

GIGS and SIDE HUSTLES: The Insurance Issues

An Insurance Continuing Education Seminar

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Our Agenda

1. Introduction: The Sharing Economy
2. A Touch of History and Background: Home-based Businesses
3. Home-sharing – The Insurance Issues
4. The Development Of The Personal Auto Policy Form In Response To Ridesharing And Car Sharing
5. Gig Workers – The Insurance Issues

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Introduction: The Sharing Economy

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Definition of “Sharing Economy”

It’s in the OED:

- “An economic system in which assets or services are shared between private individuals, either free or for a fee, typically by means of the Internet:
- *‘Thanks to the sharing economy you can easily rent out your car, your apartment, your bike, even your Wi-Fi network when you don’t need it.’*

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But, *FC Technology* Says...

- “Many terms are being used to describe a broad swath of startups and models that in some way use digital technologies to directly match service and goods providers with customers, bypassing traditional middlemen.”
- “The terms ‘sharing economy,’ ‘peer economy,’ ‘collaborative economy,’ ‘on-demand economy,’ ‘collaborative consumption’ are often being used interchangeably, though they mean very different things, as are the ideas they go hand-in-hand with, like ‘crowdfunding,’ ‘crowdsourcing,’ and ‘co-creation.’”

Rachel Botsman, May 27, 2015

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The Obligatory Uber Stats....

According to “The Business of Apps,”

- Uber generated \$17.4 billion revenue in 2021,
- While Uber’s ride hailing segment contracted by 24 percent, Uber Eats increased revenues by over 200 percent in 2020
- 93 million people used Uber in Q4 2020, below its peak of 111 million active users in 2019
- Uber drivers completed **4.98 billion trips in 2020**, a 27 percent decrease from the 6.9 billion trips in 2019|s available in 60 countries and over 300 cities

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The Obligatory Uber Stats....

According to "The Business of Apps," the stats about Uber drivers show:

- 14% are female (as compared to 1% of taxis)
- 71% have dependents at home
- 25% are over age 50; 19% are under age 30
- 87% want to be their own boss
- 85% want better work-life balance

What we're asking today: do any of them have the right insurance?

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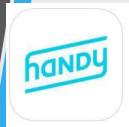
This Isn't Just about Uber...

www.doordash.com

- "DoorDash is an on-demand delivery service that connects customers with local businesses."
- "Through the DoorDash marketplace, people can purchase goods from local merchants and have them delivered in less than 45 minutes - thanks to our revolutionary logistics technology."

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According to the Insurance Information Institute and Dr. Robert Hartwig: The "On-Demand" World is Exploding



Need something done around the house...Click on Handy



Hate doing laundry? Washio will do it for you...



Hate doing just about everything? Taskrabbit will take on virtually all your "tasks"...

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Ill and Dr. Hartwig: Some Players in the On-Demand Economy Have Become Household Names



Rent a place...



...Need a Lyft?

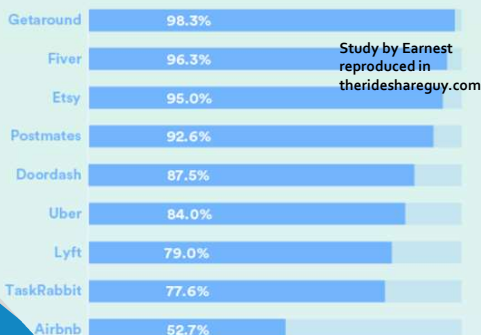


...This ride has taken Wall Street to the stratosphere

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Most sharing-economy workers earn less than \$500 per month through their platform

PERCENTAGE OF WORKERS ON EACH PLATFORM WHO MAKE <=\$500/MONTH



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A Touch of History and Background: Home Based Businesses

We've been turning houses into businesses for some time now...

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IN HOME BUSINESS STATISTICS

- Who works at home?
- According to the Bureau of Labor Statistics, in 2001
- 19.8 million people worked at home
- 50% were wage earners who were unpaid for the home work, BUT
- 17% were formally paid for at home work AND
- 30% were self-employed

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IN HOME BUSINESS STATISTICS

Who works at home?

BLS reports:

- 14.4 million people (10.5 percent of the workforce) were self-employed in 2002.
- In 2002, workers 45 years old and up were 38% of the workforce, but 54% of the self-employed.

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IN HOME BUSINESS STATISTICS

Why do they start?

