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UCSD - GPS CASE 16 - 10

**Exploitation of On-Demand  
Workers:  
A Corporate Accountability Issue of Amazon**

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## **Executive Summary**

The National Employment Law Project's recommendation to end the exploitation of Amazon Prime Now and Amazon Flex on-demand delivery drivers by misclassification of independent contractors is to pursue a third worker classification. This strategy of pursuing a third worker classification is much larger than just holding Amazon accountable for its Corporate Social Responsibility. The National Employment Law Project will create a public campaign to garner the support of Amazon and other firms that rely on on-demand workers, on-demand workers themselves, and lobbying key politicians (Senator Mark Warren, and Presidential Candidate Hilary Clinton). Other options explored was to bring all on-demand workers on as employees, which has the potential to increase employee related expenses by 30 percent. The second option explored was to unionize the on-demand workers with the coordination of the AFL-CIO and other trade unions. However, this option would hold the most amount of apprehension from firms and government organizations.

## **Introduction**

Amazon's misclassification of Amazon Prime Now drivers as independent contractors, is a pressing concern of corporate accountability. The lawsuit by four former Amazon Prime Now drivers that claim they were misclassified as Independent Contractors claim: they were not paid minimum wage, over time, given standard breaks, reimbursed for business expenses, and there was a breach of employment contract. This case study will attempt to unpack in four sections: the Background, Analysis, Solutions, and Recommendation for the National Employment Law Project (NELP) to get Amazon to be a change-agent for Amazon on-demand workers. First, the background will detail the lawsuit that the four Amazon Prime Now drivers brought against

Amazon, Scoobeez and ABT Holding. A short background on Amazon and its relationship with its supplier Scoobeez, who hired the independent contractors as drivers for Amazon Prime Now. Second, the Analysis will provide an understanding around the violations claimed in the lawsuit and whether it is state or federal regulation. It will further discuss why misclassification of workers as independent contractors is a corporate accountability issue. This section will explore the incentive mechanisms, who has more influence over the labor decisions Amazon makes (shareholders, stakeholders, and consumers). Third, three solutions will be explored, Employee Classification, Unionization, and Third Worker Classification. The costs, risks, and benefits for each solution will be reviewed in detail. Fourth and final section of this study NELP will provide a recommendation on what strategy to hold Amazon accountable for misclassification of independent contractors, ensure these violations do not occur in the future, and who to leverage to apply pressure.

## **I. Background**

### **Class Action Lawsuit**

The following are statement of facts from the lawsuit filed on October 27, 2015 in California against Amazon, its supplier Scoobeez, and ABT Holing by four former Amazon Prime Now drivers for misclassification of independent contractors.<sup>1</sup> The Amazon Prime Now drivers claim to be misclassified as independent contractors and have nine cause of action complaints that claim the drivers were not: paid minimum wage, over time, reporting time pay, reimbursed business expenses, given standard breaks, given wage statements, waiting time

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<sup>1</sup>Class Action Lawsuit section based on facts listed in this document. 2015. "Class Action Complaint Taree Truong, Khaled Alkojak, Olga Georgieva, and Cynthia Miller v. Amazon.com, INC., Scoobeez, INC., and ABT Holdings, INC." Los Angeles. Accessed January 30, 2016. <https://consumermediallc.files.wordpress.com/2015/10/2015-1027-amazon-scoobeez-complaint-final-2.pdf>

penalties, breach of employment contract, and violations of the unfair competition law (UCL). The lawsuit further provides that the four plaintiffs were hired by Scoobeez exclusively for the Amazon Prime Now delivery service. The drivers were required to wear Amazon Prime Now uniforms, use the Amazon Prime Now app that facilitated delivery customer, time, and route. The plaintiffs in this case worked exclusively out of an Amazon warehouse and received Amazon specific training on Amazon Prime Now delivery service. The smart phone with the Amazon Prime Now app was provided to each driver. A written contract was required of each driver, but the signed copy was not provided to the drivers. Drivers are required to work fixed shifts during the Amazon Prime Now service hours and can be scheduled up to six days consecutively in a row. Drivers are assigned packages and cannot reject work assignments or request specific geographic locations. Package delivery sequence and route is generated by the app for the driver. Drivers can be assigned to drive up to 100 miles or more a day and receive no reimbursement for mileage as an independent contractor. The drivers are paid hourly at rates set by Amazon & Scoobeez and have no ability to negotiate. The drivers were originally hired for \$11 per hour, plus \$2.50 a package drop, and tips. But, in September the drivers were required by Scoobeez to sign a new contract removing the per package delivery bonus and were not provided copies of the new signed contract. Amazon guarantees its customers that all tips are given to the driver, however the plaintiffs claim that they are not able to see the tips nor are given a statement of tips by delivery. Drivers are paid for actual hours worked, but are not paid overtime rate for any hours worked over an 8 hour day or 40 hours in a work week. Drivers are required to use their own vehicles and are not reimbursed for fuel, maintenance, tolls, insurance, and other vehicle expenses.

## Amazon

In 1994, Amazon started as an online auction platform that has since evolved into the world's largest retailer and one of the largest publicly traded companies. According to the Annual Report, Amazon seeks to be the Earth's most customer-centric company.<sup>2</sup> Being customer-centric is a core competency of Amazon that can be seen in all segments of the business (Marketplace, Amazon Prime, AWS). Using this strategy revenue reached \$107.01B by 2015 with an operating margin of 2.09% and a market cap of \$250.05B (See Figure 1.)<sup>3</sup> In 2015 Amazon reported having 230,800 full-time and part-time employees.<sup>4</sup> It is assumed that Amazon relies on a vast diffuse labor network of subcontractors. Amazon does not have to disclose the amount of subcontractors that are employed on behalf of Amazon by suppliers. Amazon hired Scoobezy to provide the Amazon Now Prime delivery service in select markets for a set contract price versus wages paid for labor.

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<sup>2</sup>With its "financial focus being on long-term, sustainable growth in free cash flow per share."2015. 2014 Amazon Annual Report." Accessed January 31, 2016.

file:///D:/Profile%20Data/Downloads/AMAZON%202014%20Annual%20Report.pdf.

<sup>3</sup> 2016. Amazon Key Statistics. January 31. <http://finance.yahoo.com/q/ks?s=AMZN+Key+Statistics>.

<sup>4</sup>2016. "Amazon 10K for Fiscal Year Ending December 31, 2015." Accessed January 30, 2016.

file:///D:/Profile%20Data/Downloads/Amazon.pdf.

## Figure 1 Key Statistics for Amazon

Data provided by Capital IQ, except where noted.

