

An Empirical Snapshot of the Gig Economy

Most gig workers already have health insurance and retirement benefits and are looking to augment other income.

✂ BY IKE BRANNON AND SAMUEL WOLF

California's attempt to limit the use and scope of "gig" workers—workers operating as independent contractors and not managed employees—has focused unprecedented attention on this type of worker. It has also prompted the federal and numerous state governments to reconsider how to treat workers who do not have a formal employer but instead contract with one or more firms to provide them discrete work.

In 2019, California passed Assembly Bill 5 (AB-5), which severely curtailed the ability of firms to use independent workers. The intent was to make most of these workers bona fide employees, with schedules and hours determined by the company rather than the worker. The legislation presumes, in essence, that most gig workers would prefer to be actual employees, with benefits and certain job protections not afforded to contractors.

However, ride sharing and food delivery platforms—most notably Uber and Lyft—objected to the legislation, as well as the implicit assumption that gig employees are somehow being exploited. The firms argued that most of their drivers have full-time jobs elsewhere and that they do not want or need fringe benefits, nor another full-time job that would dictate when and where they would work. The workers simply want some extra money and gig work provides it.

The passage of AB-5 resulted in numerous other independent workers in other occupations having their work arrangements curtailed as well. For instance, it forced freelance writers who published more than 35 articles a year for a single entity to be classified as employees. That edict resulted in writers in the state losing assign-

ments and had them up in arms. The California legislature was forced to amend the law several times to respond to the objections and lessen the unanticipated consequences of its passage.

The express purpose of the legislation was to convert platform drivers into employees. As a result, Uber, Lyft, and DoorDash launched their own ballot initiative—Proposition 22—that called for the repeal of AB-5's provisions for their drivers. The firms collectively spent over \$200 million to promote its passage, and their effort succeeded. However, the issue is far from settled. New York City (and state) as well as several other states are contemplating legislation resembling California's AB-5.

At the end of 2020, the Trump administration issued a rule to simplify the determination of whether a worker is an independent contractor or an employee, as well as make it more difficult for states to impose their own determinations in place of the federal standard. The Biden administration withdrew the rule, which had not yet been made final, and its nominee for the Department of Labor (DOL) post overseeing gig workers is a strong advocate for making drivers for Uber and competing services bona fide employees.

Central to this debate, of course, is the household income, non-wage compensation, and other pecuniary benefits that accrue to gig workers relative to non-gig workers with similar skills and occupations, as well as the value they place on maintaining their independence. There is surprisingly little information on this. The DOL does not include questions about someone's status as a gig worker in its regular surveys, and its surveys that do look at this are infrequent. In short, there are limited official data available on the size of the independent workforce, their wages, and their benefits.

We conducted a survey to add to our knowledge of the gig economy. We used responses from nearly 1,100 people who do business as independent contractors to help us better understand

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their situation. The vast majority of the people in our survey reported that they had a full-time job in addition to their gig and spent less than 10 hours a week doing their independent contractor activity. Few of these people expressed any concern about the lack of fringe benefits from their independent contracting, as most already had access to a health care plan and retirement benefits, either through their full-time job, their spouse, or via Medicare and Social Security for the fraction of our respondents who were over age 65.

Our data suggest that most people who do gig assignments do not place a high priority on job security or fringe benefits, but instead desire a gig that has maximum flexibility to enter and exit to provide them a straightforward way to earn additional money when necessary. Attempts to restrict gig employment reduce their ability to do this and will leave many people worse off. Further, it is facile to assume that Uber, Lyft, and others will simply convert their contractors to employees and continue apace.

WHO SEEKS OUT GIG EMPLOYMENT AND WHY?

The advent of ride-sharing platforms such as Uber and Lyft and

the concomitant rise in gig work is the proximate reason that governments in California and elsewhere have taken exception to independent contracting. However, workers for these firms make up a small fraction of all independent contractors in the United States.

Pre-pandemic, there were about 1.5 to 2 million drivers with Uber and Lyft, according to an analysis by Ridestar, a website that analyzes the on-demand transportation industry. While sizable, that represents a small fraction of all independent contractors. MBO Partners, a company that provides services to independent contractors, has been annually surveying its customers and others for a decade, and its 2020 report estimates that 38 million American workers did some form of independent contracting in the past year.

