THE "GIG" ECONOMY

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"GIG" ECONOMY OVERVIEW

The "gig economy" sums up the labor market reality demanded or dreaded by many of today's workers. In his piece naming "gig" as the word of the year, National Public Radio's Geoff Nunberg lists several labels that alternatively describe the gig economy phenomenon, including "the on-demand economy, the 1099[1] economy, the peer-to-peer economy, and freelance nation."[2] Although some workers may celebrate the freedom associated with a 1099 lifestyle, others may think of a "gig" as "an old word for a job you need that you can't count on having tomorrow."[3]

This report explores a variety of sources and discusses growth patterns, red flags, and questions worthy of further research relating to the gig economy. The report begins by examining national trends related to the percentage of non-employee (gig) workers within the national labor force, with estimates ranging anywhere from 5 percent to a third or more. Next, the report steps through information from two key analytical products: the 2015 Government Accountability Office (GAO) Contingent Worker Report and the Economic Modeling Specialists, Inc. (EMSI) analysis of 2012 Current Population Survey (CPS) data on self-employed workers. Both reports found between 7 and 8 percent of workers fell within the report's chosen label for non-employee workers, and both reports found that non-employee workers earned less than those with traditional employment. EMSI reports that Seattle Metropolitan Statistical Area (MSA) non-employee workers make just under $27,000 per year, compared to the nearly $76,000 per year earned by the average King County worker and approximately $58,000 earned by the average Snohomish County worker.[4] This report also briefly looks at the limited information available regarding online gig workers, illustrates how one employer (Uber) has impacted some gig workers, and reviews some local Seattle policies which may require gig economy firms to offer benefits and allow unionization. This report concludes with observations regarding the future of the gig economy, including the need for additional research and the importance of embracing entrepreneurship in general.

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[1] A person or company who pays for services from an independent contractor (i.e. from a non-employee) must provide the IRS and the independent contractor a copy of form 1099-MISC to document the amount paid for services over the course of the year. See Forms and Associated Taxes for Independent Contractors, Internal Revenue Service (May 12, 2016), https://www.irs.gov/businesses/small-businesses-self-employed/forms-and-associated-taxes-for-independent-contractors.

[2] Geoff Nunberg, *Good-bye Jobs, Hello Gigs: How One Word Sums Up a New Economic Reality*, Fresh Air, NPR, Jan. 11, 2016, http://www.npr.org/2016/01/11/460698077/goodbye-jobs-hello-gigs-nunbergs-word-of-the-year-sums-up-a-new-economic-reality.

[3] *Ibid.*

[4] For annual average wages by county, see Quarterly Census of Employment and Wages (QCEW), Washington State Employment Security Department, https://esd.wa.gov/labormarketinfo/covered-employment.

Defining Terminology

Although it would be simpler to use a single term, such as "gig," throughout this report, the underlying studies and articles have defined and examined populations, jobs, and economy segments differently. For purposes of this report, terms have been assigned meaning as follows:

Gig – a short-term opportunity to earn income in exchange for work, often less formal than providing independent contracting or contingent work (see below)

Shared economy – a space, platform, application, or set thereof – often but not necessarily online – through which private individuals may utilize their existing resources to earn income passively (e.g., by renting out a bedroom through Airbnb) or actively (e.g., by providing a ride via Uber or Lyft)

On-demand worker – an individual who will accept a short-term opportunity with little notice (e.g., a person on Task Rabbit willing to look at pictures and identify faces the same hour a request is posted), often less formal than providing independent contractor or contingent work, and may even be less formal than gig work (as working a gig may at times involve more notice than working "on demand")

1099 worker – an independent contractor who provides goods or services, but who retains control of his or her schedule and means of performing short-term or ongoing work

Alternative workers – a broad term encompassing individuals performing work outside of a formal employer-employee relationship, including temporary help agency workers, on-call workers, contract workers, contingent workers, and independent contractors or freelancers

Contingent worker – a person who provides services, often to a company, who does not have traditional employee protections, such as sick leave or retirement benefits (Agency "temps" and day laborers serve as common examples of contingent workers, but some entities use an expansive definition that includes long-term part-time workers who lack benefits)

NON-EMPLOYEE WORKERS AS A PERCENTAGE OF THE WORKFORCE

Some argue that the fascination with superstar companies such as Uber and Airbnb distracts from a larger trend: the national shift from full-time jobs with benefits to "alternative work arrangements" in education, healthcare, construction, and other core sectors within the economy.[5] Recent research from Lawrence Katz of Harvard and Alan Krueger of Princeton indicates that "workers engaged in alternative work arrangements—defined as temporary help agency workers, on-call workers, contract workers, and independent contractors or freelancers—rose from 10.1 percent in February 2005 to 15.8 percent in late 2015."[6] Of these, "[w]orkers who provide services through online intermediaries, such as Uber or Task Rabbit, accounted for 0.5 percent of all workers in 2015."[7] The same report states that "[a] striking implication of these estimates is that all of the net employment growth in the U.S. economy from 2005 to 2015 appears to have occurred in alternative work arrangements."[8] In other words, according to the estimates drawn from one analysis based on the CPS, the country gained a net 9.1 million total jobs over the measured decade, while 9.4 million of newly added jobs were classified as "contingent" or non-standard employment, and thus the economy may have lost 300,000 standard-employment jobs.[9]