Valuation Measures	
Market Cap (intraday) <sup>5</sup> :	268.20B
Enterprise Value (Mar 12, 2016) <sup>3</sup> :	265.94B
Trailing P/E (ttm, intraday):	455.69
Forward P/E (fye Dec 31, 2017) <sup>1</sup> :	66.47
PEG Ratio (5 yr expected) <sup>1</sup> :	3.03
Price/Sales (ttm):	2.46
Price/Book (mrq):	19.67
Enterprise Value/Revenue (ttm) <sup>3</sup> :	2.49
Enterprise Value/EBITDA (ttm) <sup>6</sup> :	33.75
Financial Highlights	
Fiscal Year	
Fiscal Year Ends:	Dec 31
Most Recent Quarter (mrq):	Dec 31, 2015
Profitability	
Profit Margin (ttm):	0.56%
Operating Margin (ttm):	2.09%
Management Effectiveness	
Return on Assets (ttm):	2.33%
Return on Equity (ttm):	4.94%
Income Statement	
Revenue (ttm):	107.01B
Revenue Per Share (ttm):	229.14
Qtrly Revenue Growth (yoy):	21.90%
Gross Profit (ttm):	35.36B
EBITDA (ttm) <sup>6</sup> :	7.88B
Net Income Avl to Common (ttm):	596.00M
Diluted EPS (ttm):	1.25
Qtrly Earnings Growth (yoy):	125.20%
Balance Sheet	
Total Cash (mrq):	19.81B
Total Cash Per Share (mrq):	42.07
Total Debt (mrq):	17.55B
Total Debt/Equity (mrq):	131.10
Current Ratio (mrq):	1.08
Book Value Per Share (mrq):	28.42
Cash Flow Statement	
Operating Cash Flow (ttm):	11.92B
Levered Free Cash Flow (ttm):	6.13B

Source: <https://finance.yahoo.com/q/ks?s=AMZN+Key+Statistics>

## Scoobeez/ ABT Holdings

In 2013, Scoobeez was started as an on-demand door to door messenger service in Glendale, California by Benjamin Art also known as “Beno Blanco”, CEO of Scoobeez.<sup>5</sup> In August 2015, ABT Holdings acquired Scoobeez for 76 percent equity, total fair value at the time

<sup>5</sup>n.d. Scoobeez.com. Accessed February 1, 2016. <http://scoobeez.com/index.php/about-scoobeez>.

of acquisition was \$1,296,000.<sup>6</sup> ABT Holdings is a US based holding company founded in 1957.<sup>7</sup> ABT Holdings' mission is to, "Invest, acquire, develop, and grow various businesses that provide strategic advantages, and generate attractive returns and positive cash flow."<sup>8</sup> ABT Holdings is responsible for the day to day operations of Scoobeez, of which is now aggressively expanding from its hive location in Los Angeles to, San Francisco, Las Vegas, San Diego, and most recently to Chicago, all in under 6 months of the acquisition.<sup>9</sup> Scoobeez relies on independent contractors for delivery drivers.

## II. Analysis

### Exploitation of "On-Demand" Workers

Exploiting "On-Demand" technology (tech) workers has become common practice in the "tech" industry as a result of fissured employment.<sup>10</sup> The increasing demand for more affordable products by consumers and the need for corporations to maximize profits influence corporation's labor decisions. In tech more job functions are being shed to focus on core competencies in turn increasing the number of suppliers. This leads to the suppliers bearing more of the liability and pressure to produce at lower costs. Amazon identifies in their 10-K and Annual Report that their expansion places significant pressure on its Management, Financial and Other Resources.<sup>11</sup> We can assume that this pressure placed on management and resources lead to failures in

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<sup>6</sup>Common Stock to be issued for \$1,200,000 & \$96K cash investment. 2015. "ABT Holdings Quarterly Report." OTC Disclosure & News Service. November 1. Accessed February 1, 2016. <http://www.otcmarkets.com/financialReportViewer?symbol=ABOT&id=146209>.

<sup>7</sup>n.d. ABT Holdings. Accessed February 1, 2016. <http://www.abtholdings.com/about.html>.

<sup>8</sup> Ibid

<sup>9</sup>2015. "ABT's Scoobeez plans to expand its services in San Francisco's Hyper Efficient Logistics Market." NASDAQ Globe Newswire. September 28. Accessed January 31, 2016. <https://globenewswire.com/news-release/2015/09/28/771407/0/en/ABT-s-Scoobeez-plans-to-expand-its-services-in-San-Francisco-s-Hyper-Efficient-Logistics-Market.html>.

<sup>10</sup> Weil, David. 2014. *The Fissured Workplace: Why Work Became So Bad For So Many and What Can Be Done to Improve It*. Cambridge & London: Harvard University Press.

<sup>11</sup> 2015. "2014 Amazon Annual Report." Accessed January 31, 2016.

file:///D:/Profile%20Data/Downloads/AMAZON%202014%20Annual%20Report.pdf.

compliance, corporate social responsibility, and possible principal-agent problems. Amazon hired Scoobeez to provide the Amazon Prime Now delivery service, rolled out as a pilot in select markets with intention to aggressively expand. Amazon as the lead firm places all of liability onto Scoobeez to provide the workers for the delivery service, but controls every aspect of how the work is to be performed. Amazon should be held accountable as the lead firm for the workers being misclassified as independent contractors as Amazon applied the pressure to Scoobeez to keep costs low leading to worker rights violations under California employment law. Additionally, Amazon is hiring independent contractors directly for its Amazon Flex Program for Amazon Prime Now delivery.

### **Employee vs. Independent Contractor Classification**

Worker classification as an “employee” or an “independent contractor is not straight forward and varies from state to state allowing for misclassifications that cost the worker and the government. There are two separate fact and circumstance tests that employers, employees, and courts use to determine whether a worker is an “employee”, one by the Internal Revenue Service (IRS) and another by the Department of Labor (DOL). Common law has determined more points of classification for independent contractors case by case.

*The Internal Revenue Code section 3121 (d)(2) defines terms for purposes of Social Security taxes that apply to wages paid to an employee defines the term “employee” to include any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.<sup>12</sup> Section 3401 defines terms for purposes*

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<sup>12</sup> Staff of the Joint Committee on Taxation. 2007. Present Law and Background Relating to Worker Classification for Federal Tax Purposes. IRS Report, Internal Revenue Service. Accessed February 24, 2016. <https://www.irs.gov/pub/irs-util/x-26-07.pdf>.



