivery men, cable installers, call center workers, and exotic dancers. [FedEx](#) and [Starbucks](#) are among companies that have paid out millions of dollars for misclassifying workers and misallocating workers’ tips, respectively, as a result of suits she’s filed.

Now, her sights are set on the so-called “on-demand economy”—the constellation of tech startups that provide transportation and delivery services at the tap of an app.



Shannon Liss-Riordan in her office in Boston

In recent months, Liss-Riordan has filed lawsuits against Uber, Lyft, Homejoy, Postmates, and Caviar—five of the largest on-demand start-ups in the world. These suits all boil down to a rather simple allegation: these companies pay the people who supply the equipment and manpower that power their businesses like independent contractors, while burdening them with the work expectations of employees. Representatives of Uber, Lyft, Homejoy and Caviar declined to comment on pending litigation, and Postmates did not respond to request for comment.

Harold Lichten, Liss-Riordan’s law firm partner, describes her as “a pit bull with a chihuahua in her mouth” when it comes to suing on-demand start-ups. “She will make life as difficult as possible for these companies,” he said. “Here’s Uber — this business model with \$40 billion behind it, that is seen as the future — but if she’s correct about their needing to classify all of these drivers as employees, it destroys that model. And it means all these venture capital investors who have poured millions of dollars into the company have bought a pig in a poke.” Liss-Riordan’s foray into the on-demand economy started in 2013, when Boston taxi drivers

working for Uber came to her firm complaining that Uber was keeping half of the tips that passengers were paying them. That case struck her as a legal lay-up: Massachusetts state law prohibits managers taking a cut of workers' tips. The case is ongoing.

But as Liss-Riordan looked more closely at Uber's business model, she realized there was a much larger legal problem looming: namely, the company was built on the backs of so-called "1099 employees"—drivers who formed the base of Uber's operations, but whose income was counted as 1099 freelancer income for tax purposes. Uber claimed these drivers were fully independent and had control over their own work schedules — even making a point of calling them "driver-partners" instead of simply "drivers" — but the company also gave them strict guidelines for participation which made them look like employees according to [the IRS's 20-prong test](#). Uber screened and trained its drivers, and drivers could get deactivated by Uber for having their rating dip below what local managers set as a cut-off, for not accepting a certain percentage of trip requests, or for customer complaints. In one case, says Liss-Riordan, a driver was fired for "not showing respect" to Uber staff.

Liss-Riordan smelled blood. She realized that if Uber's drivers were reclassified as normal W-2 employees, rather than 1099 independent contractors, Uber would be required to pay payroll taxes for them, and provide them with benefits like workers' compensation insurance and unemployment. In some states, such as California, Uber would also be required to reimburse drivers for the costs of the job, including gas, wear-and-tear on their cars, and car insurance. If Uber had indeed misclassified its drivers, the company's entire business model was built on a legal mistake.

"Just because your services are dispatched through a smartphone doesn't make you a technology company," she said in a recent telephone interview. "You're a car service, and you have the responsibilities of being an employer of the people driving the cars."

Uber's driver classification is exactly the model of employment Liss-Riordan has spent decades fighting to reform. After graduating from Harvard Law School and completing a judicial clerkship in the 1990s, she started working on so-called "wage and hour" cases, beginning with wait staff who didn't get to keep all of their tips. "That was a widespread problem," she says. "One case led to another. I focused on the hospitality industry for a long time — hotels, restaurants, country clubs." Liss-Riordan notched the biggest win of her career against Starbucks, getting a [\\$23.5 million settlement](#) from the company for letting supervisors take a cut of pooled tips. Truck drivers, exotic dancers, and delivery drivers started coming along—all of whom complained of being shortchanged by their employers.

In the case most similar to those against the on-demand companies, Liss-Riordan spent a decade litigating against FedEx. The delivery service had [hired independent contractors to be its drivers](#), but treated them like employees by making them buy FedEx uniforms and FedEx decals to put on their trucks, and dictating their delivery days, times and methods, while denying them employment benefits. Courts ruled in two major cases last year in the [Ninth Circuit](#) and [Kansas](#) that FedEx's drivers were employees. Liss-Riordan's firm has since settled cases in multiple states, including Maine [for \\$5.8 million](#). FedEx contends that it did have legal wins along the way, and that the Massachusetts case was dismissed in a 2015 summary judgment, but as of 2011, FedEx Ground now only contracts with incorporated businesses that agree to treat their drivers as their employees. "The litigation has an impact," Liss-Riordan said. "We pride ourselves at our firm in challenging industry-wide practices. Sometimes entire industries are in the wrong and we will challenge them."

