



Understanding Nontraditional Work Arrangements and the Policy Landscape for Self-Employed Workers and the Gig Economy

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A M E R I C A N E N T E R P R I S E I N S T I T U T E

Executive Summary

Across the United States, political leaders are wrestling with challenges caused by the growth in nontraditional work arrangements. These are income opportunities legally classified as independent contracting or self-employed work and are outside the standard employment arrangement. Flexibility is a staple feature of this work, and it offers income opportunities for many working Americans who either desire or require more flexible forms of work. This is especially true for women, who have been driving the growth in the nontraditional workforce.

At the same time, these work arrangements have limitations; most notably, nontraditional workers do not have access to benefits afforded to traditional employees. One obstacle in designing appropriate policies for the nontraditional workforce is that there are misunderstandings about who these workers are

and want they want. The first step to designing better policies for the nontraditional worker is to invest in better data to understand this workforce and to increase public knowledge about it.

It's also important to emphasize that nontraditional workers are a wholly diverse set of people—spanning different income brackets, industries, and roles—who work as either primary or supplementary earners. This is partially why one-size-fits-all reclassification policies tend to be problematic; those efforts ignore the workforce's diversity. To better meet the needs of the growing nontraditional workforce, policymakers will have to think outside the box and implement sustainable solutions that may require more flexible and portable benefits that are decoupled from employment.

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Across the United States, political leaders are wrestling with challenges caused by the growth in nontraditional work arrangements. These income opportunities are legally classified as independent contracting or self-employed work and are outside the standard employment arrangement. The distinction between nontraditional work and standard employment matters for tax purposes, labor regulations (e.g., collective bargaining, minimum wage, and overtime regulations), and social insurance programs and benefits (e.g., unemployment benefits, health insurance, and retirement benefits).

Today, about 10–29 percent of US workers engage in nontraditional work as their primary source of income, and that number goes up to 39 percent when including those who use it as a supplementary source of income.¹ Nontraditional workers comprise a multitude of industries, skill levels, and educational attainment. For example, they can be freelance creatives or knowledge-work professionals, medium-skilled contractors, gig workers, high-skilled consultants, self-employed merchants or sellers, or entrepreneurs.

There is a policy concern that as the nontraditional workforce grows, more workers will be left out of the purview of labor regulations and will not have access to standard employment-based benefits and protections. The COVID-19 pandemic and subsequent disruptions to work heightened this concern, and as a result, the federal Coronavirus Aid, Relief, and Economic Security Act of March 2020 included a

temporary provision for unemployment insurance for independent contractors and self-employed workers.

State and federal policymakers and regulators are debating how to best approach the nontraditional workforce. Most tinker with the legal definitions of an independent contractor versus an employee to make it more difficult to classify workers as independent contractors. By doing so, they hope companies will hire nontraditional workers as employees instead. Some examples of this include the Department of Labor's (DOL) October 2022 proposed rule on independent contractors, California's Assembly Bill 5 (AB5) in 2019, and the Protecting the Right to Organize (PRO) Act passed in the US House of Representatives in 2021.²

Another set of policy solutions attempts to expand access to “portable benefits” for nontraditional workers without reclassifying them as employees. A challenge with portable benefits solutions is that federal and state regulations restrict organizations, businesses, and individuals from providing independent contractors with benefits precisely because these benefits conventionally have been tied to employer-employee relationships.

One of the key limitations that political actors face in designing suitable policies for nontraditional workers is that there are misunderstandings and data gaps about this workforce. For example, while gig platforms such as DoorDash, Lyft, and Uber are ubiquitous in our everyday lives, workers at those types of online labor platforms amount to only 8.6 percent of

the overall independent contractor workforce.³ Moreover, policymakers often assume that independent contractors would prefer to be employees, which is not true for most of the workforce.⁴

In this report, I address the following considerations.

- The challenges with measuring nontraditional work arrangements and how to define this category of work;
- What we know about nontraditional work arrangements: the size of the workforce, growth, demographics, and industries;
- The motivations for engaging in nontraditional work; and
- The policy landscape for the nontraditional workforce at the federal and state levels.

In providing an overview of this workforce, our goal is to understand where current policy proposals can or cannot provide an appropriate solution. Greater knowledge about this workforce and its demographics and motivations will aid policymakers in designing better policy solutions.

The Challenges with Measuring Nontraditional Work Arrangements

Despite the attention on nontraditional workers, there is uncertainty about who is part of this workforce and how to measure it. Part of the problem is that data categories of workers are overly broad: Workers can be either employees or self-employed, the latter encompassing a large and heterogeneous group of individuals. For example, a self-employed individual can be an owner of a small hair salon that has its own employees, or they can be an owner of a graphic design business that has no employees. A self-employed worker can be a software developer who is an independent contractor working full-time hours at one large company or a gig worker driving a few hours a week for many different platform companies. They can also be

a music teacher who chooses their own clients and has a steady flow of income or a temporary worker contracting with an agency that “staffs” the worker on different jobs that may last one day or one season. A self-employed worker can also provide labor services or make income through selling goods or renting homes.