*of an employer's Federal income tax withholding obligation with respect to wages paid to an employee, does not define the term "employee."*<sup>13</sup>

### **IRS Common-law Test**

The IRS identifies three categories of evidence to determine whether requisite control exists under the common-law test:<sup>14</sup>

- (1) Behavioral - Does the company control or have the right to control what the worker does and how the worker does his or her job?
- (2) Financial - Are the business aspects of the worker's job controlled by the payer? (These include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
- (3) Type of Relationship - Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

### **DOL Economic Reality Test**

The DOL uses seven factors from judicial precedent:<sup>15</sup>

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<sup>13</sup> 20 factors from common law case outcomes that can be considered when trying to determine an employee vs independent contractor (Instructions; Training, Integration; Services Rendered Personally; Hiring, Supervision, and Paying Assistants; Continuing Relationship, Set Hours of Work; Full Time Required; Doing Work on Employer's Premises; Order or Sequence Test; Oral or Written Reports; Payment by the Hour, Week, or Month; Payment of Business and/or Traveling Expenses; Furnishing Tools and Materials; Significant Investment; Realization of Profit or Loss; Working for More than one Firm at a Time; Making Service Available to the General Public; Right to Discharge; Right to Terminate. Ibid

<sup>14</sup> 2015. "Independent Contractor (Self-Employed) or Employee?" IRS. August 5. Accessed February 24, 2016. <https://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Independent-Contractor-Self-Employed-or-Employee>.

1. The extent to which the services rendered are an integral part of the principal's business.
2. The permanency of the relationship.
3. The amount of the alleged contractor's investment in facilities and equipment.
4. The nature and degree of control by the principal.
5. The alleged contractor's opportunities for profit and loss.
6. The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
7. The degree of independent business organization and operation

### **“Safe Harbor” Exemptions**

Section 530 of the Revenue Act of 1978 allows a taxpayer to treat a worker as not being an employee for employment tax purposes, but does not exempt the taxpayer from income tax purposes, regardless of the worker's determined status under the common-law test.<sup>16</sup>

### **Costs of Misclassification**

The costs to the on-demand worker misclassified as an independent contractor results in there not being social insurance protection such as Social Security and Medicare. Independent contractors have no protections for on the job injuries as well as no workers compensation insurance. No protections from loss of work as a result of contracts being terminated as the independent contractor do not pay into unemployment insurance. The on-demand workers classified as independent contractors do not have certain labor rights such as a minimum wage, overtime, standard breaks and meal-time.

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<sup>15</sup> 2014. United States Department of Labor. May. Accessed March 13, 2016.  
<http://www.dol.gov/whd/regs/compliance/whdfs13.htm>.

<sup>16</sup> Staff of the Joint Committee on Taxation. 2007. Present Law and Background Relating to Worker Classification for Federal Tax Purposes. IRS Report, Internal Revenue Service. Accessed February 24, 2016.  
<https://www.irs.gov/pub/irs-utl/x-26-07.pdf>.

The cost to Federal and State government is the result of loss income and funding of social programs from misclassification of independent contractors. Very few studies have been done to show the complete impact of misclassification in the United States. However, interest is picking up as more misclassification lawsuits come to light from companies dependent on the on-demand worker. A recent 2015 Government Accountability Office (GAO) study estimates that 7.4 percent of the labor force is classified as independent contractors.<sup>17</sup> A 2010 study by the Congressional Research Service estimated \$8.71 billion in income over FY 2012-21 as a result of proposed modification to the IRS's "Safe Harbor" rules.<sup>18</sup> About 20 states have conducted their own exploratory studies to see the annual impact of misclassification (See Figure 2).

The companies receive significant benefit in the ability to classify workers as independent contractors saving up to 30 percent on employee related benefit expenses. In addition, the "safe harbor" rules from the IRS allow for exemption even if the workers should be defined as an "employee". Without effective regulations/laws, direction, and enforcement companies have an incentive to continue to classify employees as independent contractors in order to cut costs without penalty.

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<sup>17</sup> U.S. Government Accountability Office, Contingent Workforce, GAO-15-168R (April 2015), available at <http://www.gao.gov/assets/670/669766.pdf>.

<sup>18</sup> 2015. "Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries." National Employment Law Project. July. Accessed February 29, 2016. <http://www.nelp.org/content/uploads/Independent-Contractor-Costs.pdf>.

**Figure #2 Annual Losses Due to Independent Contractor Misclassification**

Annual Losses Due to Independent Contractor Misclassification: Summary of Leading State Studies <sup>21</sup>				
State	% Employers who misclassify	Loss to UI	Loss to Workers' Comp	Unpaid state income taxes
CA <sup>22</sup>				\$156 mil (collected)
CO <sup>23</sup>	33.9%			
CT <sup>24</sup>	42% of audited employers	\$17 mil	\$57 mil	\$65 mil \$611,600 (collected)
IL <sup>25</sup>	19.5% ('05)	\$53.7 mil ('05) \$8.9 mil*	\$97.9 mil \$23.2 mil*	\$124.7 - \$207.8 mil \$14.8 mil*
IN <sup>26</sup>	16.8%	\$36.7 mil	\$24.1 mil	\$147.5 mil
IA <sup>27</sup>		\$2.5 mil recovered		
ME <sup>28</sup>	11% 14%*	\$314,000*	6.5 million*	\$2.6 - 4.3 mil*
MA <sup>29</sup>	12% 14%*	\$35 mil \$3.9 mil* \$15.7 mil (collected 2014)	\$91 mil \$7 mil* \$1.1 (collected 2014)	\$91 -152 mil \$6.9 mil* \$856,000 (collected 2014)
MD <sup>30</sup>	20-30% DOL study: 30%	\$22 mil \$3.5 mil (collected)		\$1,894 mil (assessed 2014)
MI <sup>31</sup>	30%	\$17 mil		\$20-33 mil
MN <sup>32</sup>	14% 15%*			
MO <sup>33</sup>	7,517 misclassified employees at 1,118 employers identified in 2014			\$1.4 mil (owed)
NE <sup>34</sup>	10%	\$124,000 (collected 2012)		\$19,000 (collected 2012)
NH <sup>35</sup>	23% of employers audited	\$677,000		Taxes on \$37.76 million in wages
NV <sup>36</sup>	31,000 misclassified employees	\$8.2 mil		
NJ <sup>37</sup>	38-42% of audited cases	\$15 mil (UI and disability)		\$5 mil
NY <sup>38</sup>	10.3% 14.9%* 26,000 (identified by JETF in 2014) 140,000 misclassified employees identified since August 2007	\$198 mil annually \$13 mil (IDed by NY DOL audits) \$8.8 mil assessed in 2014	\$1.1mil (incl. penalties) \$640,000 (collected 2011)	\$170 mil Taxes on \$316 mil of wages in 2014
State	% Employers who misclassify	Loss to UI	Loss to Wkrs Comp	Unpaid state income taxes
PA <sup>40</sup>	25% 14,381 misclassified employees identified	\$200 mil \$4.3 mil (recovered)	\$81 mil	
RI <sup>41</sup>			\$415K collected	\$290k collected
TN <sup>42</sup>	37% 1,930 identified <sup>43</sup>	\$8.4 - \$15 mil	\$52 - 91.6 mil \$3 mil*	
Austin, TX <sup>44</sup>				\$8,618,869 (state and federal combined)
UT <sup>45</sup>	25,063 misclassified employees over 54 months (identified by the UI Div. of the Dept. of Workforce Svces)			\$18,198 mil in unreported wages over 54 months
VT <sup>46</sup>	10-14%			
VA <sup>47</sup>	27% of audited cases 30%*			\$28
WA <sup>48</sup>	62% of audited cases <sup>49</sup>	\$2.51 mil (collected)	\$25.4 mil	\$29.7 mil (collected)
WI <sup>50</sup>	44% of audited employers			

