

The Gig Economy Is Here: Is HR Ready, and How Will It Impact Employee Benefits?

by **Lisa Burkard, CEBS** | *Spectrum Group Consulting Services, LLC* and
Kelley Craven | *Spectrum Group Consulting Services, LLC*

What comes to mind when you think of the term *gig economy*? Is it a type of new information technology? Or your favorite band playing at the neighborhood hangout this weekend? According to a May 2016 article from the Bureau of Labor Statistics,¹ there is no official definition, but generally the term refers to a work environment where the workforce is made up of short-term, nontraditional, independent workers. The Internal Revenue Service (IRS) defines an individual as an *independent worker* “if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done.”²

These workers are usually hired to perform jobs that are temporary or project-based and not permanent in nature. Gig work can be found across many different industries and occupations—spanning from blue-collar to white-collar jobs. So the nature of the work performed is from “gig to gig” or project to project.

There are many different types of gig workers, including independent contractors, freelancers, contract workers, online platform workers (e.g., Etsy), contingent workers and temporary workers.

Estimated Number of Gig Workers

The gig economy continues to grow, and securing accurate data on the number of gig workers can be challenging. Some sources count all workers who participate in any form of independent work while others count only workers who rely on gig

work as their sole source of income. Since surveys conducted by the Bureau of Labor Statistics typically do not ask about part-time work, some of the best sources for survey data come from independent organizations. Latest estimates show that there are approximately 57 million U.S. workers in the gig economy.³

Data shows that 25-30% of workers have participated in some form of independent work at some point, whether part-time or full-time. In addition, economists Lawrence Katz and Alan Krueger estimate that the independent workforce increased nearly 50% from 2005 to 2015, with independent contractors making up 15.7% of the U.S. workforce in 2015.⁴ According to

AT A GLANCE

- There are approximately 57 million U.S. workers in the gig economy.
- The use of gig workers allows companies to avoid the cost of onboarding, training/development and employee benefits, and gig workers may fill critical skills gaps or be a good fit for project-based or temporary positions.
- It is not common for gig workers to be offered traditional employee benefits. One of the major hurdles is the classification of workers as independent contractors under Internal Revenue Service definitions.
- There is some support for establishing an updated employment classification system to address some of the challenges related to offering benefits to gig workers.

a recent EY Contingent Workforce Study, nearly one in five U.S. workers, on average, will be contingent by 2020.⁵

Why Now? Why Use Gig Workers?

Gig employment is not new, but why has its popularity increased? The recent surge in online and mobile application platforms, used by companies like Uber, Lyft, Etsy, Handy, TaskRabbit, Grubhub and Care.com, has created the ability to quickly and cost-effectively connect independent contractors to customers and has resulted in heightened awareness of the gig economy and its workers. The gig economy depends on an increasing number of individuals who replace or supplement their income with flexible labor, thus allowing them greater autonomy.

Using gig workers offers several advantages for many employers. Lower cost is the primary reason cited by companies for using a gig workforce, since doing so often allows them to avoid the costs of onboarding, training/development and employee benefits. With the global talent shortage, independent contractors or freelancers may fill critical skills gaps. Gig workers are a perfect fit for project-based or temporary positions. For smaller companies and start-ups, the ability to scale capacity quickly provides much valued workforce flexibility. The cost of office space and equipment can be avoided in some gig arrangements. In some situations, since the legal employment relationship with independent contractors is different, companies may consider employing gig workers as a less risky alternative to traditional employees.

From the worker viewpoint, there are many reasons that gig work has become increasingly popular. Flexibility is the most frequently cited advantage. The flexibility may be in the number of hours worked and the time of day that work is performed, as well as the work location, which is often remote. In some cases, gig workers are using the gig as a second source of income, while for others the gig is the primary income source. For certain occupations, there are fewer barriers to becoming a gig worker compared with the traditional employment arrangement, which is appealing for many individuals.

Is HR Ready for the Gig Economy?

As employment trends shift toward the use of independent contractors and freelancers, human resources (HR)

leaders need to address several areas, including talent management, impact on company culture and the onboarding experience.

Talent Management

Employers need to embrace the fact that the gig economy is growing and, in order to continue sourcing critical skills and required talent, they need to rethink how to fill open positions. Even though companies do their best to retain the talent they already have, it is inevitable that vacancies will occur and need to be filled. Talent management staff can be proactive and determine which roles within the organization can be converted to independent contractor positions.