Researchers have attempted to tease out these nontraditional work categories, and self-employed owners who hire employees have generally been left out of the discussion since they are more appropriately classified as “small businesses.” The broadest form of nontraditional workers typically includes those who are considered “solo self-employed”—meaning they are self-employed without employees—and engage in any type of income-generating activity, either as their primary job or as a supplementary source of income. This broad category includes all contractors, on-call and temporary workers, freelancers, gig workers, consultants, merchants and sellers, small-business owners (without employees), and workers at contracting firms.

Some researchers narrow this category by focusing on only those who provide labor services and thereby exclude income-generating activities that involve selling goods or leasing durable capital. Others narrow this category further by excluding self-employed workers who report a large amount of business deductions in their tax returns. This intends to remove self-employed small-business owners (perhaps the owner of a grocery store) and focus more narrowly on more-traditional freelancers and independent contractors. Additionally, some data categories also exclude workers who make only a small portion of their income through self-employment, because the goal is to capture individuals who engage in nontraditional work as their main job.

Beyond attempting to exclude self-employed owners with their own employees, there is little agreement on which type of self-employed workers should be considered part of the “nontraditional” workforce. This is one reason there are diverging measures on the presence and growth of this workforce.

The nontraditional workforce has been measured in two main ways: through surveys and tax data. The most common official household surveys are:

- **Current Population Survey.** Fielded by the Census Bureau for the Bureau of Labor Statistics (BLS), the Current Population Survey (CPS) is a monthly household survey that includes a measure of incorporated or unincorporated self-employed workers.
- **Contingent Worker Supplement.** Fielded by the Census Bureau for the BLS, the Contingent Worker Supplement (CWS) is a supplement to the monthly CPS, conducted irregularly, and designed to collect information on alternative work arrangements and contingent work as main jobs.
- **American Community Survey.** Conducted by the Census Bureau, the American Community Survey (ACS) is an annual household survey that includes a measure of self-employed work based on workers in their primary job (full- or part-time).
- **Survey of Household Economic Decision-Making.** Sponsored by the Federal Reserve Board, the Survey of Household Economic Decision-Making (SHED) is an annual consumer survey that asks about informal income-generating activities.⁵

The main advantages of the ACS and CPS unincorporated self-employment data are that they are provided regularly, have large sample sizes, and have high response rates.⁶ Similarly, the CWS contains detailed contextual information with a large sample size and high response rate, though it is not fielded regularly. The primary disadvantage of all three surveys (ACS, CPS, and CWS) is that they refer only to a worker's main job and thereby exclude supplementary earners or occasional workers. In contrast, SHED captures informal or occasional nontraditional work activities but has drawbacks in terms of sample size and responses rates, and differences in question wording make it difficult to engage in year-to-year comparisons.

Additionally, dozens of nongovernment surveys attempt to measure this workforce. These include

surveys administrated by nonprofit institutions, research firms, or companies, such as RAND's American Life Panel, Pew Research Center's American Trends Panel, Gallup's Contract Work Module, McKinsey Global Institute's survey on independent work, and Upwork & Freelancer Union's "Freelancing in America" survey, among others.

The types of tax data used to measure the nontraditional workforce are:

- **Tax Data Information Returns.** Collected by the IRS, these include information returns issued to workers by employers and submitted to the IRS and count W-2 forms (for employees) and 1099-MISC or 1099-K forms (for independent contractors). These are non-publicly available data.
- **Schedule C and Schedule SE Tax Returns.** Collected by the IRS, these include individual tax filings for those engaged in self-employed income. They may be inaccurate because of non-compliance and misunderstandings about when to file a Schedule C.
- **Nonemployer Statistics.** Produced by the Census Bureau using IRS data extracted from business income records, nonemployer statistics (NES) counts any type of business establishments with no paid employees and over \$1,000 in gross receipts annually. Since the data series measures business establishments, some self-employed workers may be included twice if they filed multiple business establishments.

Lastly, researchers have also used private financial records to understand nontraditional work arrangements.⁷ While financial records provide useful information, there are some drawbacks from these sources of data, most importantly that they generally do not represent the full population.⁸

Large differences stem from the various ways we measure this workforce. For example, Schedule C and Schedule SE may underestimate the workforce's growth because of tax noncompliance. In fact, an IRS and US Treasury Department study found that

43 percent of 1099 recipients in the gig economy did not file a Schedule C or SE in 2016.⁹ There is also a large gap in differences between official household surveys compared to administrative data. One research paper analyzes the two types of data and finds that the types of self-employment income reported in tax data have increased, which surveys have not captured well.¹⁰ For example, the CWS shows a *decline* in alternative work arrangements between 2005 and 2017, while administrative data show a significant growth of independent contractors over the same period.¹¹ One important reason for this difference is that the CWS asks households about their *primary* source of income and therefore does not capture the large percentage of workers on gig economy platforms who engage in this type of work as their supplementary source of income.¹²

While the IRS and Treasury Department report that using 1099 information returns provide one of the best sources of data on this workforce, these reports also underestimate the nontraditional workforce because they exclude individuals who make income through selling goods or renting durable capital. Moreover, the 1099-returns approach does not capture informal or nonofficial self-employed work. For example, households may not issue 1099 forms for work performed such as babysitting, cleaning, plumbing, or gardening. The Federal Reserve's SHED better captures the extent of these informal activities by specifically asking about "paid informal work" or "side jobs."¹³

Who Are Nontraditional Workers?