- Joanne H. Pratt Associates says the shift is to a primary income basis, not a secondary or supplemental income
- The entry barriers are low: 40-44% report costs are less than \$5,000
- In fact, legal barriers are quite low.

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IN HOME BUSINESS STATISTICS

How do they do?

According to Pratt Associates:

- They stay at home – less than 5% eventually move out
- They stay there awhile – over half survive 5 years.
- They succeed by using internet, e-mail and related resources

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IN HOME BUSINESS STATISTICS

According to the Small Business Admin.:

1. Home-based businesses are:
2. Half of all U.S. businesses
3. Incubators for business development and
4. Sensitive to regulatory burdens

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IN HOME BUSINESS STATISTICS

This is Significant to the Insurance Industry because...an RLI Insurance Company study showed that:

- Only 1 in 4 home-based business owners have coverage for business equipment
- Two-thirds have no business interruption coverage
- Many policyholders thought their home-based business was covered by their homeowners.

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IN HOME BUSINESS STATISTICS

This is Significant to the Insurance Industry because...

An IIABA study showed that:

- 58% of home-based businesses do not have business insurance
- (87% of those folks didn't even understand why they needed it)
- Which is a decrease of only 2% in seven years (despite the explosive growth of home-based businesses)

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IN HOME BUSINESS STATISTICS

This is Significant to the Insurance Industry because...

Of the folks without insurance for their home-based business:

- 39% said they thought they didn't need any specific coverage or had some other coverage
- 29% said their business was too small or not really risky
- 19% just didn't have a good reason.

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IN HOME BUSINESS STATISTICS

This is Significant to the Insurance Industry because...

Those without insurance and their revenues:

<u>Revenues</u>	<u>% Owners W/O Ins.</u>
Less than \$25,000	77
\$25,000 to \$49,000	62
\$50,000 to \$74,900	57
Above \$75,000	41

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IN HOME BUSINESS STATISTICS

This is Significant to the Insurance Industry because...

- Home-based business owners assume it's expensive, but
- As IIABA's Madelyn Flannagan says, *small premium dollars can leverage big (relatively) limits*

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THE ISO FORMS (BEFORE 2022)

ISO Takes a Standard, Broad Approach to Defining a "Business." It Means:

- A trade, profession or occupation
- engaged in on a full-time, part-time or **occasional** basis; OR
- **Any other activity engaged in for money or other compensation...**

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THE ISO FORMS (BEFORE 2022)

And carves out these exceptions:

- One or more activities, not described in (2) through (4) below, for which no "insured" receives more than **\$2,000 in total compensation for the 12 months before** ... the policy period;
- (2) Volunteer activities for which no money is received...;

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THE ISO FORMS (AFTER 2022)

A "Business" means:

- A trade, profession or occupation
- engaged in on a full-time, part-time or occasional basis; OR
- "HOME-SHARING HOST ACTIVITIES" OR ←
- Any other activity engaged in for money or other compensation...

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THE ISO FORMS (AFTER 2022)

And carves out these exceptions:

- One or more activities, not described in (2) through (4) below, for which no "insured" receives more than ~~\$2,000~~ **\$5,000** in total compensation for the 12 months before ... the policy period;
- (2) Volunteer activities for which no money is received...;

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THE ISO FORMS

And carves out these exceptions:

- (3) Providing home day care services for which no compensation is received...; or
- (4) ...home day care services to a relative of an "insured".

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The ISO Forms

On the LIABILITY side, all major HO forms have this exclusion (E.2):

[We do not cover]

- "Bodily injury" or "property damage" arising out of or in connection with a "business" conducted from an "insured location" or
- engaged in by an "insured", whether or not the "business" is owned or operated by an "insured" or employs an "insured".

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The ISO Forms

And have an exception to the exclusion:

[The business exclusion does not apply to:]

- (1) The rental or holding for rental of an "insured location";
 - On an occasional, residential basis; or
 - "In part, as an office, school, studio or private garage;"

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The ISO Forms

And have an exception to the exclusion (cont'd):

[The business exclusion does not apply to:]

- (2) An "insured" under the age of 21 years involved in a part-time or occasional, self-employed "business" with no employees;

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The ISO Forms

HO2 and HO3 and HO5: All contain the following limitation on real PROPERTY coverage

[We do not cover]

- a. Land, including land on which the other structures are located;
- b. Other structures rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage; ...

