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Beyond Unprecedented: The Post-Pandemic Economy
Episode 1: "You Can't Hire Me, I Quit"

[00:00:03] **Kate Andrias:** The pandemic gave rise to a growing realization of workers' essentialness, and that helped encourage workers to assert their rights. If we as a society are able to capitalize on these developments, then I think there's the real possibility of changing some of the way in which work is structured.

[00:00:21] **[Media clips of journalists saying "unprecedented"]:** The coronavirus pandemic has tanked the global economy with unprecedented speed. The steepness of the decline here is unprecedented. This is a crisis that is unprecedented. It is unprecedented, and we just don't know.

[00:00:35] **Eric Talley:** This is *Beyond Unprecedented: The Post-Pandemic Economy* from Columbia Law School and the Ira M. Millstein Center for Global Markets and Corporate Ownership. I'm Eric Talley, Sulzbacher Professor at Columbia Law School and co-director of the Millstein Center.

[00:00:50] **Kate Waldock:** And I am Kate Waldock, a research fellow at the Millstein Center and a 2L at Columbia Law.

[00:00:59] **Talley:** Every so often, economic activity can swing so wildly and to such extremes that it earns a special label. We had the Great Depression, the Dot-Com Bubble and bust, and the Great Recession. And now, at a time when no employer, it seems, can find enough workers, we have something that is starting to be known as the Great Resignation. Restaurants have cut hours because they don't have enough waitstaff. Grocery store clerks and restockers are in scarce supply. Airlines have canceled flights. And in Massachusetts, the governor has had to call out the National Guard to drive school busses. Now, since the onset of the COVID-19 crisis, over four million workers have disappeared from the American workforce. In August alone, nearly 3% of American workers quit their jobs. That's the highest rate ever in the two decades that we've been tracking that number. And for workers who remain, the number sitting on multiple job offers is also at an all time high. It's surprising since the pandemic directly led to 20 million layoffs and business shutdowns and mile long waits at food pantries. But apparently, quite a few Americans aren't interested in going back to work at all.

[00:02:16] **Waldock:** Or at least not work the way it used to be. There's lots of theories about why workers are staying at home: increased unemployment benefits, a buildup of savings during the quarantine period, or no one to look after the kids. But no matter whether people are quitting to look for a better gig or dropping out of the workforce altogether, there's a wave of labor activism—strikes and new drives to unionize—from workers still on the job. So we have to ask: Are Americans looking at the post-pandemic economy and deciding that they want work to be fundamentally different? So, Eric, have you learned any lessons about your own personal work style during the pandemic?

[00:02:54] **Talley:** You know, I got very used to this Zoom lifestyle. And while it sort of dragged on me a little bit, I also found it to be incredibly convenient because I could schedule things in a way that didn't have to take account of transit costs and so forth. Since I've been back to, kind of, more real work—going into the office every day teaching my class—I've felt a sense of fatigue that I wasn't even used to before the pandemic.

[00:03:20] **Waldock:** I similarly feel the same sort of exhausted, and I was anxious about getting sick, and I think the anxiety is a big part of it for me.

[00:03:29] **Talley:** The thing that's quite astonishing about this is how broadly scoped some of these difficulties in trying to manage work-life balance and trying to navigate the things that we at least resigned ourselves to be able to do before the pandemic have taken hold. And I guess that makes it an appropriate time to introduce our guest today, Professor Kate Andrias. Kate teaches and writes in the fields of constitutional law, labor law, and administrative law at Columbia, and she previously practiced labor law and election law and served in the Obama administration. In addition to her law professor gig, she serves as the commissioner and rapporteur—which is a super-cool title, by the way—for the Presidential Commission on the Supreme Court of the United States. So welcome, Kate.

[00:04:34] **Andrias:** Good to be here.

[00:04:36] **Talley:** Is this the first time you've had the most awesome title of rapporteur?

[00:04:40] **Andrias:** It is. It is the first, and I hope it might be the only time I have that title.