Nontraditional work arrangements can be defined in many ways. Table 1 describes some of the workforce's statistics.

The CWS captures the narrowest category of alternative work arrangements, defined as those individuals who engage in this type of work as their main job, therefore excluding most of the gig economy. Independent contractors are one subset of workers in alternative work arrangements. The industries with the most respondents listing independent contractors as their main job are in the professional and

business services industry, followed by construction and other services.¹⁴ From this survey, individuals in nontraditional work arrangements (and especially independent contractors) tend to be older compared to traditional employees. The major difference between the CWS and all other data sources is that the CWS shows little or no growth of alternative work arrangements over the past decade.

The broadest definition of nontraditional work includes any worker who makes income (primary or supplementary) outside an employment arrangement. Surveys administered by companies or research firms (e.g., Gallup, MBO Partners, McKinsey Global Institute, and Upwork) indicate that 58–65 million workers (about 30–40 percent of the workforce) engage in nontraditional work arrangements, broadly defined.¹⁵ Unlike the CWS, these surveys show significant growth in nontraditional work arrangements over the past decade. These surveys overlap with the CWS's findings for top industries; for example, in Upwork's Freelancing in America survey, arts and design, entertainment, construction, and architecture and engineering are the occupations with the greatest share of nontraditional workers. In the CWS, the greatest number of independent contractors falls under the "professional and business services" category, which includes subindustries of architectural and engineering services, advertising, and design services.

The Census Bureau's non-employer statistics, which count the number of business establishments with no paid employees and over \$1,000 in gross receipts annually, can be used as an alternative measure for capturing the nontraditional workforce. As illustrated by Figure 1, since 1997, non-employer establishments have grown by 76 percent, at a time when employer establishments grew by 15 percent.

With over 27 million establishments, non-employer businesses account for over 77 percent of establishments in the US (Figure 2). The sector with the greatest number of establishments is professional, scientific, and technical services, followed by real estate, rental, and leasing.

The set of research papers using 1099 tax information returns provides a middle ground between the

Table 1. Summary of Measures of Nontraditional Work Arrangements

Description	Number of Workers	Percentage of Total Workforce and Employment	Data Source	Year
Independent contractors engaging in labor services who reported this work as their main job (BLS Survey)	11 million workers	7 percent of total employment	Household survey, BLS CPS-CWS	2017
Those who reported alternative work arrangements as main job (BLS Survey)	15 million workers	10 percent of total employment	Household survey, BLS CPS-CWS	2017
Independent contractors engaging in labor services, either as primary or supplementary earners (IRS tax records)	23 million workers	12 percent of workforce	1099 tax information returns	2016
Independent contractors engaging in labor services, either primary or supplementary earners, who reported less than \$10,000 in business deductions (IRS tax records)	14 million workers	8 percent of workforce	1099 tax information returns	2016
Working adults engaging in any amount of self-employed work (Upwork survey)	60 million workers	39 percent of workforce	Upwork, survey of 3,000 working adults	2022
Workers engaging in any amount of self-employed work (McKinsey Global Institute survey)	58 million workers	36 percent of workforce	McKinsey Global Institute, survey of 25,062 Americans	2022
Business establishments with no employees and greater than \$1,000 in gross receipts (Census Bureau, business tax records)	27 million non-employer establishments	—	Census Bureau, data extracted from business tax records	2019
All adults engaging in some type of gig or informal work in any amount (SHED survey)	76 million adults*	30 percent of adults	SHED, 11,316 US adults	2018
Workers with any alternative work arrangements as their primary job (Gallup survey)	45 million workers**	29 percent of workforce	Gallup, survey of 5,025 working adults	2017
Workers with any connection to alternative work arrangements, including those who work multiple jobs (Gallup survey)	55 million workers**	36 percent of workforce	Gallup, survey of 5,025 working adults	2017
Workers engaging in any amount of self-employed work (MBO Partners survey)	65 million workers	—	MBO Partners, survey of 6,488 working adults	2022

(continued on the next page)

Table 1. Summary of Measures of Nontraditional Work Arrangements (continued)

Description	Number of Workers	Percentage of Total Workforce and Employment	Data Source	Year
Workers engaging in any amount of self-employed work (Pew Research survey)	53 million workers***	16 percent of adults	Pew Research, survey of 10,348 working adults	2021
Independent contractors engaging in labor services who reported this as their main job (Gallup Contract Module survey)	—	15 percent of workforce	Gallup Contract Module, survey of 61,000 working adults	2018–19

Note: *Calculation: Computing 30 percent of the entire US adult population in 2018 (253 million, US Census Bureau). **Calculation based on employment level in 2017 (153 million, BLS). ***Calculation: Computing 16 percent of the entire US adult population in 2021 (331 million, US Census Bureau).