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The ISO Forms

HO2 and HO3 and HO5: All contain the following limitation on real property coverage

[We do not cover] Other structures from which any "business" is conducted; or

- Other structures used to store "business" property. However, we do cover a structure that contains "business" property solely owned by an "insured" or a tenant of the dwelling provided that "business" property does not include gaseous or liquid fuel...

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The ISO Forms

HO2, HO3, and HO5 all restrict Coverage C on personal property to:

- ~~\$2,500~~ \$3,000 (in 2022) on property, on the "residence premises", used primarily for "business" purposes
- \$500 on property, away from the "residence premises", used primarily for "business" purposes. However, this limit does not apply to loss to electronic apparatus...

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The ISO Forms

BP 03 07 (Businessowners Policy):

- Much like the CGL, with a simplified format
- Major additional coverage:
 - "We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to property at the described premises."

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THE ISO ENDORSEMENTS

HO 24 71 (Home Based Business):

- Changes the exclusion on liability side coverages
- Applies liability and med pay coverages to the business listed in the endorsement
- Typically used for sales, clerical, and instructional occupations.

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THE ISO ENDORSEMENTS

HO 24 71 (Home Based Business):

- Does not provide coverage for ownership or control of a business
- ... *by itself*. Needs to have homeowner involvement.
- Does not cover liability arising out of professional services, except teaching

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THE ISO ENDORSEMENTS

HO 07 01:

- Used to be known as the HO 05 90
- Provides both property and liability coverage
- Named insured must have an ownership interest in business.

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THE ISO ENDORSEMENTS

HO 07 01 (Business Pursuits):

- Includes coverage for accounts receivable and valuable papers and records
- Time element coverages include business income
- Much broader coverage than 24 71 endorsement

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THE ISO ENDORSEMENTS

HO 07 01 (Business Pursuits):

- Liability coverage is on an aggregate basis
- Still no coverage for professional services

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IN HOME BUSINESS STATISTICS

Nina Godlewski, in Fundera, discussed the "9 Home-Based Business Statistics" (12/16/20)

- Fifty percent of U.S. businesses are home-based businesses.
- There are roughly 15 million home-based businesses in the U.S.
- About 60% of home-based businesses are "nonemployer" businesses.
- Sixty-nine percent of startups are home-based businesses.

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IN HOME BUSINESS STATISTICS

Godlewski:

- The information and construction industries are far more likely to be home-based businesses than other industries.
- Women are more likely to have home-based businesses than men.
- In the 2014 tax year, \$9.5 billion was claimed in home office expenses.
- Census data from the Survey of Business Owners showed that 57.1% of home-based businesses brought in less than \$25,000 in revenue.
- It takes 44% of home-based business owners \$5,000 or less to start their businesses.

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IN HOME BUSINESS STATISTICS

- SBA's Office of Advocacy: Economic Bulletin / Small Business at a Glance
- November, 2021
- "In 2021, self-employment (primary occupation, not seasonal adjusted) recovered from the slight decline in 2020."
- "Proprietors' income followed the pattern of self-employment: a quick drop followed by a quick recovery."

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Home-sharing – The Insurance Issues Where We Are Now

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What is AirBnB?

- AirBnB is a "community marketplace [that] provides access to millions of unique accommodations from apartments and villas to castles and treehouses in more than 65,000 cities and 191 countries."
- "...Airbnb is people powered and the easiest way to earn a little extra income from extra space in a home or from sharing passions, interests and cities."

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What is VRBO?

- "VRBO stands for Vacation Rentals by Owner."
 - "It's a website where you can book a stay at a property that the owner or manager is not personally using at the moment, and has instead made available for rent."
 - "If you have a property like that, then you can also use VRBO to advertise it and let other VRBO users rent it."
- www.techboomers.com/t/what-is-vrbo

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Home-sharing: a side note

Portland, Oregon: Portland recently amended its law to allow an individual or family that resides in a dwelling unit to rent bedrooms to overnight guests for fewer than 30 days. A resident must occupy the dwelling unit for at least 270 days during each calendar year.

