

Where It's At—Workplace Issues in Our Modern Economy: My Office is Where the Technology Allows it to Be



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Viewing Gig and Sharing Economy Employees' Impact Under the Lens of Where the Work is Now Being Performed:

My Thesis For This Presentation:

**Technology is Allowing Workers to
Transform the Concept of the Workplace
from a Brick and Mortar Location to Any
Location Where the Technology Allows the
Work to Be Performed Effectively and
Autonomously and the Law must Adapt**





The Gig Economy: The Key Example – Ride How You Like

- Uber: Drive When You Want: Earn What You Need
- Be Your Own Boss. Earn on your own schedule
- Lyft: Drive Your Car Whenever You Want.
- Go Ahead, Be Your Own Boss.
- Uber vs. Lyft: The Fights. Ding-Dong. Limits.
- Just a Technology Matching Service: Dating
- Employees or Not? Employer Intentional Fissuring or Millennial Employee Motivations

Employee or Not: A Few Points But



Covered in Earlier Session



- Department of Labor has Tried to Address Employee Classification Issue Under Weil and His Approach to the Fissured Workplace.
- Likewise, the National Labor Relations Board has attempted to address under Browning-Ferris.
- Franchise Cases as well:
 - NLRB: McDonald's
 - DOL: Recent Joint Agreement With Subway

Whether Employee or Not: Where is the Work Being Performed?



- **Industrial Age: Mostly Factory Floor for Life and Same Place.**
- **Office Age: Crammed in Cubicles**
- **Millennial Age: Smart Phones, Social Media, and Constant Movement.**

Whether Employee or Not: Where is the Work Being Performed?



- **The Transformation: Cubicles to Millennials**
- **A Few Notes About Cubicle Etiquette**
- **Be Respectful and Knock on the Cubicle Before Starting to Talk.**
- **Don't Take or Borrow Things: Open Space**
- **Don't Interrupt People Who are on the Phone or Emailing: Waving Hands, Talking Louder, or Using Sign Language**
- **Generally: Privacy**

Whether Employee or Not: Where is the Work Being Performed?



- **The Transformation: Cubicles to Millennials**
- **What Millennials Want: Work-Life Balance**
- **Free Meals and Open Snacks**
- **Exercise Opportunities and Green Space**
- **Don't Mind Overlap in Work and Home.**
- **Change Jobs at Least Seven Times in Life**
- **2025: 75% of Workforce Will Be Millennials**
- **General: Flexibility is Most Important and the ability to use smart phones and social media technology to communicate.**

Millennial Facebook Post Protections - - Most Involve Protections Offered By the NLRB for Concerted Activity



- 1. If you mock your boss, focus on wages and working conditions for all employees.
- 2. Don't try to be funny or sarcastic.
- 3. Get your co-workers to join you.
- 4. Mention a plan to act.
- 5. Your Company cannot tell you not to talk about the company.
- 6. Public employees: where recent case highlights friending is protected speech.



facebook

Two Key Areas for Workplace Law to Address Location of Work



- So what does this all mean for work location issues? Two Developing Areas
- Telecommuters and Working From Home: The Traveling and Work at Home Employee
- Workplace Safety: When Out in the Environment Without a Location Safety Net.

February 2013 Yahoo CEO: Marissa Mayer Banned Work From Home And Generated a Heated Response



- Claimed the importance of working “side by side” and “physically being together” made change necessary.
- Branson: Give people freedom of where to work and they will excel.
- Gallup Poll 1 year Later: Mayer right at some level. Diminished returns if more than 50% of your work time off site. But added productivity 20% or less.
- Less Engaged and Disconnected from Office Counterparts if too much telecommuting but some work from home flexibility generates productivity.