\* Indicates figures for the construction industry only.

Source: <http://www.nelp.org/content/uploads/Independent-Contractor-Costs.pdf>

**Influence**

## **Consumers**

Amazon wants to be the most customer-centric company on earth. However, in regards to changing Amazon's reliance on classifying on-demand workers as independent contractors targeting consumers to organize boycotts in order to apply market pressure to change Amazon's behavior would not be likely. Amazon customers are driving the market demand for the Amazon Prime business model of more benefits while applying pressure to keep costs low. Amazon has to differentiate its services to its customers as retail competition is high. There are many substitutes to choose from to replace using the Amazon marketplace such as Google Express, Wal-Mart, and Target, etc. This causes rent seeking on the revenue side by reducing labor costs in order to offer Amazon Prime benefits without increasing costs to the customer.

## **Shareholders**

Similar to consumers Amazon shareholders would have little influence with regards to changing the behavior of Amazon's stakeholder's reliance on classifying on-demand workers as independent contractors. Shareholders are focused on Amazon's ability to maximize shareholder value. This is done through a strategy of being customer-centric and focusing on core competencies. The shareholders are more concerned with business strategies that keep costs low while investing all profits back into the core competencies for aggressive growth.

## **Stakeholders**

Amazon stakeholders have the most influence in being able to change the reliance on classifying on-demand workers as independent contractors. Stakeholders make the on the ground decisions to carry out shareholder interests, create and implement strategic plans. It is vital to the Amazon Prime business model to address this concern early on of misclassification of

independent contractors as it has the potential of threatening the entire Amazon Prime Now business model cost effectiveness. This holds the most influence with Amazon stakeholders as the entire Amazon Prime Now model is based around “on-demand” workers. The legal outcomes from this lawsuit as well as other similar lawsuits regarding the misclassification of on-demand workers as independent contractors could have great effect on Amazon Prime Now’s business model.<sup>19</sup> Amazon Prime Now is currently offered in 26 markets with future expectations of aggressive expansion.<sup>20</sup> Amazon Flex program is in 18 cities with future aggressive expansion as well as future intent to deliver regular parcels.<sup>21</sup> Net shipping costs have increased annually by 18 percent to \$11.5B (See Figure 3). Stakeholders are most concerned with controlling the costs of shipping as it is important to the Amazon Prime model in order to ensure that the membership costs are low while still delivering increased benefits such as quicker delivery times. It is essential to the Amazon Prime business model as Prime members outspend non-Prime customers; 69 percent of Prime spend > \$100, compared to 28 percent non-Prime (See Figure

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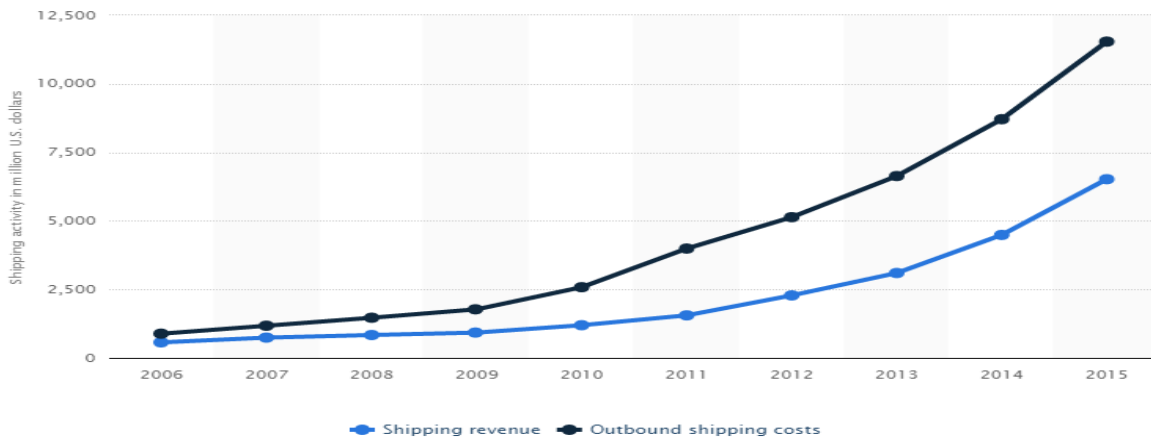
<sup>19</sup> “Uber, Postmates, Shyp, and Washio were all sued by workers, arguing that they should be classified as employees and not independent contractors.” Ribeiro, John. 2015. “After Uber ruling, pressure mounts to reclassify contractors as employees.” PCWorld.com. July 2. Accessed March 3, 2016. <http://www.pcworld.com/article/2943792/after-uber-ruling-pressure-mounts-on-companies-to-reclassify-contractors.html>.

<sup>20</sup> Amazon Prime Now in 26 Markets: Atlanta, Austin, Baltimore, Chicago, Dallas, Houston, Indianapolis, Las Vegas, Los Angeles & Orange County, Miami, Minneapolis & St. Paul, Nashville, New York City, Phoenix, Portland, Raleigh, Richmond, Sacramento, San Antonio, San Diego, San Francisco Bay Area, Seattle & Eastside, and Virginia Beach. 2016. Amazon.Com. Accessed March 6, 2016. [http://www.amazon.com/Amazon-com-Amazon-Prime-Now/dp/B00R20MPW2/ref=sr\\_1\\_1?s=mobile-apps&ie=UTF8&qid=1457415334&sr=1-1&keywords=Amazon+prime+now](http://www.amazon.com/Amazon-com-Amazon-Prime-Now/dp/B00R20MPW2/ref=sr_1_1?s=mobile-apps&ie=UTF8&qid=1457415334&sr=1-1&keywords=Amazon+prime+now).