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Home-sharing Arrangements: Potential Host Exposure Concerns (Receives Rental Income)

- Property
 - Loss of host's property / furnishings
 - Loss of use
 - Liability
 - Damage to traveler's property
 - Damage to landlord's property
 - Bodily injury
- Dr. Robert Hartwig, Insurance Information Institute
"Insurance, the 'Sharing Economy,' Millennials & More"*

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Home-sharing Arrangements: Potential Traveler Exposure Concerns

- Property
 - Loss to traveler's property
 - Liability
 - Damage to property of host or landlord
 - Bodily Injury
 - *Yelp-itis* (personal injury from poor review)
- Dr. Robert Hartwig, Insurance Information Institute
"Insurance, the 'Sharing Economy,' Millennials & More"*

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ISO's HO-3 in 2022: A Trio of Definitions

"Home-sharing host activities" means:

- a. The:
 - (1) Rental or holding for rental; or
 - (2) Mutual exchange of services;

of the "residence premises", in whole or in part, by an "insured" to a "home-sharing occupant" through the use of a "home-sharing network platform" AND

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ISO's HO-3 in 2022: A Trio of Definitions

"Home-sharing host activities" means:

- b. Any other related property or services made available by an "insured" for use during such:
 - (1) Rental; or
 - (2) Mutual exchange of services;

except those property or services provided by another party.

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ISO's HO-3 in 2022: A Trio of Definitions

"Home-sharing network platform" means an online-enabled application, web site or digital network that:

- a. Is used for the purpose of facilitating, for money, mutual exchange of services or other compensation, the rental of a dwelling or other structure, in whole or in part; and
- b. Allows for the agreement and compensation with respect to such rental to be transacted through such online-enabled application, web site or digital network.

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ISO's HO-3 in 2022: A Trio of Definitions

"Home-sharing occupant" means a person, other than an "insured", who:

- a. Has entered into an agreement or arranged compensation with an "insured" through the use of a "home-sharing network platform" for "home-sharing host activities" or
- b. Is accompanying or staying with a person described in Paragraph 8.a. above under such "home-sharing host activities".

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ISO's HO-3 in 2022: The Exclusions

We do not cover PROPERTY:

- Of a home-sharing occupant
- In a space while rented or primarily held for rental to a home-sharing occupant
- Used primarily for home-sharing host activities

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ISO's HO-3 in 2022: The Exclusions

Loss of use is generally covered, but...

We do not cover any fair rental value arising out of or in connection with "home-sharing host activities".

Also, theft and vandalism are not covered if the loss arises out of or results from "home-sharing host activities."

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AirBnB says AirCover for Hosts:

- Grants \$1,000,000 in liability protection for bodily injury to a guest, guest property loss, or guest-caused third party loss
- Grants extended property coverage for pet damage, deep cleaning, income loss and the like.

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The Bottom Line?

The Insurance Information Institute tells consumers:

- Standard homeowners and renters insurance policies are designed for personal risks, not commercial risks. Some insurers now offer a home-sharing liability insurance policy that can be purchased on a month-to-month basis, but there may be exclusions and limitations...
- If you plan to rent out all or part of your home on a regular basis, many companies will consider this a business use and you may need to purchase a business policy—specifically either a hotel or a bed-and-breakfast policy.

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ISO's Personal Auto Policy Treatment Of Ridesharing

Starting ANOTHER Insurance Discussion...

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The Baseline: the ISO PAP

"Private passenger auto insurers likewise confront a host of issues as they strive to formulate a response to the coverage needs of their insureds who drive for a ridesharing service. Traditional [private passenger auto] policies **exclude coverage for livery service**. In fact, if an insurer discovers that a driver has been using his or her vehicle for ride sharing, it may **cancel** the policy."

Boone, "Ridesharing: Coverage Challenges And Solutions," *Rough Notes Magazine*, 8/1/15

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The ISO PAP – What it Said and Says

Personal Auto Policy form (PP 00 01 01 05)
Liability Exclusion A.5:

"We do not provide liability coverage for any 'insured' for that 'insured's' liability arising out of the ownership or operation of a vehicle while it is being used as a **public livery or conveyance**."

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The ISO PAP – What It Said and Says

- The language of the exclusion for a "public livery or conveyance" is a little bit of

Back to the Future! ←

- It's the former and the current standard language for ISO policies.
- In between then and now? ISO tried out "while being used to carry persons or property for a fee" as an alternative.

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The ISO PAP – Why Have it?

The insurance industry just doesn't price private auto insurance for that risk. As FC&S notes

"Rates for private passenger automobile insurance do not anticipate the hazards inherent in operating an automobile for hire to the general public, such as a taxicab or a van..."

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The ISO PAP – Why Have it?

The insurance industry just doesn't price private auto insurance for that risk. As FC&S notes

"The exclusion is intended to be applied in those situations where it is obvious that the insured is holding the vehicle out for hire to the general public; for example, using a vehicle in a limousine service or using it as a taxicab..."

