

Workers and the Online Gig Economy

A Hamilton Project Framing Paper

By Jane Dokko, Megan Mumford, and Diane Whitmore Schanzenbach

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Introduction

Recent developments in the U.S. economy present opportunities and challenges for how to effectively promote widely shared economic prosperity in a changing labor market. The proliferation of nontraditional and contingent employment relationships, fostered in part by new technology platforms, creates new opportunities, but also new regulatory, legal, and public policy challenges. Consumers and workers alike now use online technology and apps to contract for specific, on-demand services such as cleaning, handiwork, shopping, cooking, driving, and landscaping. These developments constitute what has been referred to as the “online gig” or “on-demand” economy, where work is taking place in a series of one-off gigs, rather than in an ongoing relationship with a single employer. The emergence of the online gig economy has increased policy interest in the issue of contingent work arrangements, which broadly include independent contractors as well as part-time, temporary, seasonal, or subcontracted workers.

In some respects, these on-demand gigs benefit both workers and the economy, and help to support job growth and household incomes in the post-Great Recession labor market recovery. Such gigs often feature flexible hours, low or no training costs, and generally few barriers to worker entry. These features have enabled gig-economy workers, including those with other jobs, to generate new income or to supplement their primary incomes during difficult times in a strained job market. Moreover, customers purchasing such on-demand services have benefited from the convenience and availability of services as well as the low cost at which they are often offered.

However, other aspects of the gig economy have raised some concerns. First, these jobs generally confer few employer-provided benefits and workplace protections. This stands in contrast to traditional employer–employee relationships that often come with manifold assurances and protections, such as overtime compensation, minimum wage protections, health insurance, disability insurance, unemployment insurance, maternity and paternity leave, employer-sponsored retirement plans, workers’ compensation for injuries, paid sick leave, and the ability to engage in collective action. Second, technological developments occurring in the workplace have come to blur the legal definitions of the terms “employee” and “employer” in ways that were unimaginable when employment regulations like the Wagner Act of 1935 and the Fair Labor Standards Act of 1938 were written. The evolution of the work relationship over time has led to important regulatory gaps.

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Some observers perceive that the online gig economy is leading to a rise in the share of work arrangements that are precarious, as compared to traditional employer–employee arrangements, and that the enhanced flexibility of the marketplace has come at a cost of economic security for many workers. In fact, systematic and timely data on contingent work arrangements are hard to come by so economists are still trying to figure out how common and widespread they are and what their impact on workers’ economic security might be. The absence of systematic data makes it all the more difficult to analyze the costs and benefits of contingent work arrangements for workers and businesses, and thus inform the appropriate policy and regulatory response. While the online gig economy is bringing this challenge to the fore, the broader issues surrounding classification and protection of contingent

workers are not new or isolated. Importantly, the use of subcontracted and temporary workers, and workers with irregular or on-call shifts, also may require new regulatory frameworks.

In this framing paper, The Hamilton Project describes the broader economic context of contingent employer–employee relationships and where the emerging on-demand gig economy fits in this context. It also highlights the regulatory and measurement gaps that need to be resolved.

The Variety of Alternative Employer–Employee Relationships

A sizeable share of the workforce is in an arrangement that does not take the form of full-time work with one employer. A challenge in describing the continuum of employer–employee relationships is that surveys use different measures and sometimes overlapping terms for contingent work relationships. Several data sources measure types of contingent work; each source has its own strengths and drawbacks.

A 2014 survey conducted by The Freelancers Union identifies more than 53 million Americans, or roughly 34 percent of the labor force, doing at least some freelance work (Horowitz and Rosati 2014). These respondents reported that they had engaged in supplemental, temporary, or project- or contract-based work within the past year. The McKinsey Global Institute estimates the number of alternative employer–employee relationships to be somewhat lower, with self-employed independent contractors comprising four percent of the labor force and temporary workers making up another four percent (McKinsey Global Institute 2015). The latter report finds that workers in the online gig economy currently make up less than one percent of workers, but notes that the sector is growing rapidly.