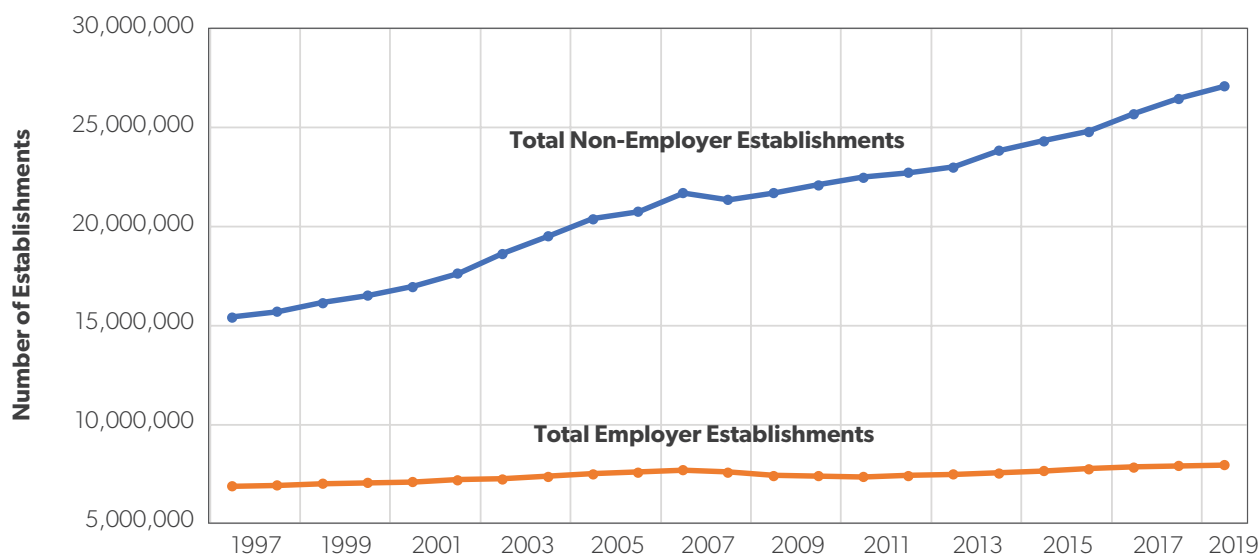
Source: Brett Collins et al., “Is Gig Work Replacing Traditional Employment? Evidence from Two Decades of Tax Returns” (working paper, Internal Revenue Service Statistics of Income Joint Statistical Research Program, Washington, DC, March 25, 2019), <https://www.irs.gov/pub/irs-soi/19rpgigworkreplacingtraditionalemployment.pdf>; Katherine Lim et al., “Independent Contractors in the U.S.: New Trends from 15 Years of Administrative Tax Data” (working paper, Internal Revenue Service, Washington, DC, July 2019), <https://www.irs.gov/pub/irs-soi/19rpgindcontractorinus.pdf>; Katharine G. Abraham et al., “The Independent Contractor Workforce: New Evidence on Its Size and Composition and Ways to Improve Its Measurement in Household Surveys” (working paper, W. E. Upjohn Institute for Employment Research, Kalamazoo, MI, 2023), <https://doi.org/10.17848/wp23-380>; Monica Anderson et al., “The State of Gig Work in 2021,” Pew Research Center, December 8, 2021, <https://www.pewresearch.org/internet/2021/12/08/the-state-of-gig-work-in-2021/>; US Department of Labor, Bureau of Labor Statistics, “Contingent and Alternative Employment Arrangements—May 2017,” press release, June 7, 2018, <https://www.bls.gov/news.release/pdf/conemp.pdf>; and Gallup, *Gallup’s Perspective on the Gig Economy and Alternative Work Arrangements*, 2018, <https://acrip.co/contenidos-acrip/gallup/2020/mayo/gallup-perspective-gig-economy-perspective-paper.pdf>. See Adam Ozimek, “Freelance Forward Economist Report,” Upwork, <https://www.upwork.com/research/freelance-forward-2021/>; Board of Governors of the Federal Reserve System, “Report on the Economic Well-Being of U.S. Households in 2018–May 2019,” May 2019, <https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf>; James Manyika et al., *Independent Work: Choice, Necessity, and the Gig Economy*, McKinsey Global Institute, October 2016, <https://www.mckinsey.com/featured-insights/employment-and-growth/independent-work-choice-necessity-and-the-gig-economy>; and MBO Partners, “Happier, Healthier & Wealthier: State of Independence in America 2022,” https://info.mbppartners.com/rs/mbo/images/MBO_2022_State_of_Independence_Research_Report.pdf.

narrow and broad categories of nontraditional work arrangements.¹⁶ Their measures focus exclusively on independent contractors providing labor services (therefore excluding selling goods and renting homes) with some additional considerations, such as excluding self-employed workers with greater than \$10,000 in business deductions, to focus on the non-business establishments. In one set of those papers, the tax records indicate that the share of workers with independent contracting income grew by 22 percent between 2001 and 2016, at a time when the share of workers with only employment income decreased by 1.5 percent.¹⁷ Figure 3 highlights how the incidence of

