Institute for Work & the Economy

WHITE PAPER

Understanding & Supporting the On-Demand Workforce

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Foreword: COVID-19 and On-Demand Work

As governors and state officials lead response to the COVID-19 pandemic, the unique challenges facing on-demand workers have risen to the forefront. On-demand work is central to the crisis response due to social distancing measures. However, these on-demand workers are among those most likely to be severely affected both by the virus and by the longer-term economic impacts of this crisis. Policymakers interested in supporting these vital members of the workforce should find the information presented in this white paper particularly timely and relevant.

On-demand workers are concentrated in industry sectors that have seen significant job losses, including construction, education and health services, hospitality and leisure, and professional and business services. At the same time, many on-demand workers serve on the front lines of the crisis. These workers are at higher risk of exposure to the virus and are more likely to earn low wages and lack health insurance, sick leave and other benefits.

At the time of this writing, federal legislation is providing temporary benefits to on-demand workers who are not traditionally able to access such benefits. Signed into law on March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act provides an unprecedented expansion of unemployment benefits to new classes of workers, including on-demand workers. As states work to implement these new provisions, it will be important to explore the benefits, costs and shortcomings of such programs and examine how similar, permanent programs can be designed to support on-demand workers.

In the near term, it is reasonable to expect an acceleration of growth in this sector during the economic downturn and recovery for two reasons. First, many laid-off workers will likely turn to on-demand work as a means of "income smoothing" to make up for lost wages as many businesses close and remain closed. Second, the pandemic has increased reliance on virtual services, delivery services and other roles that on-demand workers are already likely to hold. Reliance on these types of services will likely continue as social distancing requirements are slowly lifted or re-instated over the coming months.

Since 2018, the National Governors Association Center for Best Practices (NGA Center) and the Institute for Work & the Economy have led the State Collaborative Consortium to Understand and Support the On-Demand Workforce. The pandemic has brought the vulnerabilities and needs of this incredibly diverse segment of the workforce into sharp relief. As states work to build the resilience of their economies and workforces during this crisis, the information and strategies developed by the Consortium states will serve as valuable guidance.

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Executive Summary

As governors and states address the challenges posed by the changing present and future of work, they must account for altered relationships between workers and those who compensate them. New practices and technologies are challenging the ways work and employment are described and defined. New terms — the "gig economy," "gig workers," "independent economy," "1099 economy" and "freelancers" — are increasingly in use. A common thread among these terms is the on-demand nature of the work they describe. To better prepare their states for this workforce of the future, governors recognize the need to better understand these evolving realities and the underlying trends that have brought them about.

A growing body of research indicates that as many as one in three Americans are engaged in on-demand work. Many of these workers value the flexibility that such work affords, yet many would also prefer a formal job that provides a stable salary, benefits and workplace protections.[1] Further, evidence suggests that some on-demand workers face economic instability and fewer pathways to economic security and lack access to many of the protections and benefits of formal employment.[2]

Drawing on the findings from the member states of the National Governors Association Center for Best Practices' State Collaborative Consortium to Understand and Support the On-Demand Workforce,[a] this white paper outlines the following issues:

- Describes why this issue matters to governors and their states' economies and labor markets.
- Summarizes the current research findings on the size and composition of the on-demand workforce.
- Identifies key policy issues and opportunities for governors and states interested in supporting the on-demand workforce.
- Describes how effective state policies use the potential opportunities and benefits of on-demand work while mitigating the potential downsides and risks for workers.

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[a] Alabama, Colorado, Connecticut, Illinois, Hawaii, Maryland, New Jersey, Pennsylvania and Virginia are members of the State Collaborative Consortium to Understand and Support the On-Demand Workforce. The authors thank the teams from each state for their significant contributions.

I. Key Issues for Understanding the On-Demand Workforce

Workers, employers and policymakers recognize that work is changing. In addition to the changes in the types of jobs available and the skills needed in the workplace, workers' relationship with who pays them has become more dynamic. Today, algorithms are used to determine schedules, assess performance, assign tasks and perform other management functions. However, disagreements remain on the nature and extent of these changes and whether the underlying trends call for fundamental changes to labor laws, benefits policies, and education and training systems. Below are summaries of four issues key to understanding the on-demand workforce.

Our Current Binary View of Work Leaves Many Workers Unprotected by Policies Intended to Create Security and Stability.

Current policies are largely based on a binary view of work: A worker is either an employee or not an employee. (See Appendix A for a summary of various legal tests for determining employment status.) This determination affects who is eligible for a variety of workplace protections and benefit programs and who is not. Generally, workers who are determined not to be employees do not receive benefits such as health insurance or paid leave and do not receive protections from adverse events in connection with work or services for which they are compensated. Meanwhile, those who work irregular, just-in-time schedules based on the immediate needs and demands of the employer also lack many benefits and aspects of stability often tied to formal, full-time employment. When considering policies connected to work and employment, policymakers should appreciate the entire range of work activities that lead to precarious and vulnerable situations for workers across the economy.