The most comprehensive estimates of the contingent and temporary workforce come from the Department of Labor’s Contingent Workers Survey. Unfortunately, the survey has not been conducted since 2005, and therefore predates the rise of the online gig economy by several years. As table 1 shows, at the time of the most recent survey, over 30 percent of the workforce was

TABLE 1.

Estimates of Alternative Work Arrangements, 2005

Type of Worker	Share of Employed Labor Force (percent)
CWS-Defined Contingent Workers	30.6
Agency and direct-hire temps	3.0
On-call and contract company workers and day laborers	2.6
Independent contractor or freelance workers	7.4
Self-employed workers	4.4
Standard part-time workers	13.2

Source: Bureau of Labor Statistics 2005.

defined to be in a contingent work arrangement. Among these workers, 44 percent reported working part time (13.2 percent of the overall workforce) and 25 percent reported being independent contractors or freelance workers (7.4 percent of the overall workforce), meaning that they find customers on their own and then provide those customers with a product or service. The remaining contingent workers are either self-employed or employed on a temporary basis through temp agencies and on-call relationships.

The primary source of monthly employment measurement, the Current Population Survey (CPS), does not currently ask directly about work in the gig economy. This type of employment may be captured in a variety of places on the survey, and may also be understated. For example, the CPS asks workers whether in the prior week they were self-employed or if they were instead employed by government, a private company, or a nonprofit organization. In September 2015, 5.3 percent of workers reported that they were self-employed but unincorporated. This number includes a sizeable share of workers in construction, management, and sales occupations, and may also include workers in the gig economy.

Aggregate estimates of the share of workers reporting they hold multiple jobs hover around five percent of the labor force. This share is little changed in recent years, and seems to stand in contrast to the popular perception that gig economy workers are adding gig work on top of another job, whether part-time or full-time. According to economists Larry Katz and Alan Krueger, though, these numbers may understate the extent of on-demand

work because existing, large-scale surveys like the CPS do not directly inquire about gigs. As a result, some full-time workers performing on-demand gigs as secondary employment may not report such work as an additional job (Uhler 2015; Wile 2015).

Despite the imprecise measurement of its current scope, the online gig economy appears poised to grow. This prediction is based on rising consumer demand patterns in this sector of the economy (PwC 2015). It seems clear that such work is an increasingly important feature of the U.S. labor market.

Explaining the Rise of the Contingent Workforce

The rise of new forms of contingent work is being driven by both businesses and workers. There are three reasons businesses might promote such arrangements. First, some businesses, such as those experiencing short-run fluctuations in the demand for their goods and services, benefit from the flexibility in being able to hire workers on a temporary and contingent basis. Second, businesses seeking to reduce labor costs can turn to contingent relationships with their workers. For example, subcontracting relationships allow firms to obtain specialized skills held by outside contractors without incurring the attendant training costs and other investments (Abraham 1990). Third, some firms use contingent work relationships to meet capital market pressures on short-term performance and efficiency, noting that the announcements of layoffs are no longer viewed as signs of distress but rather as laudable improvements in efficiency, and that they are rewarded through higher stock prices for the firm (Weil 2014).

In addition, workers themselves might find contingent work advantageous. Part-time workers and independent contractors report an appreciation for the flexibility that such work offers; this type of work is particularly helpful for those seeking income during an extended job search (Hall and Krueger 2015; Segal and Sullivan 1995). Some workers, such as professional nurses, may receive and value the higher wages they earn to compensate them for scheduling disruptions that can arise when they work on a contingent basis (Segal and Sullivan 1995). Others seek contingent work arrangements to generate supplemental income to a primary job, as demonstrated in a recent survey of Uber drivers (Hall and Krueger 2015).

