Captives Help Drive the Gig Economy

MORE EFFICIENT MANAGEMENT OF EMERGING INSURANCE RISKS HELP NEW ENTERPRISES THRIVE WHILE ALSO IMPROVING WORKER PROTECTION

Written By Brice Shutan

With the convergence of captive insurance and a growing gig economy, Corporate America has become increasingly nimble and innovative while workers enjoy greater autonomy. But concerned lawmakers and policymakers alike have taken note of these developments, redefining employment status in the form of controversial new state laws or federal regulations.

The challenge is allowing tech-driven services and conveniences such as ridesharing or work-from-home (WFH) arrangements to flourish as long as they don't come at the financial expense of a more mobile workforce. Captives are seen as a laboratory to absorb emerging risks for new enterprises in an evolving economy where insurance is vital to doing business, but there may be no underwriting history.

While there are varying estimates as to the gig economy's size, the generally accepted range is 31% to 36% of the U.S. workforce. As many as 57 million Americans are freelancers who contribute nearly $1 trillion dollars to the economy, according to a joint annual study by the Freelancers Union and Upwork. The Bureau of Labor Statistics estimates that there are about 155 million wage and salary workers in all sectors of the economy.

The problem for employers is that many standard commercial or even personal lines insurance policies don't respond well to risks that participating in the gig economy have created, according to Ed Koral, managing director with BDO USA, LLP's insurance risk advisory group.

This has given rise to the use of captives as a testing ground for research and development of new insurance products that enable gig economy venture capitalists to manage business risks. He says some very large ridesharing organizations have created their own insurance organization subsidiaries.

Ed Koral

In addition, online retailers about 15 years ago created their own captives to manage unique risks related specifically to their organization, such as customers not receiving deliveries or products not resembling advertisements.

There are complications for contractors as well.

"You have people driving around thinking that they have insurance, but they don't because their policy excludes this activity," Koral cautions. "You have people looking for insurance and finding that there's nothing really available that responds to what they do. It's either overkill or it's just not available."

One serious issue is determining exactly when gig workers for ridesharing services are on or off the job. For instance, he says they may be driving with or without their app turned on, responding to a call, carrying a passenger or food, returning home from a fare (which poses ambiguity in the event of a crash), or simply driving around for personal reasons.

Their status as an employee or self-employed individual matters a great deal if they're harmed when behind the wheel, which Koral says has implications not only for their auto liability coverage but also workers' compensation.

Gary Osborne

However, captives are paving the way for more affordable protections that are as practical as they are innovative. Gary Osborne, VP of alternative risk for Risk Partners, Inc., has been involved with leasing vehicles from 38 car dealerships for $100 a week or less to Lyft drivers whose cars aren't in the best condition. "The more hours you work, the lower the lease cost is," he says.

Other areas he's exploring include tying auto insurance rates to mileage and a program called Flexdrive through which consumers can subscribe to a car using a mobile app and drive away without worrying about insurance, maintenance or other activities typically involved in purchasing or leasing a vehicle.

They also can swap vehicles without the commitment of a long-term contract.

"It was a commercial policy with a charge built into the lease," Osborne explains, "and some of that risk was being taken into our captive."

His larger point is that in writing automobile coverages, it's critical to provide what's needed "because these are dangerous vehicles that can kill people," he says, "and we need to have a big enough balance sheet." Captives regulators have learned from taxis and trucking the importance of adopting a more cautious approach because small, individual business people must be able to meet their financial obligations through coverages that captives provide, Osborne adds.

EMPLOYEES VS. CONTRACTORS

Longstanding efforts to shore up gig worker protection came to a head late last year in California where Koral says Assembly Bill 5 attempted to make employers more responsible or accountable for stitching a financial safety net for workers. He says New Jersey has been working on legislation modeled after AB5, while regulatory activity also continues at the federal level.

In reaction to AB5, ridesharing services backed a costly and controversial ballot measure known as Prop 22, which exempted them from having to classify their drivers as employees rather than independent contractors.

As a result, the Albertsons and Vons supermarket chains last month replaced their drivers with DoorDash. He says the pandemic has created such uncertainty that gig workers are able to help these giant retailers scale up and back as needed, moving merchandise to customers quickly and efficiently.

But legislation aimed at forcing ridesharing companies to treat contractors as employees defeats the purpose of this gig for scores of working Americans, cautions Osborne. "Some people have made it a full-time job, but it wasn't necessarily supposed to be full-time," he says. "That's the whole idea behind this gig economy. You might be a musician who has to put bread on the table between gigs."

What's certain is that the customer-service model "has changed dramatically and will remain dramatically altered for at least the next six to 12 months as we remain on various forms of lockdown to gig-oriented businesses," notes Koral, who expects the U.S. Department of Labor will play a critical role in defining employment over the next 10 or 20 years.

A new DOL rule clarifying the standard for employee vs. independent contractor under the Fair Labor Standards Act takes effect March 8, 2021. It comes on the heels of increased litigation over worker misclassification in the gig economy and is expected to protect independent contractor status for millions of workers. Observers say there may be more dramatic changes coming now that Joe Biden has been elected president and the Democrats will control Congress.

Whatever happens, it's clear that traditional insurance is woefully inadequate for handling emerging risks. New enterprises that don't have the luxury of showing historical loss experience are charged some sort of analogous rate that may not be applicable or oftentimes the coverage isn't what they may need, according to Foley. This is especially true in the transportation sector.