<sup>21</sup> Demmitt, Jacob. 2015. “Amazon has big plans for Uber-like ‘Flex’ package delivery service, job postings reveal.” Geek Wire, December 16. Accessed February 3, 2016. <http://www.geekwire.com/2015/amazon-plans-to-expand-uber-style-crowdsourced-delivery-network-to-millions-of-drivers/>. Amazon Flex is in 18 Markets: Seattle, Richmond, Nashville, Portland, Raleigh, Virginia Beach, Austin, Dallas, Baltimore, Miami, Atlanta, Houston, San Antonio, Las Vegas, Phoenix, Minneapolis/St. Paul, and Indianapolis metro areas. Accessed February 4, 2016. <https://flex.amazon.com/>

4).<sup>22</sup> Stakeholders want to keep customers happy in order to continue to capture their purchasing power.

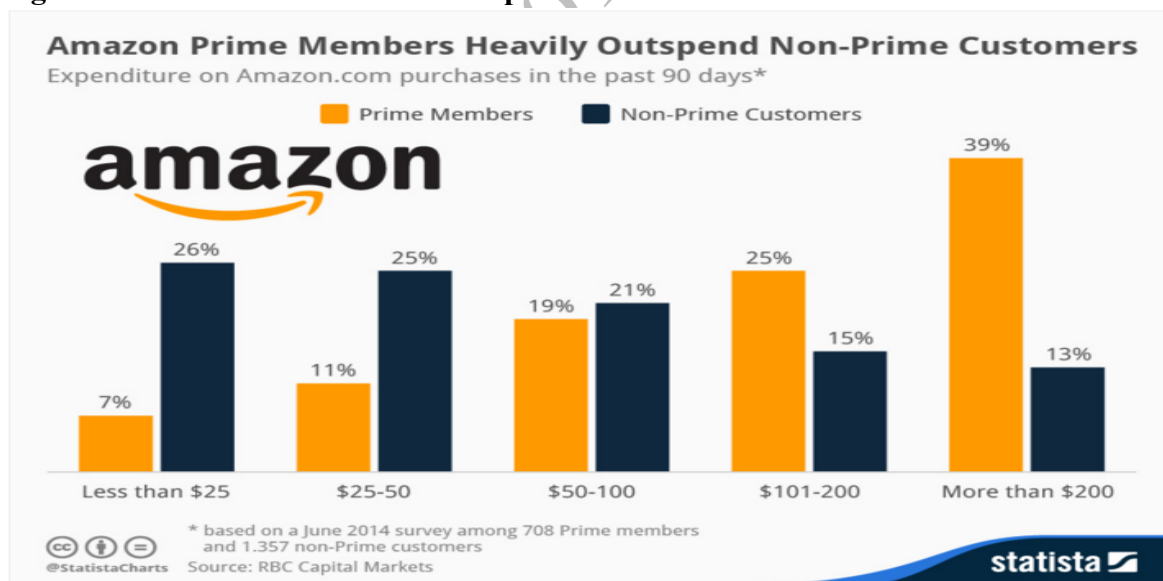
**Figure 3: Amazon's shipping revenue and outbound shipping costs from 2006 to 2015 (in million U.S. dollars)**



© Statista 2016

Source: <http://www.statista.com/statistics/236503/amazons-annual-shipping-revenue-and-outbound-shipping-costs/>

**Figure 4: Amazon Prime Members Spend vs. Non-Prime Customers**



Source: <https://www.statista.com/chart/2370/amazon-prime-spending/>

<sup>22</sup>72% Non-Prime spend under \$100, compared to 37% of Prime, 69% of Prime spend > \$100, compared to 28% Non-Prime. Richter, Felix. 2014. "Amazon Prime Members Heavily Outspend Non-Prime Customers." Statista.com. June 18. Accessed March 6, 2016. <https://www.statista.com/chart/2370/amazon-prime-spending/>.

### **III. Solutions**

#### **Options**

##### **Option 1 – Employee Classification**

National Employment Law Project (NELP) could apply pressure to Amazon stakeholders by campaigning for Amazon to reclassify the independent contractors who are delivery drivers for Amazon Prime Now through Amazon Flex program as employees. In addition, request Amazon to require all partners who hire independent contractors for Amazon Prime Now delivery drivers to be employees. Employee classification would benefit the workers by increased labor protections, unemployment insurance, workers compensation insurance, social security contributions, as well as voluntary benefits provided such as 401 (k) retirement contribution matching, stock options, or employee stock purchase plan, and healthcare they would otherwise not be eligible for. Amazon stakeholders would benefit by having greater control over quality, training, work schedules, delivery routes and performance evaluations. The potential benefits of converting the on-demand workers to employees from independent contractor would mitigate any future misclassification lawsuit risk. Converting the independent contractors preemptive to any lawsuit outcome could improve Amazon's reputation. The risk associated with this option is the increased employee related expenses to carry the drivers as employees could increase 30 percent for cost of benefits. Amazon has seen a 50 percent annual employee growth to 230,800 full-time and part-time employees as of December 31, 2015, causing higher operating expenses (See Figure 5).<sup>23</sup> This option could potentially erode already

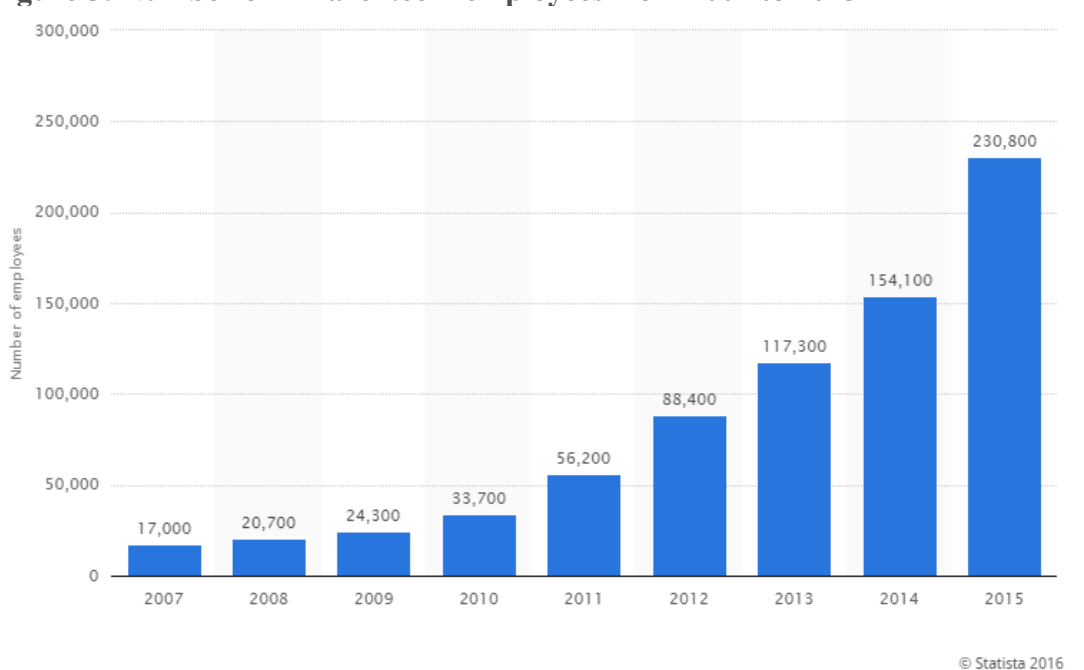
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<sup>23</sup>Growth calculation created by using Amazon 10K employees as of December 31, 2015 and original headcount from the 2014 Amazon Annual Report, 154,100 Amazon Employees as of December 31, 2014. "2014 Amazon Annual Report." Accessed January 31, 2016. file:///D:/Profile%20Data/Downloads/AMAZON%202014%20Annual%20Report.pdf.