[00:04:46] **Waldock:** So to start out, from a historical perspective, I'd like to know, just how unprecedented is the current work shortage being experienced by the U.S. and many other nations?

[00:04:57] **Andrias:** Well, it's hard to be definitive in answering that because we haven't been keeping track of these numbers for all that long. But it is, at least in recent memory, pretty unprecedented. So if you just compare August 2021 to August 2020, workers quit their jobs nearly 20 million times between April and August 2021, which is 60% higher than the same period in 2020.

[00:05:23] **Talley:** And Kate, why don't those numbers get picked up in things like unemployment rates, which are also relatively low right now?

[00:05:31] **Andrias:** Yeah, there's a few reasons for that. One is that the unemployment rates only track people who are wanting to be part of the workforce. So when a worker drops out of the workforce, either retires or decides not to keep looking for work or participates in the workforce in some way that isn't really counted as labor, for example, through taking care of their children—which for me, at least, was a defining problem of the pandemic and was, I think, for many workers and, in particular, many women workers. But those kinds of unpaid labor or casual labor don't get counted as labor, and so the unemployment numbers really are only counting people who are actively looking for work in the more traditional labor market.

[00:06:10] **Waldock:** And is this wave of resignations and labor force exits, is that due to a fear of COVID? Or has the pandemic caused workers to reassess and change their priorities?

[00:06:19] **Andrias:** My sense is that there's a number of factors leading to this dynamic, which is part of why it's such a significant trend. Certainly there are a certain number of pent-up resignations, so people who might have quit during the last year and a half or two years but didn't because things were so uncertain, so they delayed quitting. And now that we are starting to maybe come out of the pandemic, people feel a little bit more secure and are quitting jobs that they otherwise would have quit earlier. There's also some number of people who had what some people have referred to as a pandemic epiphany—that they just really wanted to change the way they were living their lives, and this became clear because they were spending more time at home or they weren't commuting hours and hours to work. And so they were able to use the pandemic to shift their priorities and shift their life course. Some degree of this, I think, is explained because people have a little bit more savings than they used to because of some of the pandemic stimulus money. There's also the childcare issue I mentioned, which is a lot of people just haven't been able to work because they haven't had anyone to take care of their children—schools have been closed, daycare centers have been closed, even when they're open, they don't stay open. And so a lot of people have left the workforce because they simply can't take care of their children and work. All those factors I was focusing on are in some ways, positive factors, right? Spending more time with your children or getting to reassess your life or finally having the financial cushion that enables you to leave a job you wanted to leave. But a lot of the Great Resignation and the growing labor unrest is not due to positive changes but rather to feelings of burnout, dissatisfaction at work. And some of that is COVID related—some people's jobs got a lot harder during COVID—but a lot of the problem, I think, reaches before COVID, and it has to do with choices about how we structure work in this society.

[00:08:05] **Waldock:** So we've gone through this long period where there's, kind of, been some negative feelings about organized labor and unions. Fast-forward to the pandemic, when we were banging pots and pans at 7 [p.m.] in appreciation of essential workers. And so I think that there has been a shift in perception of people on the ground, essential workers, people that we see in stores that are providing customer service every day. Do you think that, A, this shift is present and, B, will it last?

[00:08:36] **Andrias:** I think there's two really important shifts, and one is that, I think many people are much more appreciative of the hard work that workers engage in, especially low-wage workers, health care workers, and restaurant workers, hospitality workers, and the risks that they've endured during the pandemic. There's also been a really marked uptick in support for unions. You see this both in terms of new kinds of workers organizing. So we see graduate teachers unionizing, some efforts among new athletes, journalists, fast food workers, teachers even in red states. So we're seeing more union activity. But also, if you just look at data when people are asked, do you favor unionization or would you want to be in a union or do you think positively of unions? The numbers have gone way up. Whether or not those will materialize into real changes in how work is structured or whether more workers are in unions and whether this will be durable, I think, really comes back to this question of, what kind of legal and policy responses do we make in response? So if all the ground rules stay the way they've been, which make it really, really hard for workers to organize unions, makes it really hard for workers to win wage increases, then my fear is that these will be passing trends. But if workers are able to capitalize, and if we as a society are able to capitalize on these developments, then I think there's the real possibility of changing some of the way in which work is structured.