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The ISO PAP – Why Have it?

According to the NAIC, that's all the more compelling in the TNC situation, due to TNC drivers:

- Heading typically toward more "urban, congested" areas with higher loss frequency
- Driving more miles
- Driving distracted to check the app
- Bearing the risk of loss to passengers

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The ISO PAP (in 2015)

- The October, 2015, ISO endorsement exclusion WAS the "state of the art" on this.
- PP 23 40 10 15 does two things:
 - Defined "transportation network platform" and
 - Strengthened the "public livery or conveyance" exclusion to include when a driver is "logged into a 'transportation network platform' as a driver, whether or not a passenger is 'occupying' the vehicle."

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The ISO PAP (ISO PP 00 01 09 18)

The A.5 Exclusion now carves out the:

"insured's" liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This includes but is not limited to any period of time a vehicle is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.

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The ISO PAP (ISO PP 00 01 09 18)

The A.5 Exclusion now carves back in:

- a. A share-the-expense car pool; or
- b. The ownership or operation of a vehicle while it is being used for volunteer or charitable purposes.

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ISO Changes to the PAP Form

VOLUNTEER OR CHARITABLE PURPOSES EXCEPTION – ISO SAYS:

- Concerns regarding the applicability of the public or livery conveyance exclusion have been expressed by an agents' group with regard to situations that may arise when an insured transports individuals as a volunteer or for charitable purposes.
- For example, a school may reimburse a teacher for auto expenses for transporting students on a field trip. Another example may be a person who volunteers to transport the elderly and is paid a certain amount per mile.

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ISO Changes to the PAP Form

VOLUNTEER OR CHARITABLE PURPOSES EXCEPTION – ISO SAYS:

- The public or livery conveyance exclusion is being revised to incorporate...an exception which provides that the exclusion does not apply to the ownership or operation of a vehicle or a "your covered auto" while it is being used for volunteer or charitable purposes.
- The definition of "transportation network platform" presently contained in PP 23 40 is being incorporated into the Definitions section of PP 00 01.

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Coverage Cases

CSC Insurance Services v. Graves (N.J. 1996)

- New Jersey personal injury protection (PIP) case; policy carved out med pay for auto "being used to carry persons or property for a fee."
- Court quotes *Couch* to say, "The words [public conveyance] imply the holding out of the vehicle to the general public for carrying passengers for hire. The words 'livery conveyance' mean about the same thing."
- Minor's injuries covered by private auto carrier.

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Coverage Cases

Matter of New York Cent. Mut. Fire Ins. Co. v Byfield (N.Y. March, 2015)

- Minivan driver **was being paid** to transport a passenger "for hire" at the time of the accident
- Carrier denied coverage; court disagrees
- Primary motivation is the concept that, "a single use of a vehicle for hire has been held not to make out use as a public livery or conveyance," which was the case here.

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Coverage Cases

Johnson v. Allstate Insurance Co. (Ala. 1987)

- A van used for "Kiddie Kollege" Day Care center is insured on the individual's policy
- Daily pick-up service is \$1.00 each way
- The fee "was a definite amount unrelated to his actual expenses, paid as consideration for transporting students...there is no question that any claims arising out of this accident are excluded under the liability and collision coverages of the policy."

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Coverage Cases (Side note)

- What about deliveries and the "for a fee" or "for hire" or "public livery and conveyance"?
- Pizza delivery? **Probably** covered, according to *U.S. Auto Ass'n v. Couch*, a 1982 Tennessee decision
- Paid mail delivery in a private vehicle? **Probably not** covered, according to *U.S. v. Milwaukee Guardian*, a 1992 Eighth Circuit decision

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Legislative Developments

- National Conference of Insurance Legislators (NCOIL) has a model bill
 - "Model Act to Regulate Insurance Requirements for Transportation Network Companies and Transportation Network Drivers"
- Adopted July 19, 2015

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Legislative Developments

According to NCOIL:

"[T]he language is an effective, balanced response to debate that's heating up state legislatures and "will help states overcome the divisiveness that has made it difficult to pass legislation. The model," Rep. Michael Stinziano (OH) said, "will allow TNCs to continue offering consumers a product they enjoy while updating state laws to eliminate gaps."

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Legislative Developments

The Property Casualty Insurers Association of America reports that Oregon is now the only state without some kind of TNC legislation, NCOIL Model or otherwise.