Estimates of these contingent workers will vary depending on whether the researcher counts only those whose primary income originates from alternative work arrangements, or whether "dabblers" — for example full-time teachers who babysit for supplemental income during the summer — also count. Numbers also rise and fall based on whether alternative arrangements must be "temporary" or whether those attached to the same company for a long period can remain classified as alternative workers. The Government Accountability Office (GAO) in 2015 estimated that the percentage of the total workforce engaged in contingent work could range anywhere from less than 5 percent to more than a third.[10] The same GAO report estimated that "core contingent workers" comprised approximately 7.9 percent of the national workforce.[11]

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[5] Alison Griswold, *Uber Is Distracting Us from a Much Bigger Issue for the U.S. Economy*, QUARTZ, Apr. 7, 2016, http://qz.com/654536/the-uber-economy-is-distracting-us-from-a-much-bigger-employment-issue/

[6] Lawrence F. Katz & Alan B. Krueger, *The Rise and Nature of Alternative Work Arrangements in the United States, 1995–2015,* Report on the Contingent Worker Survey, at 1, Mar. 29, 2016, http://krueger.princeton.edu/sites/default/files/akrueger/files/katz_krueger_cws_-_march_29_20165.pdf

[7] *Ibid.*

[8] *Ibid.* at 7.

[9] *Ibid.*

[10] Government Accountability Office, *GAO-15-168R Contingent Workforce*, p.3 (Apr. 20, 2015), http://www.gao.gov/assets/670/669766.pdf.

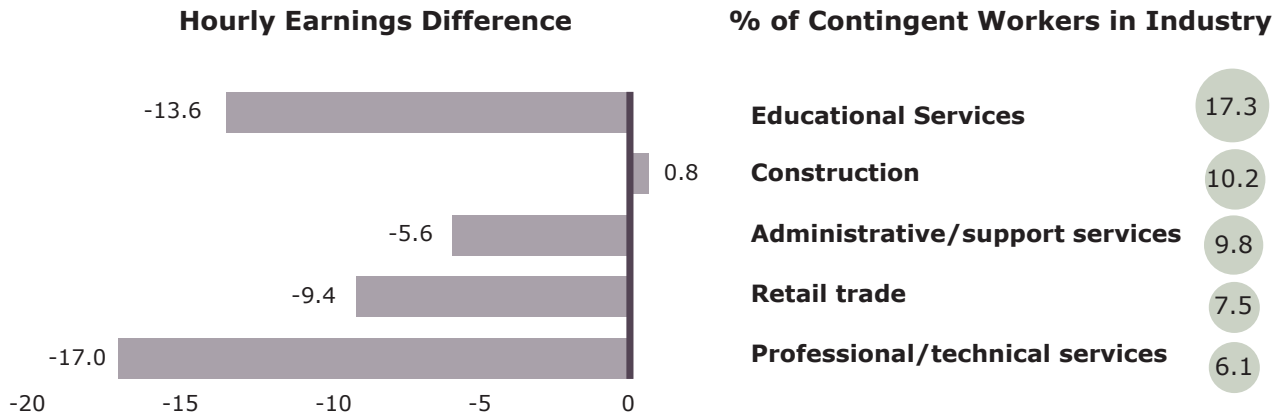
[11] *Ibid.* at 4.

THE 2015 GAO REPORT

At the time of the 2015 GAO Contingent Workforce report, "[c]omprehensive, nationally representative data on contingent workers [had] not been collected since 2005."[12] The Bureau of Labor Statistics (BLS) introduced the Contingent Work Supplement (CWS) to the Current Population Survey (CPS) in 1995 and provided periodic data updates over the course of ten years. The GAO report supplemented this 2005 data with more recent data from the General Social Survey (GSS) and the Survey of Income and Program Participation (SIPP). The GAO analysis found that contingent workers earn less on an annual (47.9 percent less per year), weekly (27.5 percent less per week), and hourly (10.6 percent less per hour) basis than non-contingent workers.[13] Contingent workers are also more likely to report living in poverty or receiving public assistance.[14]

The GAO examined earnings differences across the industries with the highest percentage of contingent workers: Education Services, Construction, Administrative/Support Services, Retail Trade, and Professional/Technical Services. Construction contingent workers showed slightly higher hourly earnings, but all other industries showed lower hourly earnings for contingent workers.[15] Every industry showed lower annual wages for contingent workers.[16]

Hourly Earnings: Comparison Between Contingent and Non-Contingent Workers



Source: GAO analysis of data from the 2012 Current Population Survey earnings modules and Disability Supplement | GAO-15-168R

[12] *Ibid.* at 9.
[13] *Ibid.* at 5-6.
[14] *Ibid.* at 6.
[15] *Ibid.* at 28.
[16] *Ibid.*

As useful as the GAO Contingent Worker report is, it leaves important questions unanswered. How might the category of self-employed workers differ from the category of contingent workers? What do we know about the Seattle area specifically? How do online gig workers differ from core contingent workers such as temporary administrative helpers and day laborers? Additional sections below attempt to tackle some of these questions.

THE ECONOMIC MODELING SPECIALISTS INTERNATIONAL (EMSI)[17] TAKE ON THE NATIONAL AND SEATTLE SELF-EMPLOYED WORKFORCE

In analyzing non-employee workers, EMSI has opted to focus on workers falling under the self-employed[18] label. This category may include individuals performing non-contingent work (e.g. a small business owner running a brick and mortar shop). EMSI, however, is one of the rare entities providing city-level information, and so examining its national and city-level findings provide insights unavailable from most other sources.