[00:10:09] **Talley:** So back in the day, you were an on-the-ground union organizer. One thing that's kind of interesting right now, I mean, for many, many years, organized labor was very much on the back pages of the newspaper, and I think by many accounts in relatively precipitous decline. But there are a lot of strikes going on right now involving pretty well-known companies, such as John Deere and Kellogg's, the breakfast cereal manufacturer. There was almost a strike in Hollywood of the employees behind the cameras. There are ongoing organization drives in industries that haven't traditionally been the hotbeds of unionization, like digital media and even graduate students at our top universities, Columbia being one of them. This uptick in organization activity and strike activity, at least perceived uptake, is it real and is it related to the elevated quit rates in the great resignation?

[00:11:05] **Andrias:** There is definitely an uptick in strike activity. It's less clear right now how much of an uptick there's going to be in successful organizational activity. But with respect to strike activity, there's thousands of workers who are on strike right now and many more strikes this past month than there have been in years. And one of the interesting things is that it's really across a range of industries. Which, like you mentioned, manufacturing workers who haven't struck in massive numbers in years, in part because their strikes were so terribly crushed in the 1980s. But manufacturing workers are again striking. We see strikes by hospital workers, by telecom workers, as you mentioned, strikes in the arts, or potential strikes. And then organizing activity, I think, among a lot of new groups—so, gig workers—and some of this is enabled by COVID. When there's a tighter labor market, it's harder for employers to replace workers who go on strike. And one of the very unique things about U.S. labor law is that it does allow employers to not just temporarily replace but actually permanently replace workers who exercise what is theoretically a protected right, the right to strike. So the tighter labor market, I think, helps make it possible for workers to strike. I think also the pandemic gave rise to a growing realization of workers essentialness, this important role that workers play in the economy, and that helped encourage workers to assert their rights. And then, for many years now, we've been seeing stagnant worker wages while corporate profits have just soared, and it's been happening for a while. But the pain of the pandemic and the vast wealth that accrued to the very wealthiest people during the course of the pandemic, I think, heightened the sense that there's something really wrong in the way we distribute wages.

[00:12:55] **Talley:** There are commentators out there that have argued that the generous governmental benefits that we have seen rolled out during the pandemic, and to some extent continue to today, are partially responsible for the large resignation numbers. Do you have a take on this assertion? To what extent might it cut the other way? Child care benefits, and so forth? How would we know whether governmental safety nets have been pushing up the resignation wave or dampening it?

[00:13:29] **Andrias:** I think it's really hard to figure that out, and in part because there are so many different contributing factors to the problems facing workers today. But, clearly, the fact that people have a little bit more of a financial cushion might help some people decide not to take a job that they think would really be a bad thing for them personally. It gives people a little bit more freedom to actually make a choice about employment, to make a free uncoerced choice about employment. But I do think some of those statements are overstated. I mean, the savings for the bottom quarter of households have gone up, and they've gone up quite a bit, but they are still really low. The numbers average of about a thousand dollars for the bottom quarter of household. So it's not like people have felt like the benefits have been so generous that people can sit home and just not work at all. But what they have done is given people a little bit more flexibility to say, I'm not going to accept those conditions.

[00:14:22] **Waldock:** That's a great point. We've been talking a lot about the law and economics. What role does labor and employment law play in addressing a pandemic-induced labor shortage? For example, are employer vaccine mandates keeping workers away, and is that even legal?

[00:14:38] **Andrias:** Certainly, there's pretty wide consensus that employers do have authority to mandate vaccines. And that's true, certainly, for vaccines that have been fully authorized. But they do have to also allow for certain exemptions for reasons of disability and religion, and how wide those exemptions have to be, I think, is something that's being litigated now, and that's a little bit unclear. There's not a lot of clear data yet about whether those vaccine mandates are causing people not to work. And I think it can cut both ways.

