

Is the Workers Compensation World Ready for the Gig Economy?

Thomas A. Robinson, J.D., M.Div.

Co-Author, *Larson's Workers' Compensation Law*

I. Gig Economy: What are Really Talking About?

II. Technological Advances Often Have Had Disruptive Impact Within the Workplace

III. Uber/Lyft/Airbnb Are Illustrative of Disruptive Factors—They Are Not Unique

IV. Uber/Lyft “Gig Economy” Attacks Come Both From Within and Without

V. Gig Economy Arguments Are Really a Proxy for Much Larger Issue: Employee Misclassification

VI. Purported Employers, Workers, State and Local Governments, Federal Government, Unions, and Others All Have Strong Vested, Non-Aligned Interests

VII. Multiple, Often Inconsistent Tests Utilized to Determine Employment Relationship—Confusion Reigns

VIII. “Control” Has Been the Historic Test—Many See it as Unsatisfactory

IX. Some Propose New Classification: “Dependent Contractor”

X. Workers’ Comp World Need Not Borrow Tests Utilized in Tort or Contract Contexts

XI. “Nature of the Work” Test, Proposed by Arthur Larson Decades Ago, Adopted in Number of States, is Still Arguably the Best for the Workers’ Compensation Context

XII. With So Much at Stake, Battle is Likely to Continue For Some Time

XIII. Battle is Closely Connected to Collateral Issue of Adequacy of Workers’ Compensation Benefits

XIV. Recent Department of Labor Report Signals Times Ahead May be Contentious

XV. You Decide: Are We Ready for the Gig Economy?