The 2012 EMSI Current Population Survey (CPS) Analysis

According to a 2012 EMSI analysis of the CPS,[19] the number of United States self-employed workers increased 14.4 percent from 2001 to 2012, for a total estimated 10.6 million self-employed jobs. Self-employment declined 5 percent during the 2006 to 2008 time period before leveling off. This worker category made up 7.1 percent of the total workforce.[20] Some highlights from this report include the following:

- Self-employed workers made $26,921 per year compared to the $56,053 made by the total workforce.
- Over thirty percent of self-employed workers were fifty-five or older; an additional 28.2 percent of self-employed workers were ages forty-five to fifty-four.
- By industry: 30 percent of self-employed jobs were within the agriculture, fishing, and hunting industry, while another twenty-four percent were in the construction industry.
- By occupation: The largest categories of self-employed workers were childcare workers, carpenters, maids and housekeepers, farmers and ranchers, and construction laborers.

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[17] Economic Modeling Specialists International (EMSI), a private entity based in Moscow, Idaho, serves as a common source for workforce data. EMSI draws on multiple sources, including the Census Bureau's American Community Survey, BLS's Current Employment Survey and Occupational Employment Survey, as well as the Indeed.com job-posting search engine, to cite but a few examples. For a complete listing, see *"Real Time and Traditional" Data Sources*, EMSI, http://www.economicmodeling.com/data-sources/.

[18] Note that the definition of "self-employed" within the EMSI CPS-based analysis covers only those who consider self-employment their primary source of income. Those with full-time employment working side jobs for extra cash are not included in the counts.

[19] Joshua Wright, *Characteristics of the Self-Employed,* EMSI, Jul. 18, 2012, http://www.economicmodeling.com/2012/07/18/characteristics-of-the-self-employed/.

[20] A lower estimate than seen in other sources due to the narrow definition of "self-employed" used within the EMSI report.

City-Level Estimates

EMSI's popularity for city-level information is due in part to the dearth of other sources that attempt to drill down to smaller geographies, combined with EMSI's policy of "unsuppressing" data.[21] To the extent that this additional detail allows policy makers to make critical decisions, EMSI estimates can be a valuable reference point. On the other hand, the smaller the geographic area discussed, the larger the room for error, and thus all city-level data discussed here must be taken with an educated grain of salt.

The July 2012 EMSI report,[22] above, lists Washington State as tied for fifteenth place for states with the highest proportion of self-employment.[23] The report mentions ten MSAs by name, but it does not list the Seattle MSA, and Seattle is not among those MSAs with the highest or lowest proportion of self-employed workers. A Forbes article[24] referring generally to EMSI research references those "writing apps, doing technical consulting, and working in the information sector" in the Seattle area and reports a 10 percent increase in self-employment for the area between 2007 and 2012, comparable to the 11 percent increase seen in San Jose for the same time period.

Drilling into the currently available EMSI Seattle MSA data, EMSI estimates that there are 126,623 self-employed jobs[25] in the Seattle MSA, compared to 10,141,056 self-employed jobs in the United States. This represents a 2.6 percent increase over EMSI's comparable estimate for 2013.

Comparison of Seattle MSA and United States Self-Employed Jobs

Region	2013 Jobs	2016 Jobs	Change	% Change
Seattle MSA	123,424	126,623	3,199	2.6%
United States	9,889,285	10,141,056	251,771	2.5%

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[21] EMSI, About EMSI: Our data, http://www.economicmodeling.com/data/. ("The BLS suppresses as much as sixty percent of county-level industry employment and wage data. We have algorithms to remove suppressions and provide estimates that our clients vouch for.")

[22] *See* Wright, *supra* note 19.

[23] For an explanation of EMSI's use of the term of "self-employed" rather than "gig worker" or "shared economy worker," see *supra* note 21.

[24] Joel Kotkin, *The Rise of the 1099 Economy: More Americans Are Becoming Their Own Bosses*, FORBES, July.25, 2012, http://www.forbes.com/sites/joelkotkin/2012/07/25/the-rise-of-the-1099-economy-more-americans-are-becoming-their-own-bosses/#2450347b7d8c.

[25] Note that the number of jobs may differ from the number of workers, as one worker may fill more than one job.

EMSI estimates that average earnings for Seattle Self-Employed workers are $26,874 in 2016. The most popular industry for self-employed work is "Other Services," followed closely by "Professional, Scientific, and Technical Services." Each of these categories has just over 20,000 jobs. Self-employed workers in "Other Services" earn approximately $15,000 per year; self-employed workers in Technical Services earn approximately $35,000 per year. Other industry categories with a large number of self-employed workers include Health Care, Construction, and Administrative Support.

Number of Jobs, Seattle Self-Employed Workers, By Industry

NAICS	Industry	2016 Jobs
81	Other Services (except Public Administration)	22,321
54	Professional, Scientific, and Technical Services	21,195
56	Administrative and Support and Waste Management and Remediation Services	13,065
62	Health Care and Social Assistance	13,065
23	Construction	12,856
53	Real Estate and Rental and Leasing	7,176
44	Retail Trade	7,020
71	Arts, Entertainment, and Recreation	6,589
48	Transportation and Warehousing	5,262
61	Educational Services	4,368
31	Manufacturing	2,729
52	Finance and Insurance	2,529
72	Accommodation and Food Services	2,484
51	Information	2,044
42	Wholesale Trade	1,731
11	Crop and Animal Production	1,166
21	Mining, Quarrying, and Oil and Gas Extraction	38
22	Utilities	36
55	Management of Companies and Enterprises	0
90	Government	0
99	Unclassified Industry	0