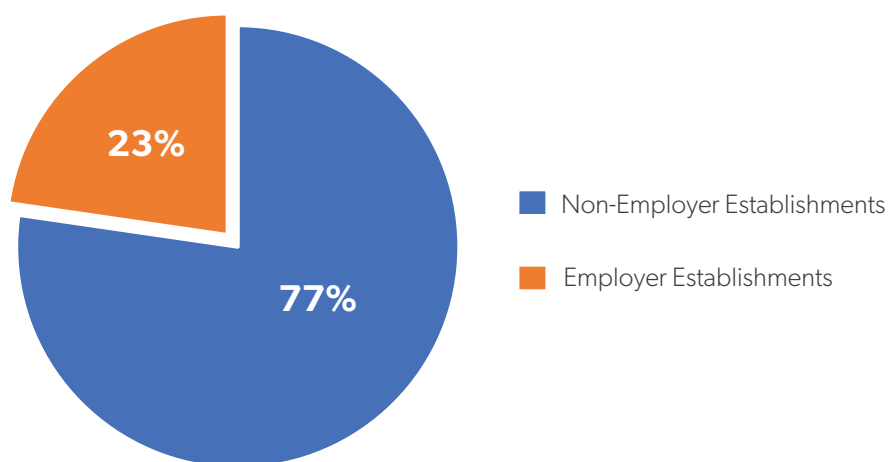
independent contracting (tax form 1099) has grown substantially faster than employee-only income (tax form W-2) since 2001.¹⁸

Similar to the surveys, the tax data also indicate that the industries with the greatest share of independent contractors (primary or supplementary earners) are professional, scientific, and technical services, followed by other services and health care. These industries have seen the greatest growth in independent contractors since 2001.¹⁹

The tax data show that the largest share of workers with independent contracting income are those in the top quartile of earners, who make most of their

Figure 1. Non-Employer and Employer Establishments (1997–2019)

Source: US Census Bureau, “Nonemployer Statistics,” 1997–2019; and US Census Bureau, “County Business Patterns,” 1997–2019.

Figure 2. Total Establishments in 2019

Source: US Census Bureau, “Nonemployer Statistics,” 1997–2019; and US Census Bureau, “County Business Patterns,” 1997–2019.

income also through W-2 employment.²⁰ These independent contractors are concentrated mainly in professional services, health care, finance, insurance, and real estate industries.²¹ But the fastest-growing group is those in the bottom quartile of earnings, who make their primary income through independent contracting, and they tend to be in industries

such as construction, transportation, and other personal services.²² Furthermore, if we analyze only the gig economy (DoorDash, Lyft, Uber, and other platform companies), these workers compose about 8.6 percent of the overall independent contractor workforce.²³ Not only that, but the gig economy workforce’s exponential growth is driven almost entirely

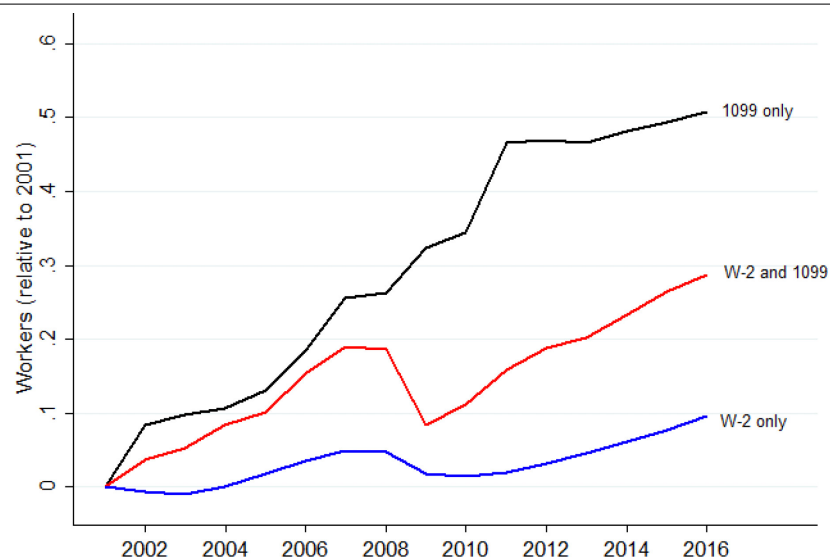
by individuals whose primary income comes from traditional jobs and who supplement that income with platform work.²⁴

The studies using 1099 tax data find that while independent contracting is more prevalent among men, the participation in independent contracting since 2001 has grown significantly more among women.²⁵ Since then, women have seen a 68 percent increase in independent contractors, and men have seen a 37 percent increase.²⁶ Female independent contractors have dominated the overall growth in the health care, social assistance, and educational services industries.

A 2016 study by the JPMorgan Chase Institute that used private financial data found that, omitting the transportation sector, women constitute a greater share of income earners on digital platforms (which include leasing, selling, and transportation and non-transportation services).²⁷ Among all four categories, the largest fraction of female digital earners is in selling. This is one reason the 1099 tax data may underestimate the presence of women in nontraditional work arrangements, since the tax data focus solely on labor services and exclude income-earning opportunities through selling and leasing.

