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Use gig companies' trip histories to establish wage loss claims

The information available from the app-based company is different from typical paystubs

BY JACK BOLLIER AND PHIL JOHNSON

Gig work is here to stay. According to recent Pew Research Center results, 16 percent of Americans have made money working for an online platform. The 2020 passage in California of Proposition 22, which allowed app-based delivery companies to label their workers as independent contractors, cemented gig work as part of our state's labor market.

With so many people working such jobs, more plaintiffs' attorneys are seeing the same pattern: a client claims lost earnings but possesses no documents substantiating the claimed loss from before or after the injury, and no doctor's note placing them off work. If the client is a gig worker, there may be a solution.

A trail of data

It would not be true gig work if it did not leave a trail of data for analysis. Tech companies make some of this data available to their workers in the form of certain financial records and reports which are available through the apps used to match workers with jobs/tasks. Some of these companies also provide links on their websites that allow workers to request their data. Uber, for example, provides information through drivers.uber.com.

If the client is tech savvy, have them collect the information and share it with you. If the client needs help, use Zoom's screen-share feature to walk them through the process, or they can turn over control to you to collect the data, while they watch and provide consent.

The information available to the client from the app-based company is different from typical paystubs. Paystubs may only show the total number of hours worked before and after the injury, broken down into pay periods. Tech companies, on the other hand, provide more granular detail. In theory, gig workers are constantly entering new work agreements. For that reason, companies like Lyft and Uber strictly track the times during which drivers are en route to a ride and time spent with passengers. These trip histories include details about the date and time of each job, when the service was requested, distance traveled, and the amount paid for each trip.

This information demonstrates your client's typical earnings before the injury, and time missed following injury. Perhaps your client's vehicle required repairs. Car shop receipts and work history documents clearly demonstrate the exact dates your client was unable to drive while their car was being repaired and the date they returned to work. This is proof of your client's effort to



mitigate their losses, while also showing that their time off was reasonable.

If the client's work habits changed due to the injury, that too can be demonstrated with gig work data. Perhaps your client worked a steady schedule five days a week with regular hours prior to the injury, but can no longer tolerate long stretches of static sitting behind the wheel. For that reason, they now work nearly every day, for shorter than regular shifts, in an effort to maintain their past level of earnings. While earnings may be the same, the records demonstrate a life without weekends, reduced time for loved ones, and, ultimately, plaintiff's loss of life's enjoyment, a non-economic harm under CACI 3905A.

Data is the building block that substantiates a forensic economist's report. Once you have these records, work with your economist to incorporate this information into their reports and tables. Proper use of such evidence can prove valuable for you and your client.

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