



# Shock Of The New:

What is the impact of the gig economy on the traditional workplace?

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## What is the impact of the gig economy on the traditional workplace?

Whenever the gig economy comes up in conversation, app-based technology companies such as Uber usually get a mention as the emerging business models for 'gig' workers. And while these new 'gig' business models are changing the way people work, many jurisdictions are resisting the changes taking place.

Back in the pre-COVID-19 days of 2019, two London-based Uber drivers sued the company claiming they should be classified as workers and given a minimum wage, holiday pay and other benefits due for company employees.

They argued that Uber was a proper taxi company employing drivers to provide a service for customers. Uber employment rules included standardised routes and fares, similar to any employer-employee relationships, and driver standards and conduct, under the Uber brand banner. Indeed, they said if drivers failed to keep to these standards their driver accounts would be deactivated, essentially sacking them like any other company.

Meanwhile, Uber argued that it was not a taxi company but rather an app-based software company providing a direct contact (via the app) between the driver and the customer. Simply put, the app helps freelance employees gain customers and the company's terms of business state that drivers work for themselves. They are not obliged or indeed contracted to work solely for Uber. An employment tribunal upheld the taxi drivers' claims, while Uber was set to appeal the decision.

The issue of companies such as Uber and Deliveroo as employers of gig workers and drivers of the gig economy is a talking point the world over. The debate goes well beyond taxi and delivery services and highlights the fundamental shift now happening in the modern workplace. This shift eschews the traditional nine-to-five office hours in favour of employment based on often casual, remote working

underpinned by digitisation. Above all, it's a generational shift based on technology, as our members discuss in the following pages.

At this point it's probably worth analysing what exactly is a gig worker and the gig economy generally.

Gig workers, as most people understand the term, are people who work on small jobs, commonly referred to as 'gigs'. These 'gigs' are often their only form of income or are on top of their full-time employment. In almost all jurisdictions, their employment status is confused and causes intense debates among tax officials, legal advisors, employment experts and trade unions.

To complicate matters further, with the digital transformation of many organisations the term 'gig worker' is starting to refer to more than just casual workers. Young millennials, for example, are adapting technology to suit their shifting workplaces and their lifestyle choices. As our members suggest, these young people are digital nomads and can work anywhere at any time. A designer can work on a logo in London and it'll be ready for the customer to use on packaging in California the following morning, for instance.

Elsewhere, e-commerce entrepreneurs are using online platforms such as eBay and Facebook business pages to sell products and services to global customers. As a result, the term 'gig worker', as narrowly used to describe casual taxi and delivery workers, can actually apply to huge areas of modern digital business culture.

Everywhere the gig economy develops, legislation in different jurisdictions attempts to play catch up to understand how gig workers fit into the economic lifeblood of the nation – often trying to put a square peg into a round hole. How are gig workers regulated? Are gig workers entitled to state benefits, pensions and paid annual holidays?

Uber's defeat in the employment tribunal in London last year would indicate that individuals, businesses and legislators are still trying to understand and define the gig economy. Above all, companies using a casual structure as a business model may have to start providing certain employment rights for their gig workers.

Furthermore, new legislation in various jurisdictions calls into question the very idea of a gig economy, which is by its nature unregulated. The Netherlands, for example, is a robust liberal economy, but has no place for an unregulated, casual approach to employment that is at odds with its traditions of social, civic and welfare regulations.

To add further complexities to the discussion, the COVID-19 pandemic recently shone a new light on the gig economy and gig workers as people had to adjust to home working, social networks and technology for their income. And, by and large, this was a hugely successful experiment at new working practices.

In almost all jurisdictions a lot of work needs to be done to close the gap between legislation, gig workers and the gig economy. During the next few years workers and businesses alike will need more clarity on the status of gig workers in the gig economy. But one thing is for sure, gig workers and the gig economy are both here to stay. Indeed, gig working could well be the new normal way of working for many people – and legislators will need to understand that.