Lastly, a recent IRS study highlights another group of individuals who are participating in nontraditional work arrangements: those who previously had a criminal record.²⁸ The study finds that individuals who had their criminal records cleared after seven years go on to work in the gig economy rather than in traditional employment. No evidence suggests that clearing records (including for convictions or non-convictions, felonies, and misdemeanors) increases the likelihood of these individuals having traditional employment earnings. When examining the impact of the Federal Credit Reporting Act (FCRA), Amanda Agan et al. conclude:

Figure 3. Changes to the Workforce Composition Relative to 2001



Source: Katherine Lim et al., “Independent Contractors in the U.S.: New Trends from 15 Years of Administrative Tax Data” (working paper, Internal Revenue Service, Washington, DC, July 2019), <https://www.irs.gov/pub/irs-soi/19rpindcontractorinus.pdf>.

While gig work is a new form of work activity, we find evidence that removal of a criminal record via FCRA has a large (in percent terms) impact on gig work for this particularly disadvantaged group, many of whom are likely entering self-employment for the first time.²⁹

The IRS study finds similar results on gig work when examining the impact of California’s Proposition 47, which reclassified eligible felonies as misdemeanors, and Pennsylvania’s Clean Slate law, which sealed all records of non-convictions for individuals who did not owe fines and fees. Based on their findings, the authors conclude that nontraditional work in the gig economy provides an important avenue of work for those who previously had a criminal record.

Why Do Individuals Participate in Nontraditional Work Arrangements?

Generally, there are two main factors that influence workers’ decisions to participate in alternative work arrangements. First, there are pull factors—individuals shifting into these types of work arrangements to have greater work flexibility. Second, there are push

factors—individuals driven into these work arrangements because they lost a stable job or income.

Pull Factors: Flexibility. The 2017 CWS indicated that 79 percent of independent contractors preferred their arrangement over a traditional job, and fewer than one in 10 independent contractors would prefer a traditional employment arrangement instead.³⁰ Other surveys indicate that most independent contractors prefer their nontraditional job arrangements over an employment arrangement because independent work provides far more flexibility regarding work schedule. Work-schedule flexibility in nontraditional arrangements gives individuals more freedom to choose what time to work and how often. In contrast, traditional employment often means a specified schedule (e.g., nine-to-five) and a specified quantity of work (e.g., 48 weeks a year).

Upwork's 2022 "Freelance Forward Economist Report" survey finds that 73 percent of individuals engaged in freelancing work do so because of the increased flexibility of their work.³¹ Workers cite that freelancing gives them the flexibility to be more available as a caregiver for their family or to address personal mental or physical health needs. Nearly half of freelancers indicated that no amount of money would entice them to switch to traditional employment.

In the 2019 version of the Upwork survey, approximately 46 percent of freelancers state that freelancing gives them the flexibility they need because they are unable to work for a traditional company owing to personal circumstances (health issues or family obligations).³² According to the survey, the proportion of workers who are parents and caregivers is higher for freelancers (46 percent) than for US workers overall (38 percent). Studies from consulting firms McKinsey Global Institute, Ernst & Young Global, and MBO Partners also all point to flexibility as the primary driver for nontraditional workers engaging in this type of work.³³

Beyond surveys, researchers have tried to estimate the value of flexibility in other ways. In a paper published in the *Journal of Political Economy*, economists estimate that UberX drivers would require almost twice as much pay to accept the inflexibility that comes from adopting a taxi-style schedule.³⁴ The

study found that drivers would reduce their hours driving on the Uber platform by more than two-thirds if they were required to work more inflexible hours. This is unsurprising given their driving patterns: The study found for any given UberX driver, the number of hours driven in one week differed significantly from the number of hours the driver drove the next week. In other words, most drivers changed the hours they worked from week to week. A recent study using data from DoorDash revealed similar results—that forcing the average driver out of their preferred driving schedule is equivalent to cutting weekly earnings by 5.3 percent. For the top decile of drivers, losing flexibility is equivalent to a 15 percent pay cut.³⁵

Flexible job arrangements can be especially transformative for working women who are primary caregivers. Analyzing panel data from the Survey of Income and Program Participation and American Time Use Surveys, a study shows that self-employment rates are higher for women who have young children and that self-employed female workers seem to have more flexibility in their work location, hours, and schedule as compared to women in traditional employment.³⁶ Mothers with young children at home use self-employment opportunities to spend an additional two hours per day with their children. The study concludes that overall, these self-employment work opportunities give mothers "more control over their work environment allowing them to better manage their household while working."³⁷ One of the studies using 1099 tax data also indicates that female independent contractors are more likely to have children than are female employees.³⁸

The McKinsey Global Institute had qualitatively similar findings in a survey of 8,000 independent workers: 42 percent of US women and 48 percent of European women who participated in independent work were also caregivers. Referring to the 17 percent of those surveyed who reported providing care to an elderly dependent, the report states that "these caregivers participated in independent work at a significantly higher rate . . . than non-caregivers." Moreover, the study indicates that caregivers engage in independent work for supplemental income (67 percent, compared with 54 percent for non-caregivers). The study

concludes that independent work “provides a way for caregivers [who are disproportionately women] to generate income while fitting their hours around the needs of their families. This type of flexibility can ease the burden on financially stressed households facing logistical challenges.”³⁹