Average Earnings of Seattle Self-Employed Workers, By Industry

Average Earnings (2016)
$26,877
102% of National Average

NAICS	Industry	2016 Jobs
81	Other Services (except Public Administration)	$80,065
54	Professional, Scientific, and Technical Services	$59,165
56	Administrative and Support and Waste Management and Remediation Services	$52,021
62	Health Care and Social Assistance	$40,909
23	Construction	$37,001
53	Real Estate and Rental and Leasing	$35,071
44	Retail Trade	$34,893
71	Arts, Entertainment, and Recreation	$34,202
48	Transportation and Warehousing	$33,949
61	Educational Services	$31,176
31	Manufacturing	$26,897
52	Finance and Insurance	$26,549
72	Accomodation and Food Services	$24,718
51	Information	$20,351
42	Wholesale Trade	$17,256
11	Crop and Animal Production	$15,333
21	Mining, Quarrying, and Oil and Gas Extraction	$15,097
22	Utilities	$2,721
55	Management of Companies and Enterprises	$0
90	Government	$0
99	Unclassified Industry	$0

For the 2013-2016 period, EMSI calls out occupational categories that it estimates are growing or declining for self-employed Seattle MSA workers. Growing occupations include Maids and Housekeeping Cleaners, Childcare Workers, and Taxi Drivers and Chauffeurs. Declining occupations include Retail Sales Supervisors and Groundskeeping.

Growing and Declining Occupations, Seattle Self-Employed Workers

Occupation	Change in Jobs (2013-2016)
Maids and Housekeeping Cleaners	976
Childcare Workers	807
Taxi Drivers and Chauffeurs	534
Sales Representatives, Wholesale and Manufacturing, Except Technical and Scientific Products	(165)
First-Line Supervisors of Retail Sales Workers	(281)
Landscaping and Groundskeeping Workers	(488)

While the EMSI data sheds some light on local trends, it is important to remember that local estimates are less accurate than national estimates. Also, as noted above, EMSI does not have a "gig" category, and a view of "self-employed workers" gleaned from EMSI data will include those who own steady small businesses as well as those embracing short-term gigs.

ONLINE LABOR REPRESENTS A SPECIAL SEGMENT OF THE WORKFORCE

Some entities have attempted to learn more about those who acquire work through online intermediaries—the 0.5 percent of the workforce Katz and Krueger referred to, above.[26] For example, Oxford's Online Labor Index (OLI) tracks international trends affecting this segment. A 2015 preliminary survey out of Silicon Valley also attempted to delve into online worker demographics.

Although OLI has a global focus, the United States is clearly a star player. The U.S. dominates online hiring, accounting for 52 percent of the global market.[27] Between May and September of 2016, United States advertisements for such positions grew by 6 percent.[28]

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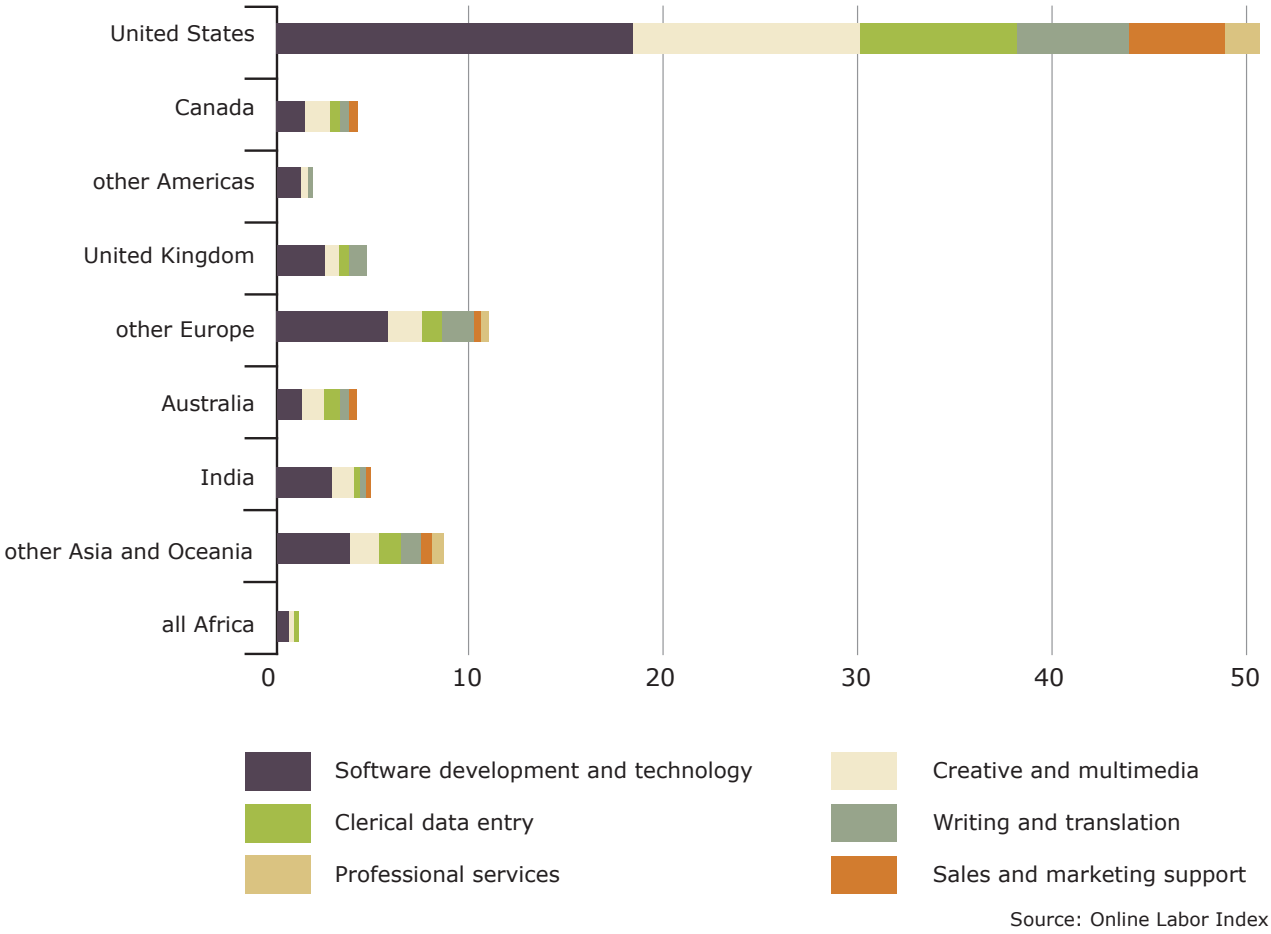
[26] *See supra* note 6.
[27] Hilary Osborne, *Online Jobs in New Economy Growing Fast,* THE GUARDIAN, Sep. 21, 2016, https://www.theguardian.com/money/2016/sep/22/online-jobs-in-gig-economy-growing-fast-finds-new-index (citing Oxford's Online Labor Index, http://ilabour.oii.ox.ac.uk/online-labour-index/).
[28] *Ibid.*