The following discussion took place between x7 IR Global members who are experts in employment law. Their wide-ranging discussion on the gig economy addresses several questions, through the lens of employment law, concerning the impact of the gig economy on traditional working practices.



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## Featured Members



ENGLAND

### THE VIEW FROM IR

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Our Virtual Series publications bring together a number of the network's members to discuss a different practice area-related topic. The participants share their expertise and offer a unique perspective from the jurisdiction they operate in.

This initiative highlights the emphasis we place on collaboration within the IR Global community and the need for effective knowledge sharing.

Each discussion features just one representative per jurisdiction, with the subject matter chosen by the steering committee of the relevant working group. The goal is to provide insight into challenges and opportunities identified by specialist practitioners.

We firmly believe the power of a global network comes from sharing ideas and expertise, enabling our members to better serve their clients' international needs.



ENGLAND

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Shilpen has a dual practice focused on dispute resolution and employment law. His expertise as a litigator is in high-value commercial dispute resolution and contentious corporate matters, often involving an international element. He has conducted a number of reported cases and cross-border disputes. Shilpen also advises and represents employers, employees and professional clients in all aspects of employment law. He has particular expertise in acting for senior executives, self-employed professionals and company directors in connection with their entire employment needs, including claims in the Employment Tribunal and the High Court.



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As co-founder of SAGIURE, Rachida began her career as a lawyer in 2002 with C'M'S', an alliance of major law firms founded by the UK firm Cameron McKenna and the German Firm Hasche Sigle. Together with Jos Pothof, head of the International Employment Group, Rachida focused on the firm's major international clients and cross border work. In 2008 Rachida continued her career and corporate employment focus with Bird & Bird LLP in The Hague, an international law firm with offices across Europe, China and the Middle East.

Rachida joined forces with former C'M'S' and Bird&Bird colleagues to establish SAGIURE® in January 2014. Her background in International Trade & Company law is a key element of her business oriented approach. Her primary goal is to achieve solutions that promote and support the business endeavors of her clients. She acts as a trusted and valued strategic business partner for her clients' legal and executive teams.



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Laura Thalacker has been practicing employment law in Nevada for over 25 years. Prior to founding Hartwell Thalacker, Ltd in 2014 with her long-time friend and colleague, Doreen Spears Hartwell, Laura was a partner in the Litigation Department of Nevada's then-largest law firm. Laura focuses on representing employers in Nevada, throughout the U.S., and worldwide in employment law and litigation matters. Laura is a past Chairperson of the Nevada State Bar's Labor and Employment Section and is a Certified Senior Professional in Human Resources.

Laura defends employers in state and federal courts and before administrative agencies. In the area of human resources compliance, she is a trusted counselor and advisor for employers on a wide array of workplace issues such as discipline and termination, reductions in force, leaves of absence, prevention of discrimination and harassment, social media use, workplace investigations, wage and hour compliance, drug testing, confidentiality and non-competes. Laura also drafts employee handbooks, policies, and employment contracts and trains employees, managers and executives on various human resources topics.



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Rebecca represents companies in litigation in federal and state courts nationwide. She is an across-the-board employment lawyer with significant trial experience representing management in bet-the-company cases involving wage and hour and fair credit class actions, trade secret, wrongful termination, discrimination and fair pay claims.

Rebecca provides strategic advice to companies aimed towards aligning personnel practices with an employer's culture, values and priorities and minimizing legal risk. She is committed to developing a client's understanding of the law to improve human resources practices and guide business forward. A frequent speaker and writer on key developments and cutting-edge legal issues, Rebecca is known for pragmatic, out-of-the-box solutions that support strategic growth.

Rebecca's clients include healthcare companies, professional services firms, entertainment, digital media and technology innovators, manufacturers and recyclers, and tax-exempt organizations, operating both domestically and internationally.



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Stephen Wilson QC heads the Litigation & Dispute Resolution practice group in the Turks and Caicos Islands ("TCI") office. Stephen has appeared in many of the TCI's recent headline cases involving disputes in the tourism and hospitality, banking, real estate, insurance and construction/building sectors.