Just over 15 million Americans are full-time independent workers, which MBO defines as working more than 15 hours a week on average. This group is smaller than the 16.3 million categorized as full-time independent workers in 2010. The MBO study attributes the decline to a robust economy increasing the opportunity cost of full-time independent contracting—more

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people are doing gig work to supplement their income from a full-time position than a decade ago.

Despite the slight diminution in their ranks, full-time independent contractors tend to be paid well. The MBO survey finds that about one-fifth of full-time independent contractors earn over \$100,000. There are numerous well-paid occupations in this group. For instance, the realm of well-paid independent contractors includes over 50,000 locum tenens, which are doctors who work for hospitals on short-term contracts filling in for temporary vacancies or short-term staffing needs. (See “The IRS’s War on Locum Tenens,” Fall 2014.)

Economists Jean Kimmel of the Upjohn Institute and Karen Conway of the University of New Hampshire have written a series of papers examining the motivation for people who take second jobs. They found that moonlighting is a natural response for people who hold jobs that pay a fixed salary and have a standard workweek with few opportunities to earn more money. These workers seek out a second job that has flexible hours to allow them to get to the income/hours tradeoff that suits them best.

Their research also found that a person’s second job is often complementary to the first. Someone who aspires to be in fitness but holds a C.P.A. may be employed as an accountant but may teach classes for a health club on the weekend, or an aspiring actor may earn a few thousand dollars doing commercials as an independent contractor while being employed full- or part-time in a non-acting job that pays the bills.

Full-time employment by its nature is somewhat inflexible, with a prescribed salary, benefits, hours, and responsibilities. Gig assignments are more flexible and reduce the barriers for people who want to pursue aspirational careers.

THE OPPOSITION TO INDEPENDENT CONTRACTING

Despite the success of California’s Proposition 22, politicians across the country have signaled their intent to do more to limit the ability of workers to be independent contractors and to create a workplace where many more workers than today are bona fide employees.

Low wages / Those who seek to reduce the incidence of independent contracting offer up several objections to the practice. The most common of these is that such gigs tend to be poorly compensated. For instance, a talking point in California’s debate about the gig economy is that it is possible for contract drivers to take home less than the minimum wage if they drive during periods of low ridership.

Penurious wages are also an objection made to the salary of adjunct professors, who make up almost half of the 1.5 million who taught at a college in the last year. While full professors can make well over \$100,000, adjunct professors typically receive a few thousand dollars a class. People who stitch together adjunct teaching gigs to make a career might teach as many as seven or eight classes a semester, while full-time professors typically teach two or three.

However, most gig drivers and most adjunct professors do these occupations part-time to complement a full-time position in another field. For instance, over 80% of the people in our survey who reported having done some sort of independent contracting gig in the last year said that it was a part-time occupation, and most who said they were full-time independent contractors had multiple gigs to support themselves. Forcing them to adhere to an employer/employee relationship would inhibit the flexibility of all those who seek out such positions and have other jobs and commitments.

Lack of benefits / Another common objection to the use of independent contractors is that these gigs rarely include fringe benefits. According to critics, this forces workers who rely on such gigs for most or all of their income to obtain their health insurance and arrange to save for retirement on their own.

But it is important to remember that the federal government has made it much easier for a worker to obtain these benefits on his own with the same tax advantages provided to employees who get benefits through their employer. For instance, a Simple IRA allows self-employed workers to set aside a considerable amount of money tax-free each year. Self-employed workers can also obtain health insurance from state exchanges and, if they have a sole-proprietorship business, they can deduct their health insurance costs so that their health insurance payments are effectively tax-deductible, much like employer-provided health insurance.

The Affordable Care Act also did away with experience rating, so people who buy health insurance on the exchange cannot be forced to pay higher prices for their insurance because of their health history. The exchange also provides subsidies for those who cannot afford to purchase insurance on their own: in 2021 a family of four earning up to \$104,800 a year qualifies for health care subsidies.

However, fringe benefits are in no way “free” for employees. These workers bear opportunity costs in the form of forgone income they could have received if not for the benefits. If a worker can obtain a pension and insurance in a cost-effective way on his own, the fringe benefits offered by an employer are of little incremental value. In fact, the benefits can be a hindrance, as an employee might worry about jeopardizing the benefits by taking another job and thus remains in a position longer than he would otherwise desire to. Such “job lock” reduces the compatibility between employer and employee and reduces the amount of training people receive on the job as well, research suggests.