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Legislative Developments

- The NCOIL Model defines a "transportation network company" (TNC) as a company networking and connecting
 - "TNC drivers" to
 - "TNC riders" for
 - "Prearranged rides"

This sort of classification system is consistent within the insurance industry and anticipates the Uber, Lyft, and others

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Legislative Developments

- A "TNC driver" is someone who pays for access to the TNC network
- A "TNC rider" is someone who selects the beginning and ending points of the drive
- "Prearranged rides" don't include vans, carpools, taxis, limousines or the like...

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Legislative Developments

TNCs MUST:

- Be "permitted" by the appropriate regulatory entity in the state (e.g., in Indiana, the Dept. of Revenue), but not as a common or contract carrier
- Meet driver qualifications, fare guidelines, a privacy policy, and
- *Meet insurance requirements, alone or with the TNC driver*

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Legislative Developments

NCOIL Model Says

- While a TNC driver is "on" or "available," but **without** a passenger in the vehicle, limits of \$50,000 per person, \$100,000 per incident, and \$25,000 for property damage are required.
- In many states, this is **double** the typical financial responsibility law requirement of \$25,000 per person, \$50,000 per incident, and \$10,000 for property damage (in place in >20 states).

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Legislative Developments

NCOIL Model Says

- While a TNC driver is en route to a TNC rider or has a TNC rider in the car, there must be a minimum of **\$1 million** liability coverage.
- This is comparable to, but not the same as, common carrier limits.

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Legislative Developments

NCOIL Model Says

The coverage requirements of [the Act] may be satisfied by any of the following:

- i. automobile insurance maintained by the Transportation Network Company **Driver**; or
- ii. automobile insurance maintained by the Transportation Network **Company**; or
- iii. [any combination](#) of subparagraphs (i) and (ii).

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Legislative Developments

NCOIL Model Says

- If the driver's policy lapses or doesn't provide coverage, the TNC's coverage "shall provide the coverage...beginning with the first dollar of a claim and have the duty to defend such claim."
- The coverage is NOT dependent upon denial of coverage by a personal automobile policy

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Legislative Developments

NCOIL Model Says

- The insurer must be admitted or eligible and have a rating of no less than "A-" from A.M. Best or "A" from Demotech.
- A Transportation Network Company Driver shall carry proof of coverage satisfying [the Act] with him or her at all times during his or her use of a vehicle in connection with a Transportation Network Company's Digital Network.

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YET, THERE ARE COMPLEXITIES...

Genzer v. James River Ins. Co.

- Tenth Circuit (2019)
- Genzer drove an Uber fare from the OKC airport to Woodward, OK (140 mile trip)
- On the way back, she was hit by debris from an unidentified truck.
- Genzer sought uninsured, medical, rental and collision coverage through Uber's insurer.

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AND THERE ARE COMPLEXITIES...

- Genzer's claim is denied.
- The James River BAP policy required that the loss occur before "[the] passenger reaches his or her 'final destination' and fully exits the vehicle with his or her belongings."
- *The policy provides no coverage for the return trip activity.*

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Other Legislative Developments

- National Conference of Insurance Legislators (NCOIL) has a model bill for Peer-to-Peer
"Peer-to-Peer Car Sharing Program Model Act"
- Adopted December 13, 2019

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NCOIL Peer-to-Peer Car Sharing Program Model Act

KY Rep. Bart Rowland stated, "With the rise of collaborative consumption and sharing, it is important that the insurance industry keep up and create trust between the consumers and companies. **If you pay someone to have access to transportation, there is a base level of safety that people expect.** The car sharing industry must work in conjunction with legislators and regulators to properly accommodate the sharing economy..."

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NCOIL Peer-to-Peer Car Sharing Program Model Act

- The NCOIL Model defines "Peer-to-Peer Car Sharing" as "the authorized use of a vehicle by an individual other than the vehicle's owner through a "peer-to-peer car sharing program."
- "Peer-to-Peer Car Sharing Program" is defined as **a business platform that connects vehicle owners with drivers** to enable the sharing of vehicles for financial consideration. This does not include car rental companies.

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NCOIL Peer-to-Peer Car Sharing Program Model Act

- A peer-to-peer car sharing program shall ensure that, during each car sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle liability insurance policy that provides insurance coverage in amounts no less than the minimum amounts set forth in that particular state, and:
 - (1) Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car sharing program; or
 - (2) Does not exclude use of a shared vehicle by a shared vehicle driver.