Stephen has successfully worked on a variety of complex litigious Employment and Labour matters. He represents both employers and employees in wrongful dismissal cases, layoffs, redundancies, discrimination, equal pay and sexual harassment situations. He has broad knowledge of the nuances of employment contracts including non-compete, non-disclosure and non-solicitation agreements. He understands the challenges and the difficulties of disciplinary and discharge issues, layoffs and redundancies, unfair dismissal, overtime and service charges. Stephen has worked with numerous corporate clients on workforce restructuring and advised international clients on multi-jurisdictional labour compliance matters.



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Founding partner of Ponte Andrade Casanova since the year 2005. He is a lawyer graduated from the Catholic University Andrés Bello in the year 1977, and postgraduate studies at Cornell University, NY, USA, where he earned a master's degree in Regional planning in 1983. Francisco's practice areas include Corporate law, Labor & Employment Law, Social Security, Occupational Health and Safety and insurance.

Has been a professor at the Institute of Insurance and the Universidad Central de Venezuela, and served as lecturer in matters related to insurance, social security, pensions and occupational health and safety in institutions such as: ANRI; AVE CAMCARONI; Chamber of Caracas; Miranda Chamber, Electrical Sector.



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Michael is a well-known and certified specialist in labour law with a particular focus in the life sciences sector. He counsels national and international, small and medium operating enterprises in the private as well as the public sector. In addition to his good negotiating strategies, he represents his clients in front of German courts of all instances. Michael holds lectures and seminars on legal matters related to labour law and the health care sector for his clients and the interested public. He publishes articles and blog posts on important matters related to his area of practice.



## SESSION ONE

# The recent resurgence of the gig economy can be seen as an extension of the technology revolution in the workplace. Does the gig economy offer benefits that older models of employment lack?

**Francisco Casanova - Venezuela (FC)** If we look at the workplace post World War II, there are several phases – up to 1990s and the start of the 2000s. It's that model which has lasted for most people's lifetimes, with all the usual work benefits. That's the first phase. The second involved mass immigration of labour where the workplace and workforce started to change. In this second phase, employment was no longer for life, but most people would be employed on several jobs during a lifetime of work. After this came the third phase, which is the gig economy – and that's where we are now.

I don't think the gig economy is an extension of the technology revolution per se, but more a direct result of the development of technology in the telecoms sector. It's a process that happens over time, not necessarily overnight.

What are the benefits of the gig economy? We need to establish whether a worker relies on the gig economy or on the traditional workplace for their income. For instance, today's workers can draw income from some form of traditional employment and also develop a sideline in the gig economy.

There is also a generational shift going on. Millennials have taken to the gig economy as their employment model and in many cases are not familiar with old fashioned labour models. In many respects they only know the gig economy and don't really know or even understand how the old economy works.

**Shilpen Savani - England (SS)** I agree with Francisco that the engagement which we're having with the gig economy has sprung out of technology and I think it's inseparable from smart phone mobile technology that we're dealing with. It's also true that there's a generational aspect to this in the sense that it seems the current generation prefers flexibility over job security. Employers in the coming months will be considering every viable way of working.

Short of dismissing employees or as an alternative to losing employees, basically that will result in zero-hour contracts. If that means part time working, job shares and more self-employed workers one way or the

other, we're going to see a diminishing of the traditional, permanent form of working and more adoption of technological support.

The COVID-19 pandemic has brought the issue into sharp focus. It was happening anyway, but even the most sceptical employer today thinks flexible working is viable and has probably recognised in recent months that it is viable through connectivity and even enhanced without necessarily having long-term fixed employees at a fixed location.

**Laura Thalacker – US - Navada (LT)** Obviously, technology is the starting point for a lot of this. But, tying into what Shilpen said, it's gone beyond that now to where the gig economy offers workers the option of having flexibility and work life balance. What may have started as new and different opportunities available because of technology has now become a way of life for people.