Peter Foley

He recalls how in 2015, the broker of a rideshare platform advised the company to buy a hired-not-owned policy. The trouble was that it excluded vehicles being used for commercial purposes, "and all sorts of losses came through," he explains. His firm was hired to redesign the coverage and matched it up, using an alternative risk structure above the captive and risk retention group.

Exposures are clearly changing as the gig economy grows. Peter Foley, managing partner of Rhodium Program Management, LLC and head of insurance for altumAI, cites business-interruption insurance during the pandemic as an example. "To me, that's a classic structure that you can write a contingent or contractual liability policy for a linear captive to cover that exposure," he says.

One monumental challenge that COVID-19 poses will be California employers having to comply with Assembly Bill 685, which took effect January 1.

In essence, they must report within 24 hours anyone who tests positive for the virus and notify those with whom they came in contact with at the workplace. "That is a regulatory nightmare," Foley opines. "People haven't woken to that fact yet."

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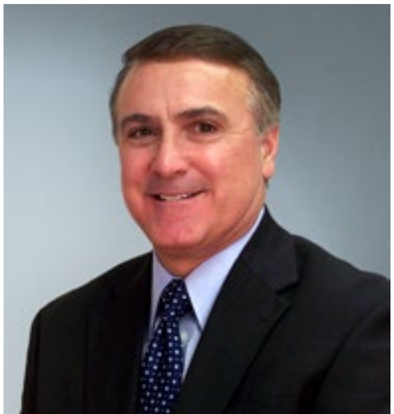

John Capasso

He's currently in discussions with a California tech company about forming a captive to reduce exposure to any potential liability that arises from coronavirus cases. For example, what happens if an individual with COVID-19 interacted with 24 people in the workplace, but contact tracing fell just short of that mark?

The use of captives in the gig economy is part of a larger movement to unbundle typical commercial insurance policies and simply offer what customer wants, explains John Capasso, president and CEO of Captive Planning Associates, LLC, as well as a member of SIIA's board of directors. "Several carriers have tried but failed to offer micro-insurance, transactional policies that are fully digital and carefully underwritten, as well as unbundling," he says. "The cost to them is too much because of their inflated overhead."

To appreciate the potential of this approach, Capasso says it's important to understand the sheer power of two key demographics. At 80 million strong with an estimated spending power of $200 billion, America's Millennials are a force to be reckoned with and marketed to, while micro and small businesses account for more than 95% of enterprises and over 50% of employment worldwide.

PROTECTING WORK FROM HOME

With WFH arrangements skyrocketing in 2020 and many expected to continue well into the future, the issue poses interesting questions about the health and safety of gig workers.

Koral recalls how a very large financial institution in New York 20 years ago would dispatch a team of experts to someone's home to ensure that their desk was the right height, a comfortable chair was in place and the home office was posture friendly.

Nowadays, he says "a number of firms have actually offered stipends to their employees to beef up the furnishings of their house or equipment to buy a comfortable chair, printer, etc.

What's unknow is whether they're scrutinizing those purchases. "They're certainly not vetting the safety of your home work environment," he observes. "So, if you fall on the way to the coffee maker in your house, I don't think anybody's filing workers' comp claims. I think it just remains a big, unsettled issue, and at some point, a case will show up that litigates the issue."

There are larger socioeconomic implications to consider across the gig economy. Foley believes it's important to remove independent contractors from government programs such as Medicaid by providing them with at least limited health insurance coverage, which can be run through a captive. "Some companies that use independent contractors are looking at captives to work on picking up some of that exposure," he reports.

But given the potential for ambiguity in determining whether contractors working remotely should be covered in certain instances under medical benefits or workers' compensation, Foley suggests 24-hour coverage as a solution.

He says this decades-old, intuitive approach not only would simplify the process and save tremendous time and expense associated with tracking worker behavior, but also break longstanding silos separating HR and benefits administration from risk management.

Foley cites a recent case involving someone working from home who took a break to hang Christmas decorations and fell off a ladder. Their injury was declared a workers' comp obligation. "I'm scratching my head on that one a little bit," he quips, noting how WFH seriously blurs the line between work and life and can, therefore, complicate claims.

THE PROMISE OF MICRO-INSURANCE

Insurance companies can act fast and intelligently by offering micro-insurance as long as the right safeguards are in place, according to Capasso. "People need a simple safety net, so when the unexpected happens, they can bounce back swiftly," he explains. Captives are considered an ideal vehicle for achieving these objectives because they're nimble, maneuverable and can be adaptable in many countries.

Micro-insurance isn't just a reduced-cost and specific-risk insurance coverage for people in developing countries, he says. It's much wider and inclusive, offering what he calls an innovative way of providing insurance that is aligned with customer expectations while covering a specific need or event at the right moment and right price. This type of insurance is designed to help close the protection gap in both developed and underdeveloped countries.

In designing micro-insurance products, his firm follows several tenets:

• A frictionless customer journey so that people can sign up with a simple click of the mouse.

• Relevant and simplified products that are easy to understand and minimize exclusions.

• Cloud-based and API-driven technology that can be deployed quickly, as well as administer policies, collect premiums and communicate with clients.

• An ability to underwrite and reinsure the risk of products that are created for customers with the help of local insurers in a particular country.

• The use of artificial intelligence to speed decision-making by digitally assessing and paying claims via parametric triggers.

• Knowledgeable project management to quickly launch products with the help of mobile networks, e-wallets, money flow indices, banks and ride-hailing companies. ■

Bruce Shutan is a Portland, Oregon-based freelance writer who has closely covered the employee benefits industry for more than 30 years.