For independent contractors with health insurance coverage from an employer or a spouse or the government, receiving such a benefit from a secondary gig would be potentially disastrous. Companies could respond to such a mandate by concomitantly reducing their pay to independent contractors and reallocating that money to cover benefits or reduce the number of contractors altogether or keep their hours below any threshold for qualifying for benefits.

Tax-dodge myth/ Finally, some aver that putting the onus on gig workers to pay their own taxes makes independent contracting a method of tax avoidance, with workers failing to report their gig income and cheating the government.

The data do not support this assertion. For starters, a company that pays an independent contractor and wishes to legally claim those costs as a business expense must provide the federal government with a 1099 informational return indicating the contractor's name, Social Security or Tax Identification number, and how much was paid to him or her the previous year.

The most recent report estimating the size of the "tax gap" from taxpayers not reporting sources of income, covering the years 2011–2013, estimates that roughly \$110 billion of the annual gap can be attributed to under-reported business income on personal income tax filings. However, this category encompasses a wide variety of tax underreporting besides gig work. The congressional Joint Committee on Taxation recognized little tax savings from efforts to require platform companies to perform "backup" tax withholding on their contractors.

CALIFORNIA'S AB-5 AND PROPOSITION 22

California is ground zero for the debate surrounding independent workers because of its high concentration of freelance work and the many interests looking to determine worker classification. Uber and Lyft, both headquartered in San Francisco, engage a large number of app-based drivers and their rise precipitated this debate. California is possibly the most important market for Uber, Lyft, and similar companies that rely on app-based workers.

At the same time, California has a decidedly liberal population largely supportive of union goals, but with a large number of people relying on independent-contractor working arrangements to further their career aspirations—a reality driven largely by the entertainment industry. Unions have hoped to organize drivers, further contributing to the pressure on legislators to make changes.

California passed AB-5 in 2019 and it officially took effect on January 1, 2020, although the ride-share industry managed to get the courts to delay its implementation until after voters decided the initiative.

The law codified a three-pronged test to determine whether a worker is an independent contractor or an employee, a test that was set forth in the 2018 state supreme court decision *Dynamex Operations v. Superior Court*. The ruling set a presumption that the worker is a bona fide employee unless

- (1) he has freedom from control of the hiring entity,
- (2) the work performed is out of the usual course of the hiring entity's business, and
- (3) the worker is engaged in an established trade, occupation, or business of the same nature as the work performed.

In September 2020, the legislature passed AB-2257, which created 109 categories of workers who are exempted from AB-5,

including photographers, freelance writers, and some professions in the entertainment and music industries. The trucking, television, and motion picture industries *are not* exempted from rules set forth by AB-5.

A coalition of platform companies responded to AB-5 with the creation of Proposition 22, which calls for California to exempt app-based transportation and delivery companies from the new law. It also requires that drivers receive a minimum of 120% of the local minimum wage for each hour they spend driving. The coalition ultimately spent nearly \$200 million in support of the proposition. It passed with 59% of voters in favor, and Uber and Lyft have voiced their intent to promote similar legislation in other states.

While rideshare drivers were the focus of AB-5, driving is far from the only opportunity available to independent workers. Skilled workers who provide expertise in services such as marketing, programming, and business consulting constitute the largest group of freelancers. Like locum tenens, these skilled workers earn a higher median wage than the overall U.S. workforce median.

THE DOL'S PROPOSED RULE FOR IDENTIFYING INDEPENDENT CONTRACTORS

In September 2020, the DOL issued a Notice of Proposed Rulemaking to clarify which workers may be considered independent contractors and which should be classified as employees. The DOL and Internal Revenue Service each currently have their own checklist for determining whether a worker is an employee or a contractor. The IRS sets forth a 20-point test but focuses on whether the worker's acts are substantially controlled, whether he can earn a profit or a loss, and the degree to which the company trains him.

The DOL proposed rule resembled the IRS's. It created an "economic reality" test to determine a worker's status by considering whether the worker is in business for himself or is economically dependent on an employer for work. Someone who does a similar task for a variety of entities—such as an illustrator who helps companies put together their annual reports—would clearly be labeled a contractor under this test, for instance, but someone who spends most of his time illustrating for a single entity would likely be considered an employee.

The rule further delineated two "core factors" of a position that need to be considered: the nature and degree of the worker's control over the work and the worker's opportunity for profit or loss. If a worker is economically dependent on what she does for the business, then the presumption is that she is an employee. If the worker has to do her tasks during specific hours and has little flexibility in terms of how and when to do them, and the work is such that she cannot do those tasks for another business, she would likely be an employee and not a contractor.