The gig economy also offers choices and new opportunities for employers. You are no longer limited by a local pool of talent. You could be sitting in Las Vegas and have somebody in London design your company logo. Your ability as a company to find workers is unlimited. And, vice versa, as a worker, you have an unlimited pool of potential companies to work with and a reach far beyond the usual geographic bounds of an employer-employee relationship. So, in this sense, the gig economy provides for additional economic opportunities.

On the other hand, right now with COVID-19 and high unemployment rates, there are a lot of people jumping into the gig economy. Because of technology, companies can essentially find workers anywhere in the world and so there's a lot more competition. It seems like there's the potential for a race to the bottom – the gig market has become so saturated that it is increasingly difficult to earn a living wage with gig work.

So, for all the benefits with flexibility and choice that go with the gig economy, there are unavoidable problems. As I said initially, I still believe for most people being a gig worker has become a lifestyle. The question going forward now, in the current environ-

ment with all the people jumping into the gig economy, how much of a lifestyle is it really going to be able to provide for people?

**Rachida el Johari - Netherlands (RJ)** The concept of the gig economy and how to deal with it within a legal framework is a discussion that has been going on for many years in the Netherlands and the Dutch government has been trying to find a new legal framework to cover gig economy workers, but it has failed thus far. I think that the complexity from a Dutch angle lies in tax laws versus civil law.

Nevertheless, we have seen the gig economy emerge following the credit crunch of 10 years ago. At that time a lot of people suddenly lost their jobs but the difference between then and now is that the work was still there. The businesses were continuing to trade. The difference with the economy today or during this pandemic is that businesses have come to a standstill and that is the unprecedented aspect of it. It's no longer the issue of employers taking advantage of the situation and transforming fixed-term employment contracts into a services contract where someone is no longer deemed an employee. The current situation does not work for gig workers – there are no gigs.

I don't see a resurgence of the gig economy during this pandemic, but I do see that the pandemic has forced us all to work in a similar way to gig workers. That is remotely, more efficiently and with less instruction and authority from our managers or the structure of a company. We are all experiencing the daily life of a gig worker. We are output driven and more result focused.

**Rebecca Torrey - US - California (RT)** As my colleagues have described, the gig economy provides individual flexibility, better access to entrepreneurship, personal control over one's vocation and work/life balance, and potentially a financial upside, depending on the impact of the economy on the chosen business sector. But we've seen upsides and downsides of rapid changes in the economy with gig workers who have fewer restrictions and regulations compared to traditional workers in the employment context.



Rebecca Torrey pictured at  
IR Global Annual Conference, London 2018

One thing that's become clear with regard to the United States in the past six months is that workers in a gig economy lack an adequate safety net if they aren't classified as employees. When work dries up due to a recession, or if a business relationship with a gig worker is altered or interrupted, the same government benefits simply aren't available to support gig workers. That can have a devastating impact on individual lives. That distinction was less impactful during a booming economy when work was readily available to nearly everyone who wanted it.

Recently the federal government and some state agencies in the US have implemented emergency legislation providing basic support benefits in the form of unemployment insurance available to certain sole proprietors and independent contractors who have lost their source of income as gig workers. It has been a radical change in our public benefit system that heavily favors employees in terms of subsidized healthcare and income alternatives.

Another factor impacting access for gig workers is purely technical. There is a wide disparity in the United States as to WiFi connectivity due to the vast and varying geography of the country. Urban areas obviously have high speed Internet at a price. Other remote areas don't have that type of access, which does impact the ability to succeed in the gig economy, particularly during a pandemic.

**Stephen Wilson - Turks and Caicos (SW)**  
Having listened to what my colleagues are saying, Rachida and Laura both made very valid points. One of the notes I'd written down in preparation for this discussion was that there's no gig economy in the Turks and Caicos Islands. But when I stepped back and

thought about it, I realised that actually the gig economy is one of our biggest selling points. The Turks and Caicos Islands is one of the most beautiful places on the planet. It is an hour and 20 minutes flight from Miami, three hours from New York and it has the US dollar as currency; English law as its base. It has the leading Internet speed in the Caribbean so you can work in the Turks and Caicos Islands as gig workers for any economy in the world and not pay taxes unless of course you are unfortunate enough to be bound to pay taxes in another jurisdiction based on your worldwide earnings.