Impact on Company Culture

According to the IBM Center for Applied Insights, “Independent workers such as contractors or freelancers beat traditional employees in job engagement, innovation, satisfaction, and pride. Where they fall short of regular employees is in commitment.” The lack of commitment is expected, since many gig workers are engaged with multiple companies simultaneously. In addition, they typically have contact with only a few people from the company and therefore often are not exposed to all aspects of its strategy, mission and values. If allowed to continue, this lack of commitment can hurt company culture. Increased engagement fosters a feeling of belonging and increases commitment.

HR leaders should find ways to engage gig workers and make them feel like a part of the company. Examples include the following:

- Include them in department emails or department meetings—even if this is done via telephone.
- Award bonuses for achieving key milestones and contributing to overall team goals.
- Include them in company social events or learning and development opportunities.
- Offer discounts and deals for company products or negotiated arrangements.

Onboarding Experience

One important and often overlooked operational adjustment is onboarding. HR leaders should establish an on-

boarding strategy that includes gig workers. These workers are not only representatives of the company and its brand, but they also have access to confidential and sometimes proprietary information. For these reasons, gig workers should be screened with the same thorough background checks that are performed on full-time employees. Onboarding shouldn't stop with a background check. Employers should invest the time to train gig workers on the systems they will be using. If the project lasts long enough, the employer should conduct a performance evaluation to offer feedback on their performance. All of these tactics lead to the gig worker feeling more engaged and committed to the company.

How Are Employee Benefits Affected?

At present, providing traditional employee benefits (e.g., paid time off, health care, retirement, etc.) to nontraditional gig workers is not common. Most U.S. workers get their benefits through the employee-employer relationship. Perhaps the largest challenge with the emerging gig and online platform economy is the current U.S. system of classifying workers as either employees or independent contractors. Workers are classified into several groups under IRS definitions, and the classification determines the benefit and employment protections as well as the tax treatment. Traditional employees receive a W-2 payroll tax form and are entitled to certain legal protections inherent in their employment relationship with their employer. Conversely, independent contractors and self-employed workers receive a 1099 form and are not entitled to protections as directed by the Employee Retirement Income Security Act of 1974 (ERISA) and the Fair Labor Standards Act.

Worker Classification Challenges

One of the major hurdles that companies have in offering traditional employee benefits to gig workers is the classification of workers under IRS definitions. One of the determining factors used by the IRS in the classification of an independent contractor is “whether or not the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.”⁶

This definition effectively eliminates the ability of companies to provide independent contractors with traditional employee benefits without changing their employment status

to a traditional W-2 employee. A classification change from independent contractor to traditional employee would likely result in tax liabilities, as well as claims for minimum wage and overtime, workers' compensation benefits, civil labor law rights and wrongful termination rights.

Confusing and inconsistent legal rulings challenging the classification of gig workers as independent contractors have added to the uncertain legal landscape. Several legal cases with very similar fact patterns have been interpreted differently by different state authorities. Numerous lawsuits have been filed against transportation companies like Lyft and Uber, but rulings in most of these challenges have upheld classifying these workers as independent contractors.

The Seattle City Council recently voted to allow taxi and ride-sharing drivers who are classified as independent contractors the ability to unionize. Since employers, workers and unions cannot confidently predict how challenges will be decided, much uncertainty remains regarding the legal classification of the gig workforce.

For many companies, maintaining the independent contractor status is critical from a cost-management perspective. Organizations such as the U.S. Chamber of Commerce have recognized the importance and growth of the gig economy and support establishing an updated employment classification system to clarify and mitigate some of these challenges.⁷

Proposals offering solutions have been developed by several organizations and individuals, including:

- The Aspen Institute⁸—In its 2016 proposal “Portable Benefits in the 21st Century,” the Aspen Institute discusses the need to develop a portable benefits model encompassing a social and private solution. In this model, workers own their own benefits, which are not tied to a specific job or company. Companies would make fixed rate contributions based on hours worked.
- Seth D. Harris and Alan B. Krueger⁹—Harris, a former deputy secretary of labor, and Krueger, an economist, have drafted a proposal that would create a new legal category called “independent workers” who would receive many of the benefits and protections that traditional employees enjoy, including the freedom to organize and collectively bargain, civil rights, tax withholding and employer contributions for payroll taxes.

- Center for American Progress (CAP)¹⁰—A report recently published by CAP urges lawmakers around the country to support gig workers by creating portable benefits funds, instituting a minimum wage, and allowing workers, employers and government to negotiate for industry-specific wages and benefits.