There are certainly lots of workers who feel more comfortable going back to work once they know that vaccination rates both in the public and among their coworkers are high. And then there's also workers who don't want to be vaccinated. But so far, I think the data suggests that when these mandates have gone into place, the vast majority of workers have complied with them. And so it's a pretty marginal number that are actually making decisions to leave work because of a vaccine mandate.

[00:15:34] **Waldock:** If you could look into your crystal ball and project out what's going to happen in the future, what do you see for the long run?

[00:15:40] **Andrias:** Yeah, in some ways, I think this is where your law question really comes in. We could go two ways, right? We could go back to where we were, where workers have really very little power in terms of setting the terms and conditions of work, where they have to take whatever jobs are on offer. They have very little ability to set their schedules or determine how much time they spend with family. No paid leave. And that's what work is like for many people, not those of us who are lucky enough to be tenured at universities but for many, many, many people in the economy. Rising precarity, where your jobs aren't guaranteed, where you're not even classified as an employee, and therefore you don't have all sorts of rights like unemployment insurance and health care and so on. So we very well might go back to that, I think, once the economy is fully up and running. But we could also make different choices and, in particular, different choices regarding the law and what the rules of the game are. And if we do make different choices about what the law should be, then I think that that can help shift what work looks like.

[00:16:47] **Waldock:** So that was a diplomatic answer. So it could be good or it could be bad. I mean, are you optimistic that we're going to make those choices?

[00:16:54] **Andrias:** Yeah. In some ways, I am optimistic. I mean, that my date back to my nature or the fact that I was a union organizer, way back when. And I really do think that people have the ability to make change through collective action. And I think that the recent upsurge in strike activity and also in organizing activity could potentially help bring about some real changes in how workplaces are structured and also create enough political pressure for there to be the kinds of changes we need to see with respect to policy. Whether we're going to have wholesale labor law reform at the federal level, I would say I'm fairly pessimistic about that in the short term. But I think that there is a lot of interesting reform happening at the state and local level and at the regulatory levels. But also in the labor agencies, at the NLRB [National Labor Relations Board] and the DOL [Department of Labor], that can help provide a fair set of rules so that that kind of collective action by workers can, potentially, produce a different future. So I would say very cautiously optimistic.

[00:17:54] **Talley:** One thing that just seems critical, particularly as the U.S. has transitioned into much more of a service oriented economy, is that competition is global now. How does that impact the fact that other major industrialized ascendant nations—Indias, the Chinas of the world—may make different choices and therefore are going to put themselves at a competitive advantage overall. And one other question is, to what extent do employers start responding by saying, OK, we're now going to automate big chunks of the labor force? And it's already happening on most college campuses around, or many college campuses around the country this year. You can phone a food delivery service and a robot will show up with your pepperoni pizza. So those two factors, globalization and automation, are complications. What is your thought about those?

[00:18:45] **Andrias:** Much of the automation that we're seeing is not removing work but actually just increasing the authority and control that employers have over workers. So the problem of algorithmic management, where employers are now tracking every move that workers make. And that's really, in some ways, the more pressing threat to workers from automation right now. I tend to be in that school of thought that robots are not in the near term going to replace all work, and that will probably create other work the more, when they pick up work. But even if we did see a world in which robots take over, there's the question of how are the profits from that change distributed, and what does that mean? Maybe that means we all get a lot more leisure time. Or maybe it means some of us get a lot more leisure time and a lot more money, and the rest of us can't survive. But that's a choice, and we shouldn't treat that as an inevitable outcome. And kind of the same thing with globalization. We had globalization in the 1890s, 1900s, there was issues around globalization. We had a huge push of globalization in the '70s, '80s, '90s, and it meant that the work changed that was occurring in this country, it meant that manufacturing, in particular, there was a lot of downward pressure on manufacturing jobs and unionized manufacturing jobs. But there's nothing inherent about auto work that makes it well paid versus, you know, fast food work. And so fast food work could also be well paid if it were organized and if the rules were fair. Meanwhile, if you look at us in comparison to other industrial democracies, most other industrial democracies have paid family leave. Most have much more generous union rights and employment rights. So I'm not sure that we are in the position where we're being dragged down by other economies. So, you know, globalization, again, it is an issue for workers, and there has to be change. But what that looks like depends on the kinds of policy and legal responses we make in response to those macroeconomic changes.