In a survey by the Kaiser Family Foundation (in partnership with CBS and the *New York Times*), researchers find that about 75 percent of self-identified homemakers, or stay-at-home mothers, in the United States indicated that they would likely return to work if they had flexible options.⁴⁰ Another survey of 2,000 women in alternative work arrangements finds that 96 percent of these women indicated that the primary benefit of engaging in platform-economy work is the flexible working hours.⁴¹ Indeed, 70 percent of these platform-working women were the primary caregivers in their homes.⁴² A quarter of these women recently left their full-time employment for platform-based work, and 60 percent indicated that they did so because they wanted flexibility or needed more time to care for a child, parent, or other relative—or both.⁴³

When examining why women select into certain nontraditional work arrangements, a recent study using the O*NET occupational database finds that women self-select into independent contracting roles in which greater autonomy defines the work, the role allows for greater freedom to make decisions and structure activities, and the workweeks are shorter—in essence, allowing for greater temporal flexibility.⁴⁴

Push Factors: Income Declines and Job Losses.

Several studies suggest that individuals turn to alternative work arrangements after losing a job. In a 2017 paper published in the *American Economic Review*, economists Lawrence Katz and Alan Krueger report that workers who “suffered a spell of unemployment are 7 to 17 percentage points more likely than observationally similar workers to be employed in an alternative work arrangement when surveyed 1 to 2.5 years later.”⁴⁵

Another study that analyzed the personal financial data of digital platform workers reported a similar result. It found that online gig workers faced a decline

in income or a significant decline in assets a quarter before they began participating in gig work.⁴⁶ Their income and liquid assets partially recovered in the quarter after they began working in the gig economy.

A separate study using tax data to unpack whether motivations differ for conventional freelancers and online platform earners found that individuals turn to both types of nontraditional work to smooth temporary income shocks after they face income declines or unemployment.⁴⁷ In this way, new and old forms of nontraditional work appear similar in that both types of work occur around large reductions in outside income and are used by workers, especially younger workers, to smooth temporary shocks.

Understanding the Policy Landscape for the Nontraditional Workforce

Policy debates over the nontraditional workforce have intensified in the past decade with the emergence of platform-economy companies. There is a growing concern that these companies are misclassifying gig workers as independent contractors when they should be employees, with proper benefits and protections. This concern has resulted in narrowing the legal definition of an independent contractor so that more workers are reclassified as employees.

One significant challenge is that reclassification policies aimed at gig workers also affect the broader workforce, since workers in nontraditional arrangements are also legally classified as independent contractors. This was evident with California’s AB5 in 2019, which implemented a stricter test for being an independent contractor and thereby made it more difficult to classify workers in California as independent contractors. This affected industries far beyond app-based transportation and delivery platforms—and included the arts community (dancers, musicians, singers, and artists), writers, visual journalists, photographers and videographers, translators and interpreters, and truck drivers, among many others.⁴⁸ These industries led a bipartisan backlash against AB5, which led to California expanding its list of occupations exempt from AB5.

At the federal level, in 2021, the US House of Representatives passed the PRO Act, which would implement a stricter test for qualifying as an independent contractor for the purposes of collective bargaining.⁴⁹ It also imposed additional fines and violations that would make it more difficult for organizations to work with independent contractors.⁵⁰ The Biden administration issued a statement supporting the PRO Act.⁵¹ Like AB5, the PRO Act would affect independent contractors across all industries.

The DOL also issues back-and-forth changes in regulatory guidance. Under the Obama administration in 2015, the DOL issued an administrator's interpretation about gig economy workers that more strictly defined independent contractors.⁵² This note was removed under the Trump administration, and instead the DOL issued a new rule change in 2021 under the Trump administration that more broadly defined independent contracting work.⁵³ Now under the Biden administration, the DOL proposed a new rule that rescinded the Trump-era independent contracting rule and introduced additional factors to the worker classification test that would significantly limit the circumstances under which a worker can legally be classified as an independent contractor.⁵⁴

These changes reflect an overarching attitude that the way to help nontraditional workers is to make them employees. However, there is another “bucket” of policy solutions referred to as “portable benefits,” which allow workers to maintain their nontraditional job arrangements while also helping them gain access to some benefits protections. The two policy buckets can be termed as “reclassification” (policies that attempt to reclassify nontraditional workers as employees) and “access to portable benefits” (policies that allow workers to maintain their nontraditional work arrangements and improve their access to flexible benefits).

When policymakers and regulators pursue solutions from the first bucket that narrow the definition of an independent contractor, they are hoping organizations will hire workers as employees instead of as independent contractors. However, policymakers face several limitations in this approach.

- Companies cannot extend all contracting positions into employment positions, which thereby would leave workers with fewer job opportunities, as illustrated by the backlash to AB5 in California when companies—especially small businesses such as theaters, music venues, and small media organizations—cut contracting jobs.⁵⁵ It is noteworthy that because most independent contractors, especially gig workers, are supplemental earners, reclassification efforts will not likely benefit them. They already have employment, and reclassification policies risk eliminating their “side” contracting jobs.
- Most nontraditional workers have indicated they prefer their nontraditional job arrangements over employment. Workers cite dependent care obligations, personal circumstances, or a strong preference for job flexibility (over job stability) as their primary reasons. This means that reclassification policies will at best help a minority of the nontraditional workforce who prefer to be employees at the expense of most of this workforce.
- In periods of uncertainty or a looming recession, cutting contracting jobs may make individuals worse off. Nontraditional work is an important source of income for those who face income loss and unemployment. Therefore, the loss of these income opportunities could further harm workers who already may be suffering from hiring freezes and layoffs.
- Limiting nontraditional work arrangements would disproportionately harm women who are caregivers and workers who previously had a criminal record.
- Lastly, reclassification policies do not address the central drawback for the millions of workers who will remain self-employed: access to workplace benefits.