Employer Market Share for Online Hiring by Country and Occupation Category[29]



Source: Online Labor Index

Within the United States, insights into the online worker's experience typically come from individual anecdotes.[30] The number of reliable, government or university-sponsored reports on contingent workers is already limited, and focusing in on the subset of online workers rarely, if ever, happens. However, one preliminary effort, the "1099 Economy Workforce Report," a survey conducted by three Stanford graduates and one Y Combinator alumnus, attempted to shed some light on broader online worker characteristics by distributing online surveys to 1,330 independent contractors.[31] The response rate was approximately 67 percent.[32]

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[29] Online Labor Index (Sep. 19, 2016), http://ilabour.oii.ox.ac.uk/which-countries-and-occupations-are-embracing-the-online-gig-economy-ask-the-online-labour-index/.

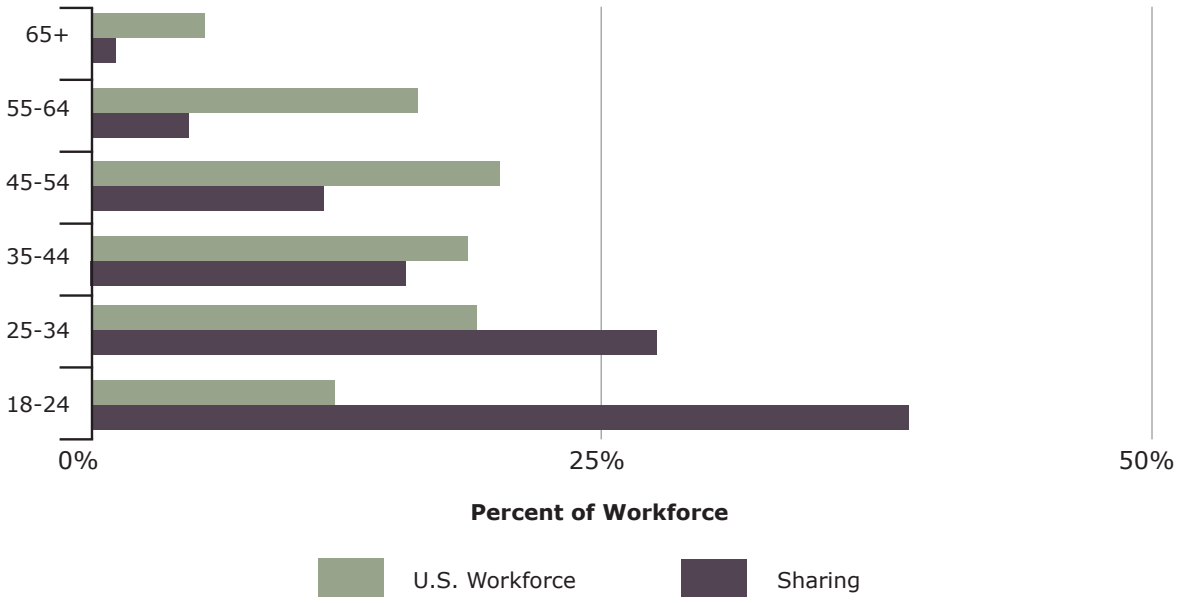
[30] *See, e.g.*, Sandra Vahtel, *I Loved Uber as a Passenger. Then I Started Working as a Driver,* LOS ANGELES TIMES, May 13, 2016, http://www.latimes.com/opinion/op-ed/la-oe-vahtel-rider-turned-uber-driver-20160516-story.html. This article is discussed in more detail in a later section.

[31] The full original survey report is no longer available online. For a summary, see Alison Griswold, *Young Twentysomethings May Have a Leg Up in the 1099 Economy*, Slate, (May 22, 2015), http://www.slate.com/blogs/moneybox/2015/05/22/_1099_economy_workforce_report_why_twentysomethings_may_have_a_leg_up.html. *See also* Joe Pinsker, *What Does the On-Demand Workforce Look Like?*, ATLANTIC (May 20, 2015), http://www.theatlantic.com/business/archive/2015/05/what-does-the-on-demand-workforce-look-like/393680/.

[32] *See* Griswold, *supra* note 5.

Survey respondents trended young. 39 percent of respondent online sharing economy[33] workers were age eighteen to twenty-four (compared to 12 percent of the total U.S. workforce). 68 percent of these workers were age eighteen to thirty-four (compared to about a third of the total U.S. workforce).[34]

Age: Online Sharing Economy Worker Compared to U.S. Workforce



Source: BloombergBriefs.com

A greater number of online sharing economy respondent workers had at least a college degree (40 percent compared to 32 percent for the general population).[35] An even higher percentage of online sharing economy workers have some college, but that may be due to college students participating in the shared economy to earn spending money.