Government Efforts

Federal and state legislators have made a number of efforts and proposals to address the issues of inconsistent benefits and protections for the gig workforce. Federal efforts include the Portable Benefits for Independent Workers Pilot Program Act¹¹ introduced by Senator Mark Warner (D-Virginia) and Suzan DelBene (D-Washington). This act would establish a \$20 million grant fund within the U.S. Department of Labor to incentivize states, local governments and nonprofit organizations to experiment with portable benefits models for the independent workforce that would allow workers to carry these benefits with them from job to job.

A number of states, including Washington, California, New York, New Jersey and Oregon, are exploring how best to implement a portable benefits system. A Washington state bill would require companies using independent contractors to make contributions to nonprofit benefit providers as well as provide workers' compensation coverage. Oregon was the first state to launch a mandated automatic individual retirement account (IRA) program (called OregonSaves). Despite recent bills signed by the current federal administration repealing protections for cities and states that establish automatic IRA programs, Oregon recently announced its intent to extend the program to gig workers.

There also is a growing movement among cities and states to provide paid sick and family leave. Nine states and more than 30 municipalities have enacted paid sick leave programs, while five states have paid family leave policies. Many of these programs require that companies extend these benefits to gig workers.¹²

Private Efforts

Google, Amazon and SurveyMonkey have recently made headlines by announcing they will begin providing comprehensive benefits for contract workers. Upon closer ex-

AUTHORS



Lisa Burkard, CEBS, GMS-T, is managing director of Spectrum Group Consulting Services, LLC, an Atlanta, Georgia-based consulting firm that assists global companies with the design, implementation and management of their global mobility and international benefits strategies. She has more than 30 years of experience in insurance underwriting and benefits consulting and extensive international corporate experience. She previously was the director of international compensation, benefits and global mobility, for United Parcel Service (UPS). Burkard holds an M.B.A. degree from Georgia State University—Robinson College of Business and a B.B.A. degree in risk management and insurance from the University of Georgia—Terry College of Business. She is a frequent industry conference presenter.



Kelley Craven, CRP, GMS, is global mobility consultant for Spectrum Group Consulting Services, LLC. Craven has ten years of experience managing domestic relocation programs with both a regional supermarket chain and a multinational consumer goods company. She uses her expertise in the domestic relocation arena to assist clients with their relocation strategy, policy development and program design while sharing industry trends, best practices and experiences. Craven holds both the CRP and GMS certifications through Worldwide ERC. She has been a guest speaker at past Worldwide ERC conferences as well as local ERC groups. Craven holds a bachelor's degree in business management from Pfeiffer University.

amination, this will be achieved by requiring vendors and employment agencies that use independent contractors to provide employee benefits, paid time off and, in most cases, a minimum wage of \$15 per hour. So, while not providing the benefits directly to their gig workforce, they are using their considerable influence to require their suppliers and service providers to provide benefits to their gig workers who are

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providing services on behalf of Google, Amazon and SurveyMonkey.¹³⁻¹⁵

Etsy, the online handicraft retailer, in 2016 offered a solution to create a federal benefits portal that allows individuals to select from an array of benefit choices while payroll deductions/withholdings are managed by the company.¹⁶ In addition, companies have begun to offer a marketplace of negotiated services through vendors such as Wealthsimple, eHealth and Visor for financial planning, health insurance and tax assistance, respectively. The use of perks such as access to company health club facilities and company discount programs is common, but cash compensation remains the predominant reward system.

Uber offers discounts on vehicle maintenance, phone plans and tax services. Several of the mobile platform companies have entered into a partnership with Stride Health, an online insurance broker, allowing workers to use a free app to search for and buy health insurance. Another benefit that is becoming more common is occupational accident insurance, which provides protection to gig workers who don't have access to workers' compensation insurance if injured on the job.¹⁷

Conclusion

As the gig workforce grows, so will concerns about a lack of comprehensive benefits and employment protections. Across a number of industries, HR has been slow to adjust and respond to this emerging workforce. A number of private think tanks and several states and municipalities have begun to advocate for portable benefits and expanded employment protections for the gig workforce; however, the IRS employment classification rules are the major hurdle that private employers have in offering employee benefits. As long as offering "employee-type benefits" could shift the employment classification from independent contractor to traditional employee, companies will remain hesitant to offer traditional health care and retirement benefits to gig workers. 

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