But what I do think, agreeing with Francisco, is that this is happening to us all now. We see a change in the way people think about work – even our age group. Meanwhile, the millennials are growing up as technological wizards and gig economists. People will want to be somewhere where it is safe to work and make use of Internet facilities and have the ability to work from home. I can see a shift in the dynamic, away from the traditional employment structures, and perhaps all of us as lawyers could become self-employed consultants.

**Michael Wuebbeke - Germany (MW)** In Germany you can already recognize a big shift due to the rise of the gig economy. This affects the classic economy to a certain extent and leads it to a change in the direction of the gig economy. All-in-all it seems that the gig economy comes along with a generational shift.

Several long-established and well-known companies are in the process of adapting their classic patterns towards the gig economy because the digitalisation of the workplace and the basics of the gig economy are changing the attitudes

of the younger workforce. This younger generation has certain expectations about how they want to work. They are rejecting the more traditional employment practices. Businesses have to change to attract that kind of young talent. In many respects younger people want to be gig workers, using social networks and technology to achieve their ambitions. These days there are few expectations of working in an office or working 9am to 5pm. Job security is not en vogue anymore, the key requirement is flexibility.

On top of all pros and cons of the gig economy with respect to how we work, nowadays one has to consider the impact of COVID-19. Across a wide range of industries both employers and employees have suddenly realised that working from home is a feasible alternative. It is often seen as more convenient and allows employees to work at their own pace. This is a further indication that classic workplace models are disappearing. Nowadays, both young and old people no longer need an office to perform a wide range of jobs.

## SESSION TWO

# As employers see the benefits of the gig economy in terms of cutting the costs of social security payments, pensions and health insurance, how important is it for companies in different jurisdictions to understand local legislation and court precedent?

**Venezuela - FC** First of all, let's remember that there are countries, especially in Latin America, where labour legislation is far more favourable to full time employees. Thinking about the gig economy in Venezuela, if there is a provision of personal service the issue is going to be one of either employment or unemployment. The gig worker as service provider needs to make clear they are not subject to supervision or control, that he or she runs their own risks regarding employment status. This also includes the ability to find work as a gig economy worker. For example, if there are no clients requesting your delivery service, you'll have no income.

Consequently, as well ensuring there is work in the particular service sector for the gig worker, that person also has to prove they have developed their business sufficiently. This will include providing sales information, order books, client lists, income streams etc. This is the employment test that is required legally in Venezuela to prove you are providing a personal service as a gig worker and that your gainfully employed.

**Nevada - LT** In the US, we have a complicated scheme where you have to comply with both federal law and the particular laws of your state for worker classification. The challenge of properly classifying workers is further complicated because many of the different agencies, at both the state and federal level, use different tests for deciding who is an "employee" versus who is an "independent contractor."

The US Department of Labor, for example, does not use the same test used by the US Internal Revenue Service for worker classification. Multiply that by multiple agencies and then on top of that you layer in the state analysis and companies find it very difficult to comply with legal requirements for independent contractor requirements. If you fail to understand all this as an employer, you're going to end up with litigation, which unfortunately has become very common.

There are severe consequences for improperly classifying workers. Nevada, where I practice, primarily has its own set of rules about independent contractor status. For labor laws, there's a multifactor test for independent contractor status. This is a statutory framework that lays out very specific elements

and criteria such as, for example, the person has a business license; the person has paid self-employment taxes; or they applied for an employer identification number; or they invest in their business, they pay rent, etc. Over the past several years, there have been multiple changes in the analysis and criteria – sometimes favoring companies and at other times seeming to favor gig workers. In the most recent legislative session in Nevada, the pendulum started to swing back toward increased scrutiny of how workers are classified.