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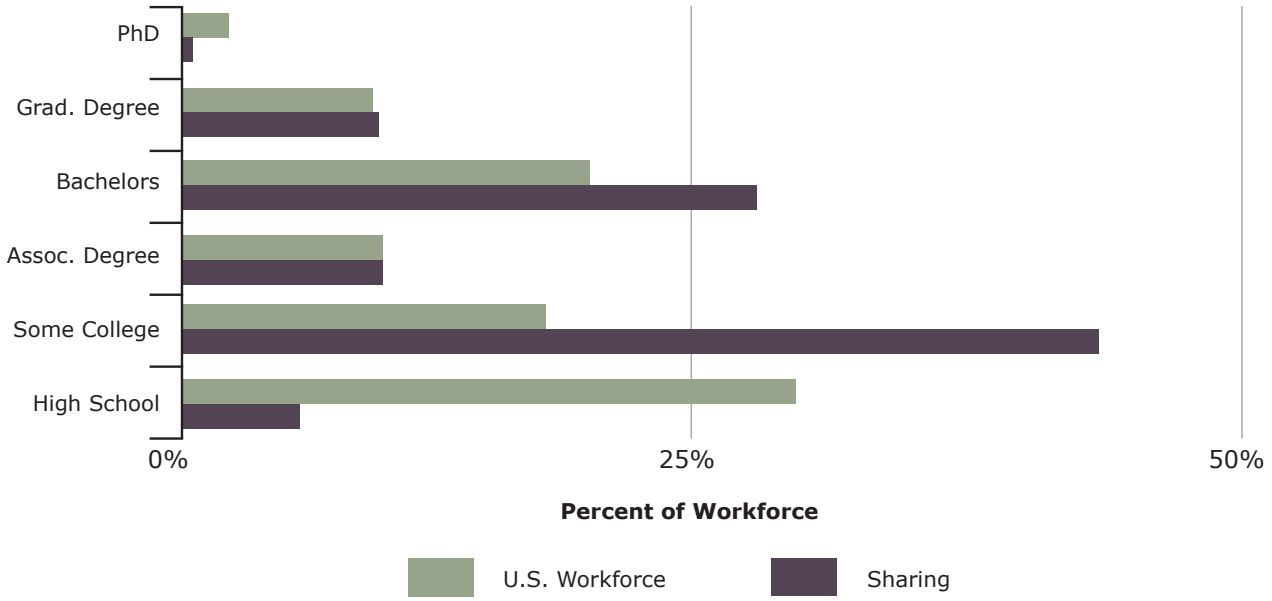
[33] Some describe the "sharing economy" as the online space in which owners can temporarily rent out assets such as a car or bedroom. *See The Rise of the Sharing Economy: On the Internet, Everything Is for Hire*, THE ECONOMIST (Mar. 9, 2013), http://www.economist.com/news/leaders/21573104-internet-everything-hire-rise-sharing-economy. Others see it as a place where people "produce or co-produce goods and services collaboratively or collectively or cooperatively," and which can include "swapping, exchanging, collective purchasing, collaborative consumption, shared ownership, shared value, co-operatives, co-creation, recycling, upcycling, re-distribution, trading used goods, renting, borrowing, lending, subscription based models, peer-to-peer, collaborative economy, circular economy, on-demand economy, gig economy, crowd economy, pay-as-you-use economy, wikinomics, peer-to-peer lending, micro financing, micro-entrepreneurship, social media, the Mesh, social enterprise, futurology, crowdfunding, crowdsourcing, cradle-to-cradle, open source, open data, user generated content (UGC) and public services." Benita Matofska, *What Is the Sharing Economy,* THE PEOPLE WHO SHARE (Sep. 1, 2016), http://www.thepeoplewhoshare.com/blog/what-is-the-sharing-economy/.

[34] Jennifer Rossa and Anne Riley, *These Charts Show How the Sharing Economy Is Different*, BLOOMBERG, June 15, 2015, http://www.bloomberg.com/news/articles/2015-06-15/these-charts-show-how-the-sharing-economy-is-different.

[35] *Ibid.*

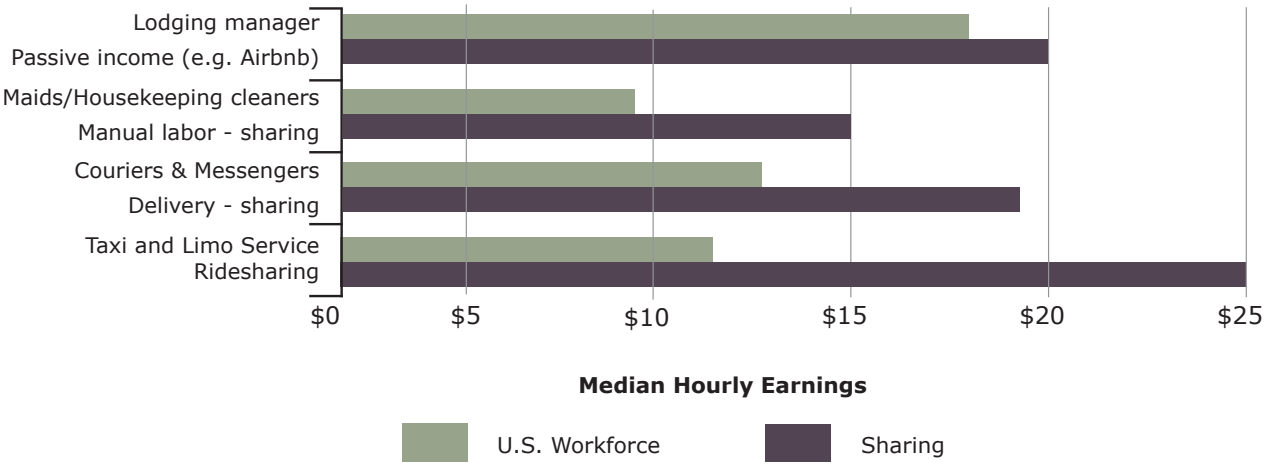
Education: Online Sharing Economy Worker Compared to U.S. Workforce