Recent ADA Accommodation Case Supports Mayer on Importance of Working Face to Face



- En Banc: EEOC v. Ford Motor Company.
- 2015: 6th Cir. addressing EEOC guidance.
- No Accommodation Needed for request to telecommute for four days out of the week.
- Others in position were required to regularly and predictably work on site.
- Some limited exceptions: But still had to come in if needed. Plaintiff would not and four days unpredictable. Job-Specific

Recent OSHA Paper Highlights

Safety Concerns for Fissured

Workplace and Gig Economy

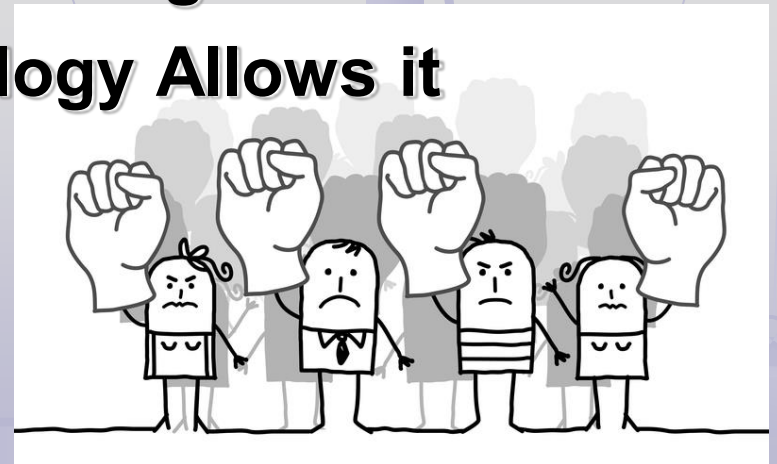


- No concern for workers safety since arguing they are independent contractors or non-employees.
- These transient workers are vulnerable and not in position to create safe workplaces.
- More stress through using technology to micromanage.
- OSHA working with DOJ to expand criminal actions and also expanding multi-employer citations policies



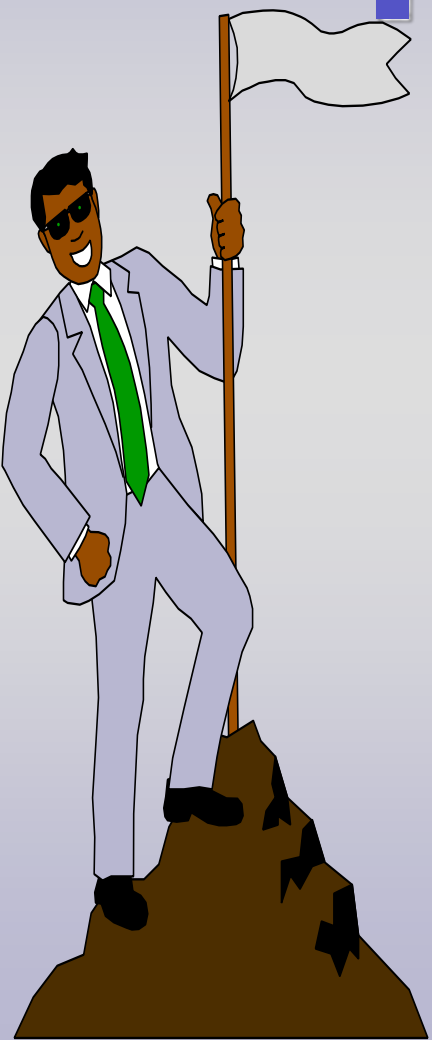
SUMMARY: TECHNOLOGY IS MAKING LOCATIONS MALLEABLE AND WORKPLACE LAW MUST RESPOND

- **Beyond DOL Wage and Hour and NLRB Attempts to Address Who are Employees to ADA and Telecommuter Concerns About Working at Home**
- **Beyond DOL Wage and Hour and NLRB Attempts to Address Who are Employees to OSHA and Safety Concerns About Working in Unsafe Places**
- **Work is Wherever Technology Allows it**





The End



■ Technology is helping to expand the locations where workers perform their job duties. As employers grapple with the importance of physical presence and interaction as either a matter of teamwork or safety, the law will have to address unique situations including disability accommodation and workplace safety violations even for transient workers at multiemployer sites

The image features a blue bokeh background with a central orange band. The bokeh consists of numerous out-of-focus light spots in various shades of blue and white, creating a shimmering effect. The orange band is a solid, horizontal strip that spans the width of the image, positioned in the middle. The text "QUESTIONS?" is centered within this orange band.

QUESTIONS?