**England - SS** There's no question that jurisdiction is extremely important here. The technology that we're talking about that's changing the workplace means that it's easy to forget borders and to forget extra considerations. This type of flexible working is seen in different ways, depending on where the work is taking place and that's compounded by the fact this is a fast moving space, more so than ever before given the sort of economic recess that's been forced on most countries because of the pandemic.

Listening to all of us just emphasises the differences that apply to every jurisdiction we consider. Looking at the English context, there's a tax consideration that is whether a worker is self-employed or an employee. For tax purposes, it's a binary choice but from a legal perspective there's the third status of worker and that gives you few protections in terms of minimum wage, in terms of the rights to holiday etc.

Depending on whether you are an employee or whether you're a worker makes a big difference because the employees have a right not to be unfairly dismissed. They have entitlements to redundancy payments and they have much clearer and more extensive maternity and parental leave rights, which self-employed workers generally don't have.

I think the gig worker status is here to stay. This sector doubled between 2016-2019 in the UK. At the start of 2016 one in 20 workers was involved in the gig economy. This became one in 10 by 2019 and it's continuing to grow.

**Netherlands - RJ** In the Netherlands you have an employment contract and the criteria for it is codified in our civil code. This employment contract has three criteria, which are;

- there is work or a service that is being delivered or performed
- that in exchange some money is paid in whatever form
- and thirdly there is the element of subordination, which means that the employer or the party hiring the individual has the possibility to give instructions. Whether or not they do that is irrelevant. It's all about whether they have that possibility or authority to do so.

There is no legal requirement to have a written legal employment contract based on how parties execute their verbal or written agreement in practice. Based on those elements a court or the tax authorities will decide whether there is an employment contract or not. So that's the first important rule.

From these three criteria, you can say what is the work performed or service delivered. We can then establish if something is paid. But the third question is there or is there no subordination? How do you establish whether someone is being instructed? With Deliveroo or Uber, for instance, one of their most important arguments was that they do not give any instructions but the court said they have an app and an algorithm and the algorithm gives instructions. It is built in such a way that it forces people into certain actions. Workers have to check in the app. They have to take the order. They have to deliver within a certain timeframe. This algorithm concept acting as the actual virtual gig employer is a big issue. I am convinced the Dutch government will do whatever it takes to stop the expansion of gig economy workers.

**California - RT** I agree that it is important to be knowledgeable about the changing legislation in the jurisdictions where a business is operating. It seems that that government worker classification models are trying to keep up with the direction that the economy is developing, rather than the other way around, and some legislators and regulators are doing better than others in that process of keeping up. As Laura pointed out, it is complex in the United States when a business operates in multiple locales due to different state standards in combination with the federal standard.





Stephen Wilson, QC, pictured at the 'On the Road' Conference, Miami 2020

The gig economy enables a person to conduct business with the world – to cultivate work, relationships and resources anywhere. But for those individuals working in California, the stricter of the California and federal rules would apply. Adding complication, in 2020, there was new state legislation prompted by a recent California Supreme Court decision that set up an entirely different system for classifying workers performing services in the state. The new standard establishes that most workers would be properly classified as employees unless they are performing work that is outside the usual course of a hiring entity's business. The standard was simplified, but it is an uphill battle in establishing contractor status. As a result, the California gig economy, among the largest in the world, is developing in opposition to applicable new legal standards and the consequences of not abiding by the new legislation can be quite costly.

**Turks and Caicos - SW** How important is it for employers to know the different legislation in each jurisdiction? Obviously, very important. Is it actually employees who benefit from the gig economy? Certainly, as we've discussed, there are many who choose not to be employees and choose to be self-employed instead.

In terms of local legislation in the Turks and Caicos Islands, not unlike Venezuela, it is a very heavily employee-biased legislation. We have a concept of 'dependent contractor' who, even if not employed under a contract of employment, is treated under the Employment Ordinance as an employee. Indeed, it's quite difficult to show that somebody is self-employed rather than employed. That's why I said earlier, we do not have what one might think as a thriving gig economy. That

being said, one of the things that drives many employment-related matters here is our very immigration-centric country.