While there are many potential explanations for why businesses and workers end up in contingent work arrangements, technology both enables these arrangements and makes them more visible. For example, the revolution in computing power has improved the ability of businesses to track the performance of their workers, including the number of hours worked and the quality of output. In turn, greater observability of workers reduces the scope for information asymmetries in employment contracts, leading to the greater use of short-term contracts rather than longer-term employment contracts (Brynjolfsson and McAfee 2011). Also, the ability to transmit data instantaneously has allowed business to track their goods and inventories at all points in space and time, which has helped them better forecast and anticipate demand for their services and adjust their staffing needs accordingly (Baker and Hubbard 2003; Weil 2014). And smartphone applications have connected consumers to service and goods providers more quickly and with greater ease, making such contingent work more salient to the casual observer.

Regulating Workers in the Gig Economy

In the emerging online gig economy, a company, sometimes referred to as a platform, connects the worker to the customer, typically through an app. The degree to which the platform or employer exerts control over the worker's schedule, the prices charged to the customer, any equipment used by the worker, the method of service delivery, and ways of advertising the service all depend on the type of company and service (Hagi 2015). As contingent work has evolved and new types of employer–employee relationships have emerged, important questions have surfaced as to whether the legal classification systems governing the workforce have kept pace with these new relationships.

In the current legal context a worker is classified as either an employee or an independent contractor; there is often some uncertainty about which category is appropriate for workers along the continuum between the two classifications. The categorization of a worker matters, in part because U.S. law imposes requirements on employers with respect to their employees that are not imposed on independent contractors, such as minimum wage and overtime rules, the right to organize, and civil rights protections. As a result, in cases that lie in the gray area on the continuum between employees and independent contractors, it can be advantageous for employers to classify workers as independent contractors rather than employees to avoid incurring additional costs.

The courts have developed tests to determine whether a worker is an employee or an independent contractor. The

BOX 1.

Ambiguity in Employment Relationships: An Illustrative Example

Consider a hypothetical work arrangement for a delivery truck driver. He drives for a delivery service whose primary client is a large commerce company. The driver is paid based on the number of deliveries he completes, and he does not receive traditional employment protections such as overtime pay. The driver must purchase his own vehicle, but is not allowed to work for other delivery services. The driver must wear a uniform with the delivery service's logo. He can be removed as a contractor at will for not meeting the service's standards or expectations. What are the sources of classification ambiguity?

For the purposes of IRS classification, the driver may meet some criteria for classification as an independent contractor: he is paid based on the job rather than by the hour, week, or month; he invests in his own facilities (the truck); and he does not perform his work on the business's premises. However, the driver may meet other factors that suggest he is an employee: he must perform services in the order set by the business and he may not work for more than one firm at a time. In addition, the delivery service has the right to terminate the relationship without incurring liability (Joint Committee on Taxation 2007).

tests vary somewhat, and are used for different purposes. In practice, a given worker can be categorized as an employee under one test and an independent contractor under the other. The “common law test” evaluates a worker’s status based on which party has the right to control the work process; the IRS uses a closely related twenty-factor test to evaluate employer tax obligations. The “economic realities” test, used by the Department of Labor to enforce labor standards such as the Fair Labor Standards Act that governs minimum-wage and overtime rules, focuses on the economic relationship between worker and employer. This test examines factors such as whether a worker provides services that are integral to the employer’s business, whether the worker has the opportunity to make a profit or suffer loss, whether the worker has an extended relationship with the employer, and other factors. In other cases, such as the Americans with Disabilities Act, a hybrid of factors from both the common law test and the economic realities test is used.

Under all of the tests, correct classification of a worker depends on the totality of the circumstances in which she works, with no one factor dominant.

The legal dichotomy is not fully exhaustive of the range of employer–employee relationships. Workers in the gig economy have some characteristics that suggest they should be categorized as employees, and others that suggest categorization as an independent contractor (see box 1). Under current law, the courts are asked to resolve this uncertainty by forcing gig economy workers into one category or the other. As technology enables the types of work arrangements to continue to grow, it is becoming increasingly difficult to fit these arrangements into the traditional designations that laws, courts, and government agencies still use. The wide scope of potential employment relationships may counsel in favor of adding new categories of workers.