slim profit margins overtime. However, the Amazon Flex program is less than a year old and has not yet amassed a substantial amount of on-demand drivers that would cause significant changes to margins if converted to employees. The potential liability of future lawsuits by not converting the independent contractors to employees could end up being more than the conversion which would in turn erode profit margins causing negative effects to the Amazon Prime business model.

**Figure 5: Number of Amazon.com employees from 2007 to 2015**



Source: <http://www.statista.com/statistics/234488/number-of-amazon-employees/>

## **Option 2- Unionize Amazon Prime Now and Amazon Flex On-demand Workers**

A second option to explore would be for NELP to partner with the AFL-CIO to coordinate the Amazon Prime Now and Amazon Flex on-demand workers in order to unionize.

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"Amazon 10K for Fiscal Year Ending December 31, 2015." Accessed January 30, 2016.  
file:///D:/Profile%20Data/Downloads/Amazon.pdf.

Last year on-demand drivers of Uber, Lyft, and other on-demand vehicle drivers attempted to get an ordinance in Seattle to unionize on-demand vehicle drivers passed.<sup>24</sup> There was a lot of backlash to the companies who were perceived as union-busting. Another outcome was the drivers creating driver associations, networks and a unity campaign by NY taxi drivers. Inaction by Amazon stakeholders holds high risk of backlash as previously seen with other on-demand workers at Amazon such as Mechanical Turk where on-demand workers protested alleged in-human wages by sending letters to Jeff Bezos, CEO directly.<sup>25</sup> The Mechanical Turk workers received support from Stanford and the University of California San Diego in solving collective action problems of crowd workers by creating Dynamo a collective action platform.<sup>26</sup> With a platform to bring all of the Amazon Prime Now and Amazon Flex drivers together NELP and AFL-CIO could apply further pressure to Amazon stakeholders by collectively bargaining for better employment contracts and worker protections. The largest risk to this strategy is if the Amazon Prime Now and Amazon Flex drivers are not willing to coordinate for various reasons (time, effort, costs, economy, and benefit tradeoff).

### **Option 3 – Third Worker Classification**

A third worker classification to accommodate the on-demand worker segment would alleviate the current corporate governance issue of classification of the on-demand worker falling between employee and independent contractor varying by state law.<sup>27</sup> The Department of Labor

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<sup>24</sup> Smith, Rebecca. 2016. "UNION-BUSTING. NOW THERE'S AN APP FOR THAT." NELP. March 7. Accessed March 13, 2016. <http://www.nelp.org/commentary/union-busting-now-theres-an-app-for-that/>.

<sup>25</sup>Harris, Mark. 2014. "Amazon's." The Guardian. December 3. Accessed March 7, 2016. [http://www.theguardian.com/technology/2014/dec/03/amazon-mechanical-turk-workers-protest-jeff-bezos?CMP=share\\_btn\\_fb#\\_=\\_](http://www.theguardian.com/technology/2014/dec/03/amazon-mechanical-turk-workers-protest-jeff-bezos?CMP=share_btn_fb#_=_).

<sup>26</sup> Niloufar Salehi, Lilly C. Irani, Michael S. Bernstein, Ali Alkhatib, Eva Ogbe, and Kristy Milland. 2015. "We Are Dynamo: Overcoming Stalling and Friction in Collective Action for Crowd Workers." Stanford. April 18. Accessed March 7, 2016. <http://hci.stanford.edu/publications/2015/dynamo/DynamoCHI2015.pdf>.

<sup>27</sup>Chayka, Kyle. 2015. "A Third Way for Temporary Workers." Pacific Standard. August 7. Accessed February 25, 2016. <http://www.psmag.com/nature-and-technology/defining-an-employee-in-the-digital-economy>.

(DOL) is in the beginning stages of trying to assess the size of “contingent worker” segment with a report expected in 2017.<sup>28</sup> A NELP campaign could influence Amazon stakeholders to comply with its corporate social responsibility to join a coalition with other companies that are dependent on the on-demand business model to lobby the government for this new worker classification that could provide for rights & protections to on-demand workers, while still providing more flexible work, and allowing for an alternative compensation plan (See Figure 6). A third worker classification that could allow for unemployment insurance, workers compensation benefits, and social security. This option would allow for continued on-demand workers to support the Amazon Prime Now through Amazon Flex program by controlling shipping costs as delivery services using on-demand workers is 35 percent of standard shipping costs.<sup>29</sup> In addition, the ability for Amazon stakeholders to scale delivery services up or down as a result of demand. Political risks associated with this option is that it is an election year and parties are polarized meaning that it could be quite difficult to get any new labor laws passed quickly. In order to get any new policies passed would take a lot of time, effort, and money. In order for the coalition to gain any ground in a third worker classification they would need to start with a gaining the support of a politician who is already in support of change such as Senator Mark Warren to influence a new policy.<sup>30</sup> Another risk could be this new classification is complex to figure out what benefits and protections that the dependent contractor would receive. If Amazon

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<sup>28</sup> Morran, Chris. 2016. "Government Will Try To Figure Out How Many Americans Are Now Part Of The "On-Demand" Workforce." Consumerist. January 26. Accessed March 5, 2016. <https://consumerist.com/2016/01/26/government-will-try-to-figure-out-how-many-of-americans-are-now-part-of-the-on-demand-workforce/>.

<sup>29</sup> Saito, Mari. 2016. "Exclusive: Amazon expanding deliveries by its 'on-demand' drivers." Reuters.com. February 18. Accessed March 4, 2016. <http://www.reuters.com/article/us-amazon-com-logistics-flex-idUSKCN0VR000>.