You only have the right to remain in the Turks and Caicos Islands if you have some form of permit or you are a native of the island. In order to work here, as an expatriate, you have to have either a work permit (employed person) or a work permit (self-employed person).

I come back to something I may have mentioned before, obviously taxation is the issue. So, from a tax viewpoint, there is no benefit to you if you are employed or self-employed.

**Germany - MW** Germany has very strong social security and labour laws. In addition, there is a steadily growing number of legal developments due to court decisions at a local level. Thus, it is important to understand legislation on national as well as on a local level. This is true not only for local companies but also and especially for international companies entering the German market.

Germany has a statute law system, however, this is evolving over time by an ever-increasing number of court decisions. One can argue that there is little difference nowadays between the classic case-law and the statute law system. Everything is aligning over time, so it is very important to understand the legislation and the respective case-law regarding the differences between self-employment and dependency employment with respect to the gig economy. This distinction seems to be a significant challenge for the gig economy in Germany and has a huge impact on how foreign investors operate to avoid legal penalties.

A misclassification may lead to a revocation of a necessary operating licence, penalty payments or additional payments including high interest by German authorities and can even lead to public prosecution in certain cases.

Uber is a classic example. In Germany all taxi drivers need to have a licence to convey passengers. The respective law is nearly 50 years old. Consequently, if you're working for a taxi company not only the company needs a licence but also all individual taxi drivers. People who drove for Uber did not have individual licences. Thus, the Uber-setup was clearly forbidden under German law. It appears that Uber ignored this aspect of the national legislation when it entered the German market.

Furthermore, Germany has a fairly strict social law. Unlike in the US or UK, one cannot easily lay off an employee without a valid social reason. The laws are generally very strict and protective with respect to the employees. While businesses and technology are leaning towards the gig economy, it is actually difficult in Germany to get a gig economy going properly and for businesses to be more flexible and agile. By the nature of technology, a business needs to be agile and flexible in terms of its introduction to the workplace. As a result, there is a contradiction happening – flexibility and technology fit well with the gig economy, but they don't suit the current legislation in Germany.

SESSION THREE

## What is the gig economy's impact on employment patterns in different jurisdictions?

**Venezuela - FC** The gig economy gives workers an opportunity to work from home and allows flexibility for their working lives. During the pandemic, the whole country was essentially based on a serviced/delivery economy. If you wanted something, it was delivered to your home.

That's the same for service providers now. You want a teleconference? Someone will provide that. In Venezuela, due to the employment legislation, if you are a gig worker and a qualified worker, as such, you're provided with security and employment benefits. But that is only if a gig worker is qualified as a worker; for example, an accountant.

The negative issue arising from the gig economy is the loosening of the labour market. Working conditions are declining and there is a decline in benefits or the elimination of them altogether.

In Venezuela, the real change is in employment patterns due to the different expectations from younger generation – and the rise of the digital workplace. Above all, the younger generation has adapted immediately to this new digital workplace. In many respects, the ability to work from home is actually driving the economy at the moment and that is also driving competition between companies. Those that have the value

added element of remote work, for example, are able to respond to clients in moments and this is playing a huge role in determining the difference between companies' abilities to offer services. We believe that if gig workers are able to unite, to be somehow empowered, they can be a huge economic driver because they are flexible enough to be able to adapt to all the latest technologies.

**Nevada - LT** The traditional employment relationship for several years now has not provided the security and the safety net that it had supplied to previous generations. Certainly, my generation saw some of the benefits of the traditional employment relationship such as a measure of job security and decent wages and benefits. As these benefits of employment have declined over the past decades, people are willing to strike out on their own as gig workers with a "what have I got to lose?" mentality. Interestingly, there was a survey done back in 2017 in the U.S. and something like almost 70% of gig workers said they felt gig work actually provided them with more security than regular employment. There was a sentiment among gig workers that they'd rather be on their own and controlling their own fate.