Source: BloombergBriefs.com

Online sharing economy respondent workers' 2015 earnings were a median $18.00 an hour versus the May 2014 $17.09 overall workforce median.[36] Some sharing-economy workers make more than their non-alternative worker counterparts per hour.[37]

Median Hourly Earnings: Online Sharing Economy Worker Compared to BLS Estimated US Worker



Source: BloombergBriefs.com

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[36] *Ibid.*

[37] *See Ibid.* Annual earnings information is not available.

Uber as an Example: Description of the Challenges and Advantages of Gig Employment

Uber has played a large part in shining the spotlight on gig work, so it seems fitting to look at Uber as an example for some details about gig economy employment.

Uber worker satisfaction reports are mixed. In an op-ed, one Los Angeles author described frustration with passenger expectations, company-issued fine print, and earnings short of expectations: "On my third day behind the wheel, I sat in the car for eleven hours, drove for seven of them, and grossed $118 before deducting the cost of gas, wear and tear, rideshare insurance, and income tax."[38] A broader report, commissioned by Uber and providing financial incentives to respondents, concluded that Uber has improved drivers' lives by offering a flexible schedule and that the majority of drivers are satisfied with the company.[39]

NerdWallet is a third party that has attempted to compare costs and rewards of driving for Uber. In the Seattle market, NerdWallet estimates that, for a Camry, average annual auto insurance is approximately $1,000, average annual car ownership cost is approximately $11,800, and average gross fare paid to the driver is approximately $16.50 per trip.[40] At these estimated levels, a driver would need to give about one ride per week to cover insurance, about six rides per week to cover car ownership costs, and about fifty-eight rides per week to make $50,000 per year.[41] NerdWallet also notes that it is difficult to estimate how many hours per week an Uber driver would need to be available in order to actually provide fifty-eight rides per week.

Given the lawsuits that have challenged gig workers' alleged independence, it seems a fair population of workers is not happily taking home $50,000 per year driving only during their spare time. Shortly after settling one lawsuit with a $100-million payout, Uber faced a fresh suit brought by thousands of New York drivers alleging they had been misclassified as 1099 contractors rather than W-2 employees.[42] (Lyft has had to settle at least one similar suit, albeit for a smaller amount.[43])

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[38] Vahtel, *supra* note 30.
[39] Danny Vinik, *Uber Drivers Love Uber, Says Uber Survey. Here's Why You Should Believe It*, New Republic, Jan. 22, 2015, https://newrepublic.com/article/120832/uber-study-uber-drivers-are-happy-uber
[40] John Kuo, *Here's How Much You Need to Drive for Uber and Lyft to Cover Car Insurance, Other Costs*, NERDWALLET, INC., Oct. 19, 2016, https://www.nerdwallet.com/blog/insurance/number-rides-pay-insurance-lyft-uber/.
[41] *Ibid.*
[42] Abigail Tracy, *Thousands of Uber Drivers are Suing Over Their Employment Status: the Battle Over the Company's Contractor-Based Model Continues*, VANITY FAIR, June 2, 2016, http://www.vanityfair.com/news/2016/06/uber-class-action-lawsuit-new-york.
[43] *Ibid.*

INTERSECTION OF GIG EMPLOYMENT AND VARIOUS SEATTLE ORDINANCES (PAID SICK LEAVE AND SAFE TIME, MINIMUM WAGE, ETC.)

The Unionization Question

In December 2015, the Seattle City Council voted unanimously to allow independent drivers for Uber and Lyft to choose to unionize.[44] The city ordinance specified that, by September 19, 2016, ride-hailing applications must provide a list of drivers in order for organizing representatives to contact the drivers to determine whether the drivers wish to unionize.[45] The Council has since voted to extend the deadline to January 17, 2017, allowing time to resolve issues such as which drivers should be allowed to vote on the unionization question.[46]

Paid Sick and Safe Time and Seattle's Minimum Wage Law

Paid Sick and Safe Time

Seattle Municipal Code 14.16, also known as the Seattle Paid Sick Time and Safe Time Ordinance, took effect on September 1, 2012. The Seattle Office for Civil Rights (SOCR), the entity tasked with administering and enforcing the ordinance, lays out some key points in its "Frequently Asked Questions" document:[47]

- The ordinance covers work based on whether the work was performed within Seattle city limits, not based on the employer's address.
- The size of the employer is based on the employer's total workforce, not merely the Seattle workforce.
- Part-time employees and occasional employees are covered.
- Employers are allowed to require employees to track their own covered hours.
- Independent contractors are not covered.
- SOCR will determine whether someone is an independent contractor using the Fair Labor Standards Act (FLSA) and Washington State Minimum Wage Act (MWA) "Economic Realities Test." Factors include:
    - "Degree of control that the business has over the worker"
    - "Worker's opportunity for profit or loss depending on the worker's managerial skill"
    - "Worker's investment in equipment or material"
    - "Degree of skill required for the job"
    - "Degree of permanence of the working relationship"
    - "Degree to which the services rendered by the worker are an integral part of the business"[48]

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[44] Anne Milligan, *One Step Closer to a Unionized Gig Economy*, Gig Employer Blog, FISHER PHILLIPS, Aug. 10, 2016, https://www.fisherphillips.com/gig-employer/one-step-closer-to-a-unionized-gig-economy.

