THE SEMINAR

The entirety of labor and employment law is keyed to the employment relationship. However, a growing portion of the workforce in today's economy, especially in the so-called "gig" or "sharing" economy, falls outside the category of "employee," or along its hotly contested boundaries. How are non-employment work relations regulated (by antitrust law, for example), and how should they be regulated? We will take up both the boundary question – who is an "employee"? – and the legal status and treatment of workers beyond the reach of labor and employment laws, primarily within U.S. law but also elsewhere.

CLASS MEETINGS AND TOPICS

The planned topics (subject to change), along with the readings for the first class, are as follows:

Class 1 (1/17): Fissuring and the Gig/Platform/Crowd-Based/Sharing/On-Demand Economy

Please read pp. 1-75 of DAVID WEIL, THE FISSURED WORKPLACE; at least the Executive Summary of the MGI Report on Independent Work (available here); and pp. 1-11 of the IRLE report on Platform & Gig Work (available here). Also, please take a quick look at the “map” of ongoing initiatives on the future of work, here.

Class 2 (1/24): Classification of Employees & Independent Contractors

Class 3 (1/31): Classification of Employees, cont’d: Contemporary controversies & comparative perspectives

Class 4 (2/7): Third Category: Possibilities & Pitfalls

Class 5 (2/14): Collective action by ICs: Antitrust & Labor Preemption

Class 6 (2/21): Collective action by ICs & worker ownership & coops

Class 7 (2/28): Regulation through occupational licensing, regulation of home work, leasing/staffing agencies, Freelancing Is Not Free Act

Class 8 (3/7): Supply chain regulation and liability

Class 9 (3/2): Benefits, Social Protection, & Social Insurance Beyond Employment

Class 10 (3/28): On the Horizon: Automation, Universal Basic Income, Crowd-Based Capitalism

**Readings/Assignments**

Apart from the Weil book, most readings will be posted or linked on Classes (under Resources). In addition, you will be expected to read other students’ reaction papers (see below).

**Laptops**

Because many of the reading materials will be posted online, we will allow laptop use in this class. If we conclude that the screens are detracting from our discussions, we may institute CE’s customary no-laptop policy.

**Required Papers & Presentations**

During the first part of the semester (Classes 2-10), you will each be required to write three short reaction papers (~1000 words), and post them on Classes no later than 8:00 p.m. on the Monday before the relevant Wednesday class session. (All students should read those papers, in addition to the other assigned materials, before class.) We will circulate a sign-up sheet during the first session, and you may pick the three class sessions and topics that you wish to write about, subject to our effort to achieve a reasonable distribution of papers among class sessions (and also subject to possible change in topics for a particular week).

You will also each have to write a longer paper (~5000 words) that applies some of what we have studied to some particular “gig” or “platform” or other independent contractor setting, or that in some other way follows up on what we have studied. This may or may not resemble a traditional research paper; it might be comparative or historical in nature if you are so inclined. We are amenable to joint projects (in which case the length and the breadth or depth of your project should expand accordingly). In any event, this is something you should be thinking about from the beginning, and you should confer with us about it by the first week of March at the latest.

Those of you who are enrolled in the substantial writing credit will have to do a longer research paper (~8,000-10,000 words) instead of the 5000-work paper. Please see Prof. Estlund about this if you have not already done so.

In either case, you will present your longer papers during the final weeks of the semester, and the whole class will be expected to read and discuss the papers.

**Grades and Attendance**

Your grade will be based on your four papers (10-10-10-40%) and your contributions to class discussions (30%). You are expected to attend every class session (barring illness or the like), and to participate actively in class discussion. If you cannot attend a class, please let Prof. Estlund know ahead of time. You may be required to do an additional short paper if you miss class.

**Contacting Us**

Prof. Estlund’s office is VH 403B and e-mail address is ce21@nyu.edu. Prof. Liebman is available at wbliebman@gmail.com. We can schedule meetings by email.