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NCOIL Peer-to-Peer Car Sharing Program Model Act

- The insurance may be satisfied by motor vehicle liability insurance maintained by:
 - (1) A shared vehicle owner;
 - (2) A shared vehicle driver;
 - (3) A peer-to-peer car sharing program; or
 - (4) Both a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car sharing program.

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NCOIL Peer-to-Peer Car Sharing Program Model Act

- If insurance maintained by a shared vehicle owner or shared vehicle driver has lapsed or does not provide the required coverage, insurance maintained by a peer-to-peer car sharing program shall provide the coverage required beginning with the first dollar of a claim and have the duty to defend such claim except when:
 - (1) A shared vehicle owner makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car sharing program before the car sharing period in which the loss occurred, or
 - (2) Acting in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of car sharing program agreement.

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NCOIL Peer-to-Peer Car Sharing Program Model Act

- A peer-to-peer car sharing program shall collect and verify records pertaining to the use of a vehicle, including, but not limited to, times used, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner and provide that information upon request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation.

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NCOIL Peer-to-Peer Car Sharing Program Model Act

- A peer-to-peer car sharing program shall keep a record of:
 - (1) The name and address of the shared vehicle driver;
 - (2) The number of the driver's license of the shared vehicle driver and each other person, if any, who will operate the shared vehicle; and
 - (3) The place of issuance of the driver's license.

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Regulatory Developments

- The National Association of Insurance Commissioners issued a White Paper
- In 2015
- Titled "Transportation Network Company Insurance Principles for Legislators and Regulators"
- Addresses coverage issues – uses tripartite model as NCOIL does
- Surprising depth on defense vs. indemnity

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Regulatory Developments

To NAIC, the biggest issue is consumer awareness. NAIC recommends the following communications to TNC drivers:

- Transporting for a fee often isn't covered.
- Read your insurance policy.
- Talk to your agent.

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Regulatory Developments

To NAIC, the biggest issue is consumer awareness. NAIC recommends the following communications to TNC drivers:

- Be prepared to be canceled or non-renewed.
- Don't drive without insurance.
- Research the TNC with which you're doing business.

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Regulatory Developments

NAIC recommends the following communications *to* TNC drivers:

1. Ask for a copy of the TNC's insurance policy.
2. Ask about the TNC's position on available limits, med pay, PIP in no-fault states, comp and collision and UM/UIM.
3. Ask who's going to pay for the defense.
4. Buy additional coverage as necessary.

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From the Commercial Side: The "Gig" Economy

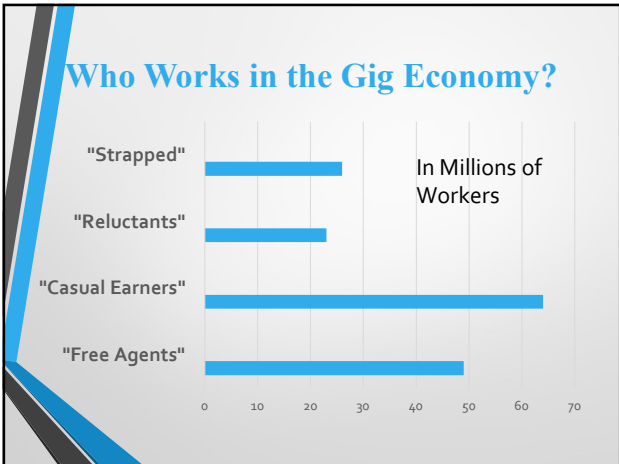
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What is the Gig Economy?

According to Insurance Business America, the "gig economy" is:

- ❖ "Characterized by workers who engage in short-term contracts and free-lance work rather than full-time employment..."
- ❖ "Forecast to comprise 40% of the US labor force by 2020."

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Who Works in the Gig Economy?

1. **"Free Agents"** – people whose preferred choice is to earn their primary income from gigs (49M)
2. **"Casual Earners"** – preferred choice to earn supplemental income (64M)
3. **"Reluctants"** – have no other option than to earn primary income from gigs (23M)
4. **"Strapped"** – have no other option but to supplement income from gigs (26M)