But I also agree that people are drawn to gig work for a number of the reasons we have been discussing – lifestyle, flexibility

and technological advances. These lifestyle benefits have now been experienced by a whole new group of workers who, for the first time, have been working from home during the pandemic. With more and more people realizing first-hand that gig work provides a lot of freedom and flexibility, it seems likely that once the pandemic is over, some workers will opt not to return to traditional employment and the gig economy will keep expanding.

**England - SS** I agree with Laura. I think that as the concept of traditional job security diminishes, the attractions of the flexibility that comes with the gig economy are limitless. That flexibility works on both sides and it really helps not only workers but also businesses that can benefit from flexibility and the ability to extend their resourcing as and when they need it, but without the huge overheads that come with a static workforce.

The overarching context of all of this is really important. This is that work as we knew it may never return. In that context what was previously a relatively small growth area developing out of the workplace is about to become bigger than ever before.

**Netherlands - RJ** It is evident that the gig economy has had a huge impact on employment patterns. As I mentioned, there



Rachida el Johari pictured at  
IR Global Annual Conference, London 2018

are already more than one million gig workers in the Netherlands and we don't have that many people in the Netherlands.

I do think it's a change that we cannot undo. Of course, there are certain benefits, but at the same time it is a development that will not continue to grow and evolve without boundaries or rules. Consequently, we are seeing limitations starting to be put in place and this will continue to happen.

The impact is important because it has shown us that we need to reinvent how we organise people and how companies and their business models embed the human factor. Young people and workers of the future want to do things differently. We don't have a real answer to it yet. It also has a huge impact on government and the trade unions and this is extremely important. By law, in the Netherlands trade unions can only represent employees – what happens if a gig workers trade union was established? Trade unions see them as semi employees and do not want to lose them to an independent workers union. Consequently, it's not only the government, but also the trade unions that are interested in this particular topic. I think the gig industry itself needs to come up with solutions.

**California - RT** I agree with these insights in terms of the gig economy impacting employment patterns. It is the economy that drives business, not the law, although the law may have an effect. As a result, California businesses are reaching beyond state borders to

retain talent, both internationally and in other states and that's just one example where business activity is determined to go, regardless of legal structures.

With the pandemic, businesses who can are adjusting to a remote workforce and reducing overheads. I also see businesses devaluing restrictions that are out of step with the direction the gig economy is headed, particularly those with a younger workforce. They deal with the risk and hope the law will catch up.

**England - SS** It doesn't surprise me that the freelance sector is growing in the US, particularly when we see what's happening there. What is it now? Nearly 40 million unemployed without access to healthcare. Personally, I cannot believe the lack of social support in the US. When I hear that one of the most liberal and socially minded countries like the Netherlands is looking at social policies to assist the self-employed, the contrast is stark.

**Turks & Caicos - SW** How is the gig economy changing The Turks and Caicos Islands? Well, I think I mentioned before, it is an amazing place to come and work if you can work remotely – and you don't have to worry about the income tax.

**Germany - MW** There is no doubt that the gig economy will open up new opportunities for flexibility around working patterns. As a result of COVID-19, the typical old-fashioned working patterns in Germany have now shifted signifi-

cantly towards remote working. Businesses have realised that a lot of jobs no longer need to be performed in an office and instead can be carried out just as well from home. For many companies and workers there is a sudden realisation that they are not working alone as the office guinea pig anymore. Everyone is doing it but with regard to Germany, how flexible can businesses become?

After working from home for several months, I have noticed myself that professional service companies have been able to quickly adapt to these changing circumstances since the legal requirements have existed in Germany for decades already. Nevertheless, as previously mentioned, it is the younger generation who is embracing this model. Older people still prefer turning up to work in an office.

Going remote also largely depends on the sector of business. The younger generation is comfortable working remotely for technology firms, publishing, marketing etc. But older industrial sectors such as manufacturing will always prove problematic when it comes to flexible working patterns. Everyone knows if they work for BMW, Mercedes Benz or Porsche building cars that they will probably not be able to work from home any time soon.

It will be interesting to observe the different digital workplaces over the next couple of years. One should expect these developments to have an impact on legislation regarding pension funds, social benefits and labour law.



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