Liss-Riordan says that Uber, Lyft and other on-demand companies are making the same kind of arguments she's seen before. "FedEx argued that it was a logistics operation, connecting people who wanted to deliver packages, not a delivery service. Strip clubs argued that dancers weren't employees, that they were in the business of selling drinks and that naked women just danced on the side," said Liss-Riordan. "These arguments have not gone well for these companies."



In March, judges in San Francisco ruled that the lawsuits Liss-Riordan had filed against Uber and Lyft could [go to trial](#). U.S. District Judge Edward Chen noted that Uber sets drivers' rates, screens them, can fire them, and needs them in order to make money. "The idea that Uber is simply a software platform, I don't find that a very persuasive argument," he [said](#).

The essential dispute in all of these cases is whether companies like Uber and Lyft are more like Craigslist — a classifieds site that simply provides a place for buyers and sellers of goods and services to meet — or an Apple Store, where goods and services are carefully stocked, scheduled, and presented to customers by trained, uniformed employees who return day after day.

Proponents of on-demand startups argue the Craigslist side of the analogy. In their view, these workers *do* have more independent agency than a typical employee, and therefore are properly classified as contractors. After all, Uber drivers and Homejoy cleaners aren't required to work a certain number of hours per week, and they set their own schedules, even though some companies try to steer them to busy times by incentivizing them with "surge pricing."

Predictably, Liss-Riordan takes the Apple Store view. “The only way [on-demand companies] can offer what they’re offering is with employees, people working for them under their control.”

It may be, though, that the on-demand economy presents a new type of labor model altogether—one that isn’t exactly like either Craigslist or an Apple Store. U.S. District Judge Vince Chhabria, who is overseeing the Lyft case, said that existing labor law doesn’t map well with these companies’ business models. Lyft drivers don’t seem exactly like employees *or* independent contractors, he wrote in his motion. “The jury in this case will be handed a square peg and asked to choose between two round holes,” he wrote [[PDF](#)]. “The test the California courts have developed over the 20th Century for classifying workers isn’t very helpful in addressing this 21st Century problem.”

On-demand companies are playing heavy defense to avoid having to reclassify their contractors as employees. Among the measures Uber has taken is placing a binding clause in driver sign-up contracts, which prevents them from filing class-action lawsuits and requires them to settle disputes in arbitration instead. Liss-Riordan plans to claim that Uber’s arbitration clause is not enforceable, but she has a backup plan if that doesn’t work: instead of filing class-action suits on behalf of large groups of employees, her firm will simply file arbitration claims for each of those employees individually. “We are also signing drivers up to bring cases one by one against Uber if the clause does get upheld,” she said. “Hundreds of drivers have contacted us to do that.”

If cases like Liss-Riordan’s are successful, on-demand companies would have to pay overtime, deductions from wages, and, in California, the expenses incurred by their service providers. Those costs would mount into the millions, and proponents of the on-demand economy worry that they could force successful companies out of business.

“Our community cares about flexibility and setting their own hours,” said Fiona Ramsey, the director of communications for [Peers](#), an advocacy group for the on-demand economy. She added: “We worry the share economy will cease to exist if these cases are successful.”

That worry may be exaggerated, however. Deep-pocketed companies like Uber, which has raised nearly \$5 billion in venture capital since launching, could surely afford the additional expense of putting drivers on its payroll. And several on-demand companies, such as the house cleaning start-up MyClean and the food delivery service Munchery, already treat their workers as W-2 employees. These companies' labor costs are higher than their 1099-dependent rivals, but they get additional benefits, such as being able to train their workers and hold them to consistent schedules.

Liss-Riordan thinks Uber did "a great thing for the world in terms of convenience for customers." But she contends that the company's insanely high valuation is based on its skirting employment responsibilities and having drivers bear the costs of its business operations. She also thinks the on-demand economy's existential fears about the oncoming wave of class-action lawsuits are overblown.

"Uber and Lyft can survive classifying drivers as employees," she says. "It might cost them a little more, but it's a successful concept. It's not going to go away because we are trying to enforce the rules."