[45] *Ibid.*

[46] *Council Delays Uber Union Rulemaking Until January*, Seattle City Council Insight, Sep. 12, 2016, http://sccinsight.com/2016/09/12/council-delays-uber-union-rulemaking-until-january/.

[47] Frequently Asked Questions: City of Seattle Paid Sick Time and Safe Time Ordinance, Seattle Office for Civil Rights, http://www.seattle.gov/Documents/Departments/CivilRights/psst-faq.pdf.

[48] *Ibid.*

Minimum Wage Law

Like the Paid Sick Time ordinance, Seattle's minimum wage concerns itself with where the hours are worked rather than the employer's address, and it also declines to cover independent contractors. When determining an individual's status as an employee or independent contractor, the Seattle Office of Labor Standards uses the same "Economic Realities Test" outlined above.[49] Workers that companies identify as independent contractors who the city later determines should have been classified as employees may make a complaint to the Washington State Department of Labor and Industries; workers may also file a civil suit under Washington State's Wage Payment Collection Act, RCW 49.48. or a criminal wage theft complaint with the Seattle Police Department.[50]

At least one law firm has noted that the "Economic Realities Test is "a particularly difficult test to pass" because it looks at the economic dependence between a company and an alleged independent contractor.[51] Companies must clear a high bar in demonstrating that a worker truly retains independent control over the worker's schedule, tools, and environment.[52]

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[49] Questions and Answers (Q&A), Office of Fair Labor Standards, Feb. 12, 2106, http://www.seattle.gov/laborstandards/questions-and-answers#contractors.

[50] *Ibid.*

[51] Nigel Avilez, *Does Seattle's $15 Minimum Wage Apply to Businesses with Independent Contractors? No, but…*, MERCER LAW PLLC., Jun. 11, 2014, http://mercerlawpllc.com/does-seattles-15-minimum-wage-apply-to-businesses-with-independent-contractors-no-but/.

[52] *See Ibid.*

IMPLICATIONS FOR FUTURE POLICY MAKING

Non-standard employment leads to new challenges regarding accurately determining labor market trends as well as best practices for encouraging economic development. Whether policy makers see gig economy entities as engines of growth or as threats to traditional worker protections depends on personal outlooks. For example, a data point such as the national economy adding 9.4 million contingent jobs and losing 300,000 standard jobs[53] could be seen as sign that the non-standard economy has greatly reduced potential unemployment, that companies that would have created standard jobs have opted to give workers less for the same services, or that workers increasingly prefer to control their own projects and schedules.[54]

In the absence of reliable data, embracing entrepreneurship may be the best path for the time being. While we do not know the ultimate net benefit or loss of the gig economy in particular, we do know that new and growing businesses contribute to up to seventy percent of job creation.[55] Bill Fulton,[56] Director of the Kinder Institute for Urban Research at Rice University, describes the situation as follows: "What this means is that economic development efforts become much less about individual businesses and much more about the underlying infrastructure... as well as the labor force (skill levels and the density of the labor supply)."[57] Fulton recommends thinking of large businesses as incubators for future entrepreneurs and emphasizes the importance of nimble training programs, including those at local community colleges.[58] The Economic Development Council of Seattle & King County aims to serve as a resource to both large and small businesses by offering consulting services and generally "through a rich support structure serving all sectors."[59] The Council has partnered with entities across the county to assist with startup launch, financing, and expansion.[60]

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[53] See Katz & Krueger, *supra* note 6, at 7.
[54] Only 3.1% of independent contractors and 1.8% of self-employed workers reported pursing their work path due to it being the "only type of work found." See Government Accountability Office, *GAO-15-168R Contingent Workforce*, p.22 (Apr. 20, 2015), http://www.gao.gov/assets/670/669766.pdf.
[55] Ryan Decker et al., *The Role of Entrepreneurship in U.S. Job Creation and Economic Dynamism*, 28 JOURNAL OF ECONOMIC PERSPECTIVES 3, 4 (Summer 2014), http://econweb.umd.edu/~haltiwan/JEP_DHJM.pdf.
[56] For a more detailed description of Fulton's background, see https://kinder.rice.edu/content.aspx?id=4834
[57] William Fulton, *Economic Development in the 1099 Economy*, GOVERNING, May 2011, http://www.governing.com/columns/eco-engines/Economic-Development-in-the-1099-Economy.html.
[58] *Ibid.*
[59] *Resources*, Economic Development Council of Seattle & King County, http://www.edc-seaking.org/service/resources/resources-.
[60] *Ibid.*

CONCLUSION

Attempting to make a coherent statement about gig economy workers runs into the twin problems of minimal data and lack of cohesive definitions. Answers regarding how workers fare may be wildly different depending on whether a report examines "contingent workers" or "self-employed workers," for example. Outcomes also vary by industry. To determine the true impact of choosing to participate in the gig economy, particularly within any one local area, analysts require a new data set focused specifically on the relevant workers. In an ideal world, such a survey would explore not only wage and benefit values, but also the other work opportunities open to non-employee workers. To know, for example, whether a company such as Uber provides income opportunities for those who would not otherwise work or simply reduces the salary of those who were already in the industry, someone (other than the self-interested company) must ask.