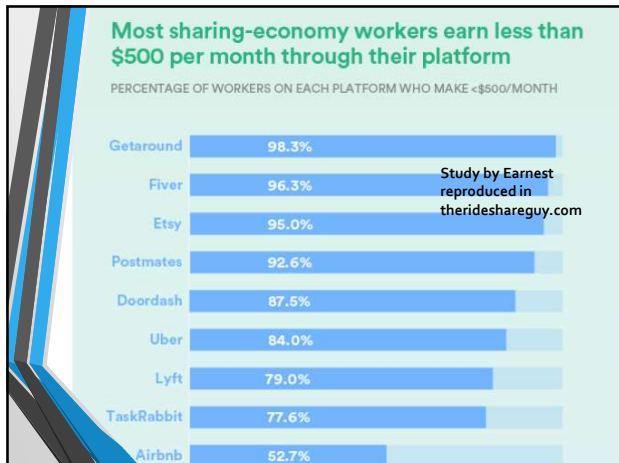
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Do the Gig Workers Have Coverage?

- 18% of gig workers have insurance
- 89% of gig workers who are uninsured have no idea what kinds of insurance they might need
- 22% of the workers not seeking it thought it was provided by personal insurance
- 70% would buy it direct from the carrier.

Insurance Business America / Cake & Arrow

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LOVGREN: Workers Compensation and Platform Companies

- Platform companies argue that they are merely technology companies connecting users with desired providers' goods or services
- The trend has been for platform companies to treat service providers as independent contractors rather than employees
- If service providers are treated as independent contractors, platform companies would not provide benefits such as health insurance, 401(k) plans, overtime or paid days off, or pay for state unemployment or workers compensation insurance
- Lori Lovgren, JD, CPCU, Division Executive – State Relations, NCCI

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LOVGREN: Workers Compensation and Platform Companies

"Misclassification has significant financial consequences in terms of back wages and overtime, legal fees, penalties, taxes, etc. If a worker had a work-related injury and would normally have been able to rely on workers compensation insurance, the worker may be able to sue the employer in tort."

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An "Old School" Example: Employee or Independent Contractor?

1st Response Automotive Repair v. Ard

- Indiana Court of Appeals January 3, 2020
- Ard was hired to do auto repair, was paid every week, and worked at 1st Response's shop.
- He worked Monday through Saturday and used 1st Response's tools. Ard fell and broke his leg at the shop.
- The Worker's Compensation Board found Ard was an employee and the "employer" appealed.

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An "Old School" Example: Employee or Independent Contractor?

The Indiana version of the factors:

1. Control	6. The length of employment
2. Distinct Occupation or Business	7. Method of calculating payment
3. Is it typically supervised or specialist work?	8. Is the work the employer's regular business?
4. Skill required	9. What did the parties believe?
5. Instruments and tools	10. Is the "employer" a business?

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An "Old School" Example: Employee or Independent Contractor?

- "Though Ard had one principal job of repairing towed vehicles, it is undisputed that Ard spent the overwhelming portion of his time working for the [Employer] and was paid hourly rather than job by job.
- "And while he has specialized skills, Ard nevertheless worked for an auto shop that dealt almost exclusively in the same line of work—repairs. Finally, at the time of Ard's injury, the [Employer was] in business.
- "Despite the lack of tax forms, a written employment contract, and a crystal-clear understanding of the relationship between Ard and the [Employer], the evidence in the aggregate clearly leads to a conclusion that the balance of the ten factors weighs in favor of the Board's conclusion."

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And now, the "ABC" Test

According to the law firm of Fisher & Phillips LLP:

A hiring entity classifying an individual as an independent contractor now bears the burden of establishing that such a classification is proper under the "ABC test." To do so, **the entity must prove each** of the following three factors:

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The "ABC" Test

- (A) that the worker is **free from the control and direction** of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- (B) that the worker performs work that is **OUTSIDE THE USUAL COURSE OF THE HIRING ENTITY'S BUSINESS**; and
- (C) that the worker is customarily engaged in **an independently established trade, occupation, or business** of the same nature as the work performed.

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The "ABC" Test

According to the law firm of Fisher & Phillips LLP

More than 20 states already use some form of the ABC test, although for most of them the test has been used for only a particular inquiry such as unemployment insurance determinations. In California, however, the state Supreme Court specifically ruled that the ABC test **should be broadly applied** for inquiries under the California Wage Orders as to whether a worker is an employee or independent contractor.

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Finally, a Few Words

Why should the insurance industry care so much? Because of what's next...

- **For insurance purposes**, how often do I have to rent for a home become a place of business?
- **For insurance purposes**, is a paid "permissive use" of my vehicle still a "permissive use" from the carrier's perspective?
- **For insurance purposes**, when is a virtual business just like its real world counterpart?

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