The second bucket of policy solutions is access to portable benefits. In a high-profile survey published in the *Journal of Economic Perspectives*, 80 percent of self-employed workers surveyed said that they would like flexible, shared, or portable benefits.⁵⁶ These are benefits tied to the worker rather than attached to an employer.

The challenge is that current federal and state regulations restrict organizations from providing independent contractors with benefits precisely because these benefits conventionally have been tied to employer-employee relationships. If an organization were to provide benefits to their independent contractors, the organization would likely have to reclassify these workers as employees.⁵⁷ Indeed, several companies have already indicated that they want and are ready to give benefits to independent contractors, conditional on the law allowing them to do so.⁵⁸ Lawyers also advise companies not to provide benefits to their independent contractors for this reason.⁵⁹

The other legal challenge is that the employer-provided health insurance subsidy, which allows employees and employers to exclude their contributions on health insurance and other fringe benefits from income and payroll taxes, makes it difficult to break the link between employment and benefits.⁶⁰ As long as tax law favors employer purchase of health insurance, it will be more challenging to forge another path that separates health insurance benefits from employers.

Generally, policies with portable benefits solutions move forward in two ways:

- **Voluntary Portable Benefits.** Policymakers or agencies would have to remove the legal barriers that prevent companies from giving benefits to independent contractors; they could also reform tax laws to provide self-employed workers with better treatment for health insurance and retirement benefits contributions.
- **Mandatory Portable Benefits.** These include state solutions that allow app-based workers to maintain their independent contractor status

but require companies to provide a set of mandatory benefits for independent contractors.

The voluntary portable benefits approach is one way to implement a market-based test on whether benefits would flow to independent contractors when legal barriers are removed.⁶¹ This may be achieved from a congressional act or from agencies such as the IRS removing the presence of benefits as a factor for worker classification tests. State legislatures could also do similar changes and eliminate the provision of benefits from worker misclassification investigations.

A voluntary portable benefits approach could look like this: Fiverr, a freelancer platform, could facilitate contributions from three parties by setting up a 5 percent fee that goes into a benefits fund (a specific or general fund) for the independent contractor. Of that fee, 2.5 percent will be paid by the platform and 2.5 percent by the client or customer who is hiring the independent contractor. The third payer could be the worker, and larger companies can create various matching contributions plans to encourage greater savings. Tax incentives also could help encourage independent contractors to contribute to these funds.

With this approach, organizations could provide a menu of benefits; some organizations may provide one or two sets of benefits, whereas others, especially larger companies, may provide a more complete set. The limitation with a voluntary portable-benefits approach is that companies, especially small businesses, may choose not to contribute benefits. However, since independent contractors often receive income from various clients and organizations, this could partially mitigate the problem of independent contractors not having access to any benefits.

The mandatory portable-benefits approach is similar to what was implemented with California's Proposition 22, a ballot measure in response to AB5. Proposition 22 exempted app-based transportation and delivery drivers from AB5 by stipulating that those workers are independent contractors, but companies must provide a menu of benefits. Washington state also passed a mandatory portable-benefits approach in 2022, and other states, such as Massachusetts, are

introducing similar approaches. The menu of mandatory benefits usually includes a minimum earnings standard, health insurance stipends, and medical and disability coverage. Under this system, all covered workers would receive these mandatory benefits. The drawbacks are that it covers only app-based drivers (a minority of the independent workforce) and privileges larger companies that have the resources to provide benefits, harming potential entrants into the market. This may result in fewer competitors for these larger companies because the requirement raises the entry costs.

These state-by-state mandatory portable-benefits programs will probably continue to gain traction. At the same time, the DOL's independent contractor rule will swing with changes in the administration. However, a more sustainable, long-term solution may involve moving toward decoupling benefits from employment. If the nature of work continues to change and nontraditional work continues to grow, policymakers may have to consider more fundamental, structural changes that would allow employees and self-employed workers access to benefits.

Conclusion

Nontraditional forms of work are desirable opportunities for many working Americans. At the same time, these work arrangements have limitations;

most notably, workers do not have access to benefits afforded to traditional employees. One obstacle in designing appropriate policies for the nontraditional workforce is that there are misunderstandings about who these workers are and what they want. The first step to designing better policies for the nontraditional worker is to invest in better data to understand this workforce and to increase public knowledge about the workforce.

At the same time, it's important to emphasize that nontraditional workers are a wholly diverse set of people—spanning different income brackets, industries, and roles—who work as either primary or supplementary earners. This is partially why one-size-fits-all reclassification policies tend to be problematic; those efforts ignore the workforce's diversity. To better meet the needs of the growing nontraditional workforce, policymakers will have to think outside the box and implement sustainable solutions that may require benefits to be decoupled from employment.

About the Author

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