<sup>30</sup> Senator Warner is Democrat representing Virginia who is in support of a third job category to support “on-demand” workers. Warner, Mark R. 2015. "Sen. Mark Warner: Asking tough questions about the gig economy (Washington Post)." Mark R. Warner Senator from the Commonwealth of Virginia. June 19. Accessed March 6, 2016. [http://www.warner.senate.gov/public/index.cfm/newsclips?ContentRecord\\_id=9ec95aab-a96c-4dd5-8532-b45667013d2e](http://www.warner.senate.gov/public/index.cfm/newsclips?ContentRecord_id=9ec95aab-a96c-4dd5-8532-b45667013d2e).

stakeholders chooses not to join the coalition and does not react to the current allegations and does not change policies, thus waiting for the outcome of legal proceedings before reacting there could be several risks. The risk potential is new lawsuits in each of the 26 Amazon Prime Now markets for Amazon Prime Now delivery drivers and potential Amazon Flex drivers. The increase in on-demand worker lawsuits for misclassification as an independent contractor across the US could indicate the legal climate for such labor practices. Additional risks of letting the market correct itself and legal regulation to catch up could be a long-term strategy and take many years to resolve in the mean-time costing Amazon an unknown amount in employee related expense, back wages, fines, and legal fees.

**Figure 6: NELP Report on Major Companies in the On-Demand Economy**

Major Companies in the On-Demand Economy			
Name	Field	Size of Workforce	Operating Areas
Uber	Transportation	160,000 <sup>i</sup>	International
Lyft	Transportation	50,000 <sup>ii</sup>	U.S.
Sidecar	Transportation	6000 <sup>iii</sup>	Major U.S. Cities
Handy	Home Services	5000 <sup>iv</sup>	U.S.
Taskrabbit	Home Services	30,000 <sup>v</sup>	International
Care.com	Home Services	6,600,000 <sup>vi</sup>	International
Postmates	Delivery	10,000 <sup>vii</sup>	U.S.
Amazon Mechanical Turk	Crowdwork	500,000 <sup>viii</sup>	International
Crowdfunder	Crowdwork	5,000,000 <sup>ix</sup>	International
Crowdsourc	Crowdwork	8,000,000 <sup>x</sup>	International
Clickworker	Crowdwork	700,000 <sup>xi</sup>	International

Source: <http://www.nelp.org/content/uploads/Rights-On-Demand-Report.pdf>

#### **IV. Recommendation**

##### **Third Worker Classification**

NELP's recommendation is to pursue a third worker classification to accommodate the on-demand worker. In order to achieve a third worker classification a coalition would need to be built. The support of Amazon stakeholders, Amazon being the largest retailer and one of the largest companies with a workforce over 200,000, could have greater impact to gain supporters on board with the coalition. Amazon would benefit as this strategy supports their long-term growth strategy and the Amazon Prime Now business model that relies on on-demand workers." Amazon's stakeholders would be supportive of such initiative as the potential third worker classification allows for flexible on-demand workers that would still be cheaper than an employee and would cost less than lawsuits from misclassified independent contractors. NELP garnering support from Amazon stakeholders to uphold its corporate social responsibility would have the potential for other organizations, who rely on on-demand workers such as Uber, Lyft, Fed-Ex, UPS, Shyp, etc., who would benefit from a third worker classification, to build a coalition that would lobby for a new classification. As seen previously in figure 6 the companies that rely on on-demand workers crosses almost every industry and is growing rapidly growing. This strategy provides for a broader reaching solution to independent contractor exploitation. Stopping one corporation, Amazon, from abusing independent contractors does not necessarily stop the entire industry from doing so. One of the largest issues of independent contractor exploitation is the definition of employee vs. independent contractor varies by case and by state law. The impact is greater if change can be affected across the nation.

NELP could apply pressure by pointing out to Amazon the risk exposure involvement of trade unions such as AFL-CIO or Teamsters. Amazon would benefit by being at the forefront of

any new policy development for a third worker classification for the on-demand worker. NELP's expertise on policy development would ensure the correct worker classification is adopted allowing the appropriate protections, benefits, flexible work, and alternative compensation.<sup>31</sup> Amazon will have higher risk exposure if the trade unions spearhead the change in policy. Collectively the weight of a coalition spearheaded by Amazon could start a public campaign for a third worker classification to protect the on-demand worker. Amazon and the coalition could then lobby an already known supporter, Senator Mark Warren, to submit policy for the third worker classification. 2016 is a major presidential election year to obtain support from the public as well as on-demand workers and employers who want to sign onto the campaign. Hilary Clinton has already made public that she promises to, "Crack down on bosses who exploit employees by misclassifying them as contractors."<sup>32</sup> Having the support of Hilary Clinton and Sen. Mark Warren would provide strong credibility to the campaign. This recommendation is a win-win for companies, the government, and the on-demand workers as all would benefit. The state and federal governments would directly benefit from taxation as well as including workers in the employment category. Estimates of increased income as a result of new classification previously seen in figure 2 Annual Losses Due to Independent Contractor Misclassification.

### **Risk Mitigation**

The third worker classification strategy has several risks that NELP will need to keep ahead of. The first risk is gaining the support of Amazon to want to build a coalition and not just wait for legal outcomes of its existing lawsuit. It is very important for NELP to gain enough

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<sup>31</sup> "NELP works from the ground up to build systemic change. We collaborate with community partners on advocacy campaigns, developing and testing innovative policy ideas in cities and states, then scaling them up to effect change nationally." n.d. National Employment Law Project. Accessed March 6, 2016. <http://www.nelp.org/campaign/turning-gig-jobs-into-good-jobs/>.

<sup>32</sup> Sahadi, Jeanne. 2015. "When an Independent Contractor is Really an Employee." Money CNN. July 16. Accessed March 7, 2016. <http://money.cnn.com/2015/07/16/pf/independent-contractors-employees/>.

support from the public through campaigns to put pressure on Amazon in order to advocate on behalf of the on-demand worker. The second is time, there is a very small window of opportunity to gain political support during the election window as well as race to get campaigns moving to pressure courts for favorable outcomes of lawsuits for on-demand workers. It will be pertinent to the success of the on-demand worker coalition to move quickly using heavy hitters at the top like Amazon to garner support. The third risk is the costs of lobbying, campaigns, and coalition building. This strategy is quite expensive and could be a long-term strategy to get effective changes for a new worker classification. NELP will need to show the costs of unionization of on-demand workers and the cost of employee classification are higher than a third worker classification which benefits offset its costs. Having the DOL study show the economic and social impact of a new classification would gain credibility of a third worker classification.

