



UBER

Uber Technologies, Inc.
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March 5, 2018

Elizabeth Schumacher
Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Janet K. Song
Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

**RE: RIN 1210– AB85: Definition of “Employer” Under Section 3(5) of
ERISA - Association Health Plans**

Dear Ms. Schumacher and Ms. Song:

On behalf of Uber Technologies, Inc. (Uber), I write to you regarding the above-referenced Notice of Proposed Rulemaking (NPRM) published by U.S. Department of Labor’s Employee Benefits Security Administration (EBSA) on January 5, 2018.

Uber has been a leader in connecting independent contractors with third parties that can provide them with healthcare, retirement, and other benefits. We support efforts by policymakers to expand affordable and quality access to benefits and thank the Department of Labor (DOL) for issuing this NPRM, which would build upon positive changes made by the Affordable Care Act.

Uber’s independent work model

Uber’s mission is to provide technology that enables reliable transportation everywhere, for everyone. We started in 2010 to solve a simple problem: how to get a ride at the touch of a button — and in the space of less than eight years, we have completed five billion trips.

With Uber, people can also get work at the touch of a button. Easy access to work combined with the flexibility to set and adjust your work schedule has attracted over 750,000 partners to work with Uber in the United States. Indeed, in a [survey](#) of Uber driver-partners, 87% noted that they use Uber “to be my own boss and set my own schedule”. Further, recent [economic research](#) has estimated “significant benefits” arising from Uber’s real-time flexibility.

However, the chance to be your own boss should not need to come at the expense of having access to social benefits and protections. At a basic level, we believe everyone should have access to the option to protect themselves and their loved ones when they are injured at work, get sick, or when it's time to retire.

Uber is leading on portable benefits

We believe that a portable benefits system would allow individuals to optimize their work arrangements enabling them to have the option of changing their current occupation to find a better opportunity or start their own business without the threat of losing critical benefits for themselves or their families. We acknowledge that developing a first of its kind scheme will involve business impacts, implications for worker and consumer protection, complexity in market design and regulatory framework and the need for prudential standards. That is why we have committed to a collaborative process that involves all stakeholders and seeks to understand and account for these challenges through data, evidence and an open process.

Plan participation

Uber is proud of the progress we've made through our relationships with third-party providers and our policy thought leadership in this broad area. We will continue to promote innovative measures to help our driver-partners obtain desired coverage and pursue reforms that enable all workers to have access to the social safety net. Like the Department of Labor, we wish to develop a fair and strong economy by empowering individuals with the tools to make decisions about their independent businesses both now and in the future. Furthermore, we agree with the intention of the NRPM in expanding access to more affordable, high-quality healthcare coverage. However, there are currently limitations on what companies like Uber can provide for independent contractors. Existing employment law and tax law prevents Uber from providing driver-partners with insurance coverage without jeopardizing its business model.

We seek clarification from the Department on the governance of the associations under the proposed rule. As currently written, association health plans (AHPs) are required to maintain a formal organizational structure that is to be controlled by the association's or group's employer members. It is unclear whether entities that assist in establishing and/or administering the plan will, on account of these activities, maintain legal certainty over their work arrangements. Specifically, entities such as Uber would be better positioned to assist driver-partners in administering such plans if the rule made clear that doing so could not be used as evidence that driver-partners are employees, rather than independent contractors. Such legal certainty may encourage participation from a wider range of small employers, digital intermediaries, and nonprofits, that may contribute to more efficient economies of scale and leading to a more robust and successful system. Further, it is unclear how important consumer protection arrangements, especially state and local laws, would apply in relation to the proposed rule.

Lastly, the reality of the on-demand economy is that driver-partners have multiple options to generate income. In the US, more than half of driver-partners drive less than 10 hours a week, and, to Uber's estimation, a majority of driver-partners work in other capacities that provide additional sources of income. Therefore, it is important that the associations incorporate enough flexibility to recognize workers who utilize two, three, or even four platforms. The Department should clarify how the minimum income and 30 hour threshold would be calculated for workers who supplement their income through a range of activities.

Conclusion

Technological and economic developments have reshaped opportunities and challenges for workers, but the American social safety system has not kept pace with today's workforce. We understand that developing a portable benefits system will be complex, but Uber strongly believes the way forward for the ever-changing American economy is a benefits system that provides workers the flexibility they value in independent work with the stability they clearly seek for important protections such as health. The Affordable Care Act was a positive first step towards this future.

We thank DOL and the EBSA for taking this additional step towards reaching that goal and look forward to engaging the Department further as it continues to enhance benefit options for Americans regardless of their work status.

Sincerely,

/s/ Danielle Burr

Head of Federal Affairs
Uber Technologies, Inc.