The rule included three additional, more specific factors that affect the determination of one's status. For starters, the skill required for the work matters: someone with advanced skills or

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skills specific to the task at hand is more likely to be deemed an employee. Second, the persistence of the relationship between the worker and the employer matters: long, stable working arrangements indicate an employer–employee relationship. Finally, whether the work is part of an integrated unit of production affects the determination. Someone tasked to contribute on an assembly line, for instance, cannot credibly be considered an independent contractor, especially given the dependency that others have on his presence.

However, the rule conceded that it is impossible to draw bright lines that clearly delineate the millions of tasks and occupations done by workers in the United States. It noted that the actual practice is more relevant than what may be contractually or theoretically possible in determining whether a worker is an employee or an independent contractor.

On its first day in office, the Biden administration froze this and all other rules that had not yet been finalized, which is standard procedure for a new presidency.

OUR RESEARCH

We contracted with BRX Research to survey approximately 1,200 people who said they received at least one 1099 on their 2019 income. For tractability we limited our survey to Pennsylvania, Michigan, and Ohio. We received 1,082 usable responses. We asked a total of 24 questions about the respondents' experience in the gig economy and the broader labor market.

Over half of our respondents were between ages 30 and 50, and only about 12% were under age 30. Our survey age is older than the typical perception of who does independent contract work, which might reflect the older median age in these states. Just over 6% said they were over age 65.

The vast majority of respondents reported that their gig work was not their primary source of income. Some 85% of respondents reported that they either had W-2 income or received more than one 1099 for 2019, and just over 90% of those under age 30 reported having either W-2 income or receiving multiple 1099s. The youngest cohorts seem to be utilizing the flexibility offered by gig work to supplement the income from their main employment.

Income / Those we surveyed reported an average total income of \$52,000, and over three-fourths of our respondents also reported receiving a W-2 in addition to their 1099 income. One-third of respondents earned less than \$10,000 in 2019, and the majority made between \$25,000 and \$100,000.

Over 92% of our respondents also said that they had health coverage of some sort. Some 41% obtained coverage through an employer and another 18% received it through a spouse. Some 21% received it through either Medicare or Medicaid and another 8% bought their insurance coverage on the exchange. When broken down to the state level, the percentages of gig workers with coverage were higher than overall coverage levels for workers in those states.

Whether someone held a full-time job barely affected health insurance access, as 90% of those who did not receive a W-2 had health insurance. The cohort of workers who receive all their money via independent contracting do not need a job to obtain insurance.

It's also illuminating that nearly two-thirds of respondents reported that they had some sort of retirement account. For those who were over age 30, that proportion was 67.7%, which is comparable to all Americans in this cohort.

CONCLUSION

The politicians and activists who advocate for laws limiting the use of gig workers do so because they fear that gig work creates precarious jobs without benefits for independent contractors, who supposedly would much prefer to have full-time employment. However, our survey data indicate that the vast majority of independent contractors are doing gig work to supplement income from another job. Most of the people we surveyed with income reported on a 1099 have access to health insurance as well, either through their full-time job, their spouse, or via Medicare.

Government intervention to convert these workers into bona fide employees would do nothing to help these people. They would lose flexibility and, potentially, wages in exchange for job security or benefits they neither want nor would benefit from.

There is public consensus that people who work full-time should have access to an affordable health care program and receive incentives to save for retirement. Despite the legislative stasis of the last decade, Congress has managed to accomplish these things. The Affordable Care Act provides access to health insurance without experience-rating for people without coverage, and families with income up to \$104,800 are eligible for a subsidy to purchase it. What's more, a self-employed worker can deduct his health insurance as a business expense. And today it is possible for self-employed workers to create a tax-advantaged savings account and contribute as much as \$58,000 a year to it.

Our government should certainly enforce labor laws to ensure that workers are not coerced into being designated as independent contractors when their work is prescribed and overseen by a company. But broadening the definition of a bona fide employee because it ostensibly serves to protect workers from exploitation is a perspective that fundamentally misconstrues the status of most independent workers in the United States these days.

Being an independent contractor is a mutually beneficial arrangement for the vast majority of gig workers as well as those who employ their services. Severely diminishing the ability of firms and workers to use this status will ultimately reduce the number of independent contractors without an equivalent increase in the number of actual employees. While it may indeed create more permanence and a desired access to benefits for a group of workers who desire such things, the losses from such a move would greatly outweigh the gains. R