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## References

2015. "2014 Amazon Annual Report." Accessed January 31, 2016.  
file:///D:/Profile%20Data/Downloads/AMAZON%202014%20Annual%20Report.pdf.
- n.d. *ABT Holdings*. Accessed February 1, 2016. <http://www.abtholdings.com/about.html>.
2015. "ABT Holdings Quarterly Report." *OTC Disclosure & News Service*. November 1. Accessed February 1, 2016.  
<http://www.otcm Markets.com/financialReportViewer?symbol=ABOT&id=146209>.
2015. "ABT's Scoobeez plans to expand its services in San Francisco's Hyper Efficient Logistics Market." *NASDAQ Globe Newswire*. September 28. Accessed January 31, 2016.  
<https://globenewswire.com/news-release/2015/09/28/771407/0/en/ABT-s-Scoobeez-plans-to-expand-its-services-in-San-Francisco-s-Hyper-Efficient-Logistics-Market.html>.
2016. "Amazon 10K for Fiscal Year Ending December 31, 2015." Accessed January 30, 2016.  
file:///D:/Profile%20Data/Downloads/Amazon.pdf.
- n.d. *Amazon Jobs Principles*. Accessed February 1, 2016. <https://www.amazon.jobs/principles>.
2016. *Amazon Key Statistics*. January 31.  
<http://finance.yahoo.com/q/ks?s=AMZN+Key+Statistics>.
2016. *Amazon.Com*. Accessed March 6, 2016. [http://www.amazon.com/Amazon-com-Amazon-Prime-Now/dp/B00R20MPW2/ref=sr\\_1\\_1?s=mobile-apps&ie=UTF8&qid=1457415334&sr=1-1&keywords=Amazon+prime+now](http://www.amazon.com/Amazon-com-Amazon-Prime-Now/dp/B00R20MPW2/ref=sr_1_1?s=mobile-apps&ie=UTF8&qid=1457415334&sr=1-1&keywords=Amazon+prime+now).
- Berliner, Daniel, Anne Regan Greenleaf, Milli Lake, Margaret Levi, and Jennifer and Noveck. 2015. *Labor Standards in International Supply Chains: Aligning Rights and Incentives*. Edward Elgar Pub.
- Chayka, Kyle. 2015. "A Third Way for Temporary Workers." *Pacific Standard*. August 7. Accessed February 25, 2016. <http://www.psmag.com/nature-and-technology/defining-an-employee-in-the-digital-economy>.
2015. "Class Action Complaint Taree Truong, Khaled Alkojak, Olga Georgieva, and Cynthia Miller v. Amazon.com, INC., Scoobeez, INC., and ABT Holdings, INC." Los Angeles .
- Gourevitch, Peter A. & Shinn, James. 2005. *Political Power & Corporate Control: The new Global Politics of Corporate Governance*. Princeton & Oxford: Princeton University Press.
2015. "Independent Contractor (Self-Employed) or Employee?" *IRS*. August 5. Accessed February 24, 2016. <https://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-Self-Employed-or-Employee>.
2015. "Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries." *National Employment Law Project*. July. Accessed February 29, 2016. <http://www.nelp.org/content/uploads/Independent-Contractor-Costs.pdf>.



- Jeszeck, Charles A. 2015. "Contingent Workforce: Size, Characteristics, Earnings, and Benefits." *U.S. Government Accountability Office*. April 20. Accessed February 29, 2016. <http://www.gao.gov/assets/670/669766.pdf>.
- Locke, Richard M. 2013. *The Promise and Limits of Private Power*. Cambridge: Cambridge University Press.
- Morran, Chris. 2016. "Government Will Try To Figure Out How Many Americans Are Now Part Of The "On-Demand" Workforce." *Consumerist*. January 26. Accessed March 5, 2016. <https://consumerist.com/2016/01/26/government-will-try-to-figure-out-how-many-of-americans-are-now-part-of-the-on-demand-workforce/>.
- Niloufar Salehi, Lilly C. Irani, Michael S. Bernstein, Ali Alkhatib, Eva Ogbe, and Kristy Milland. 2015. "We Are Dynamo: Overcoming Stalling and Friction in Collective Action for Crowd Workers." *Stanford*. April 18. Accessed March 7, 2016. <http://hci.stanford.edu/publications/2015/dynamo/DynamoCHI2015.pdf>.
- Ribeiro, John. 2015. "After Uber ruling, pressure mounts to reclassify contractors as employees." *PCWorld.com*. July 2. Accessed March 3, 2016. <http://www.pcworld.com/article/2943792/after-uber-ruling-pressure-mounts-on-companies-to-reclassify-contractors.html>.
- Richter, Felix. 2014. "Amazon Prime Members Heavily Outspend Non-Prime Customers." *Statista.com*. June 18. Accessed March 6, 2016. <https://www.statista.com/chart/2370/amazon-prime-spending/>.
- Roose, Kevin. 2014. "Does Silicon Valley Have a Contract-Worker Problem?" *New York*. September 18. Accessed February 28, 2016. <http://nymag.com/daily/intelligencer/2014/09/silicon-valleys-contract-worker-problem.html>.
- Sahadi, Jeanne. 2015. "When an Independent Contractor is Really an Employee." *Money CNN*. July 16. Accessed March 7, 2016. <http://money.cnn.com/2015/07/16/pf/independent-contractors-employees/>.
- Saito, Mari. 2016. "Exclusive: Amazon expanding deliveries by its 'on-demand' drivers." *Reuters.com*. February 18. Accessed March 4, 2016. <http://www.reuters.com/article/us-amazon-com-logistics-flex-idUSKCN0VR000>.
- n.d. *Scoobeez.com*. Accessed February 1, 2016. <http://scoobeez.com/index.php/about-scoobeez>.
- Smith, Rebecca. 2016. "UNION-BUSTING. NOW THERE'S AN APP FOR THAT." *NELP*. March 7. Accessed March 13, 2016. <http://www.nelp.org/commentary/union-busting-now-theres-an-app-for-that/>.
- Staff of the Joint Committee on Taxation. 2007. *Present Law and Background Relating to Worker Classification for Federal Tax Purposes*. IRS Report, Internal Revenue Service. Accessed February 24, 2016. <https://www.irs.gov/pub/irs-utl/x-26-07.pdf>.

2015. *Statista.com*. Accessed March 6, 2016. <http://www.statista.com>.

2014. *United States Department of Labor*. May. Accessed March 13, 2016.  
<http://www.dol.gov/whd/regs/compliance/whdfs13.htm>.

Weil, David. 2014. *The Fissured Workplace: Why Work Became So Bad For So Many and What Can Be Done to Improve It*. Cambridge & London: Harvard University Press.

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