[00:20:40] **Talley:** Can I ask you a little bit about statutory evolution in this field over the last few years? So a real hotbed, but far from the only one, has been California, which has had something that I think is known as AB5 legislative bill that would essentially codify a California Supreme Court opinion that distinguishes between independent contractors and employees, largely for purposes of worker benefits for employees. Which was then countered by a proposition, Prop. 22, which tried to create what is essentially a third category of workers: not independent contractors and not employees but sort of a Goldilocksian middle between them of gig workers who would have some benefits but not all of the benefits that a full blown employee would have in California. Now Prop. 22 was recently in a trial court invalidated, but I understand the legal battle continues there. To what extent does this type of legislative, regulatory, or proposition reform, do you think it's going to take hold nationally, and is it already?

[00:21:55] **Andrias:** Well, what is already happening is really widespread debates about what rights workers should have and how we should define them. So the history that you're talking about, what's really at the crux of it is whether or not workers can be defined as non-employees, as independent contractors, and therefore not eligible for a host of things. Under under state law, it means they're not eligible for things like state minimum wages and unemployment insurance. When they're defined as independent contractors under federal law, it means they can't organize unions; it means they aren't entitled to federal minimum wages. So there's a lot at stake in this question of how workers are defined. I think that there's a growing feeling among labor law experts that these are rights that all people who are working should have. The rideshare companies have responded, as you mentioned, with really intense efforts to try to foreclose the possibility that these workers will be defined as employees and get the whole suite of rights that employees are entitled to. And so the drive to come up with this middle category has been pushed in large part by the rideshare companies and other gig economy companies that recognize that they need to do something in terms of offering basic rights, but they don't want to be subject to all of the legal requirements. And so I think it's an area that there's going to continue to be a lot of debate. I'm not convinced that Uber and Lyft and the other companies will prevail. It's an interesting case. I mean, California was interesting. They spent $200 million to pass the ballot proposition that you were talking about to overrule the state legislation. And so there's a lot at stake for the companies. And I think it's really an open question: What's going to happen?

[00:23:42] **Waldock:** If you think about this independent contractor recharacterization and compare that to just raising the minimum wage or providing more paid leave, what do you think is the single change that would have the biggest impact on workers?

[00:23:58] **Andrias:** So if I could wave a magic wand, the change that I would urge would be to create really much more robust collective rights for workers because I think when workers have that kind of collective power, are able to organize into unions, they can then exercise that power both politically to enact the kind of legislation you're talking about and at the worksite to bargain for the kinds of benefits you're talking about. So if I were to just be able to pick one change, it would be that one because it, kind of, fundamentally shifts how power is distributed and then enables the other kinds of changes. But if you say, OK, take that one off the table, what's the individual benefit that seems most important? It's a lot harder for me to choose, but I do think more generous paid family leave is really important for a lot of people. So is unemployment regimes that enable people who are out of the workforce to continue to survive and to have time to look for another job. It's a lot harder for me to choose just one particular regulatory policy.

[00:25:02] **Waldock:** That's OK, we can have them all.

[00:25:03] [Laughter.]

[00:25:05] **Talley:** Well, with great resignation, I must say that even though I could go on talking about this all day, I think we have to sign off. But Kate Andrias, thank you so much for joining us. This has been super interesting.

[00:25:19] **Andrias:** Thank you for having me. It was great to talk about this stuff with you.

[00:25:25] **Waldock:** Our guest today was Professor Kate Andrias. Join us next time for another episode of *Beyond Unprecedented*, and make sure to follow us on Apple, Spotify, or wherever you get your podcasts. Thanks so much for listening.

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