BOX 2.

Related Policy Proposals from The Hamilton Project

The Hamilton Project has previously released several papers that focus on the changing nature of work.

- “Profiles of Change: Employment, Earnings, and Occupations from 1990–2013” (2015): In this economic analysis, The Hamilton Project documents changes in the earnings and occupational distributions of workers with different levels of education.
- “The Future of Work in the Age of the Machine” (2015): In this framing paper, The Hamilton Project explores the debate about how computerization and machines might change the future of work and the economy.
- “Three Targeted Approaches to Expand Employment Opportunities” (2015): In this framing paper, The Hamilton Project discusses structural challenges in the labor market and three ways to address labor market frictions that impede job growth.
- “Reforming Occupational Licensing Policies” (2015): Occupational licensing has had an important influence on wages, benefits, employment, and prices in ways that impose net costs on society with little improvement to service quality, health, or safety. Morris Kleiner proposes four specific reforms to occupational licensing policies.
- “Encouraging Work Sharing to Reduce Unemployment” (2014): Katherine Abraham and Susan Houseman propose a variety of work-sharing requirements to target workers who would otherwise become unemployed during cyclical downturns. The proposal aims to reduce the number of layoffs during economic downturns.
- “Creating 21st Century Jobs: Increasing Employment and Wages for American Workers in a Changing World” (2010): The Hamilton Project and Center for American Progress discuss the decline of the real wage for the median worker and the rise in wages for the highly skilled worker. They offer three discrete policy options that seek to promote the future competitiveness and prosperity of the U.S. labor force.
- “The Polarization of Job Opportunities in the U.S. Labor Market: Implications for Employment and Earnings” (2010): David Autor analyzes the U.S. labor market over the past three decades and finds employment polarization on the rise as job opportunities decline in middle-skill occupations, resulting in a sharp increase in wage inequality.

Looking Ahead

As the nature of work in the twenty-first century evolves, a range of views on the state of employment in the United States has emerged. While some characterize the rise of the on-demand or gig economy as an existential threat to traditional job security, others emphasize that this innovative form of work can provide new employment opportunities and flexibility that workers in the new economy highly value. An important but unresolved question in evaluating these views is whether emerging forms of work are substantively new or are simply a different manifestation of contingent work.

The Hamilton Project has previously discussed a variety of structural changes in the American labor market and potential policy responses, as seen in box 2. Common across these papers has been the view that the social benefits of regulation should exceed the social costs. When regulation reduces uncertainty for households and businesses, promotes innovation, and does not have high enforcement costs, it is easier to achieve this goal. While the implications of the gig economy for the broader economy remain to be seen, its impact will depend in part on how we decide to classify and regulate such arrangements, and whether we are able to forge a path that simultaneously protects workers and promotes innovation and job growth.

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The Hamilton Project seeks to advance America's promise of opportunity, prosperity, and growth. We believe that today's increasingly competitive global economy demands public policy ideas commensurate with the challenges of the 21st Century. The Project's economic strategy reflects a judgment that long-term prosperity is best achieved by fostering economic growth and broad participation in that growth, by enhancing individual economic security, and by embracing a role for effective government in making needed public investments.

Our strategy calls for combining public investment, a secure social safety net, and fiscal discipline. In that framework, the Project puts forward innovative proposals from leading economic thinkers—based on credible evidence and experience, not ideology or doctrine—to introduce new and effective policy options into the national debate.

The Project is named after Alexander Hamilton, the nation's first treasury secretary, who laid the foundation for the modern American economy. Hamilton stood for sound fiscal policy, believed that broad-based opportunity for advancement would drive American economic growth, and recognized that "prudent aids and encouragements on the part of government" are necessary to enhance and guide market forces. The guiding principles of the Project remain consistent with these views.

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