Clear Data on On-Demand Workers Is Lacking.

Just as laws and programs tend to pertain to workers who are employees, so does most data, making the "on-demand" part of the workforce difficult to quantify. This less clearly defined, on-demand portion of the workforce has always existed but is now expanding and getting new attention because of platforms such as Uber, Lyft, Amazon Mechanical Turk (MTurk) and TaskRabbit.

There Is No Common Definition of On-Demand Work.

There are no commonly accepted definitions that describe and differentiate workers who fall outside the definition of "employee." Various research efforts rely on their own unique definition of "gig" or "on-demand" work. Consequently, policymakers must cobble together a comprehensive picture of the on-demand workforce based on a series of research results that are not directly comparable.[3] States are also exploring developing clearer definitions through legislation, such as California's recent Assembly Bill (AB) 5.[4] Appendix A showcases the Collaborative Consortium to Understand and Support the On-Demand Workforce's efforts to develop a more comprehensive visualization of the universe of on-demand workers to serve as a useful guide when assessing and understanding research and policies pertaining to on-demand workers.

Defining On-Demand Work

The consortium has defined **"on-demand workers"** as workers who do not receive a W-2 tax form for some or all of their compensated work, such as entrepreneurs and the self-employed, as well as workers whose income is reported on a W-2 form but whose schedules and places of work are unpredictable and episodic.

This definition includes an incredibly diverse array of workers, from construction day laborers to rideshare drivers, adjunct university faculty, independent contractors, freelancers and nannies. See Appendix A for a visualization of this definition.

On-Demand Work Presents Opportunities and Challenges That Must Be Weighed in Relevant Policy Decisions.

The on-demand economy provides new economic opportunities and raises legitimate concerns for workers, employers and policymakers. Workers who seek supplemental income can benefit from the flexibility of on-demand work and may find work that fits their lifestyle and personal needs. In contrast, the on-demand economy does not appear to work well for low-skilled workers looking to earn sufficient wages.[5] Personal safety risks and economic uncertainty can often be high. Taken together, these issues raise the cost and risk that workers take on when participating in on-demand work. As governors seek to build a competitive state economy, keeping these issues in mind will enable them to expand access to economic opportunity to more workers and businesses.

II. Research Findings on the On-Demand Workforce

Little information exists at the state level, but several studies and surveys by federal agencies, academic institutions and other organizations are available that explore different aspects of the on-demand economy.[6] A synthesis of the common research findings is presented below; an annotated bibliography is included in Appendix B.

On-Demand Workers Make Up a Significant Part of the American Workforce.

Most surveys of workers estimate that the number of adults who engage in on-demand work in any given year is significant: as many as one in three Americans.[7] However, only around one in 10 Americans engages in on-demand work as a primary source of income.[8] Most on-demand work can be seen as a way for workers to supplement their income and cover needed expenses.[9] On-demand workers are not restricted to being either full time or part time.[10]

Evidence Exists That This Sector of the Workforce Is Growing.

Frequently cited longitudinal data on on-demand work comes from the U.S. Bureau of Labor Statistics Contingent Worker Survey, which has shown little to no growth in on-demand work over the past decade. Some research, meanwhile, has indicated that this measure undercounts on-demand workers.[11] Administrative tax data may provide evidence of more robust growth. In the period between 1997 to 2016, the number of nonemployer businesses grew by 60.7%. In contrast, the number of business establishments with employees grew by 11.1% between 1997 and 2015. The growth in nonemployee sole proprietorships may point to an increase in on-demand work.

On-Demand Workers Have Key Demographic Differences From "Formal" Workers.

Demographic characteristics vary by the nature and industry of on-demand work, but a few themes emerge. For example, independent contractors tend to be older, male and white relative to the formal workforce, while on-call and temporary workers are more likely to be younger, female and black or Latino compared with the formal workforce.[12] Generally, on-demand workers are less likely to have obtained a bachelor's degree. Similarly, on-demand workers are only half as likely to have health insurance provided by an employer and, by 11 percentage points, are less likely to have health insurance from any source.[13]

Many On-Demand Workers Value the Flexibility of Their Jobs, but Some Would Prefer a Formal Arrangement.

One survey found that 30% of on-demand workers participate in work this way out of necessity; many say they would prefer a formal job if they could find the right fit.[14] Bureau of Labor Statistics surveys find that satisfaction with on-demand work changes based on the nature of the arrangement. While 70% of independent contractors preferred their arrangement over a formal job, only 44% of on-call workers and 39% of temporary help agency workers preferred their work arrangement to a permanent job.[15] One survey of Uber drivers in Washington, D.C., however, found that although 100% of drivers had difficulty determining their income and 30% reported physical assault or safety concerns, 50% would recommend the job to a friend.[16]

Many "Formal" Workers Are Affected by the On-Demand Nature of Irregular Scheduling.

Seventeen percent of formal workers have schedules that vary based on their employer's needs, including being on call or subject to just-in-time scheduling. These workers are 50% more likely to say that they are not doing as well financially than workers who have consistent schedules or control their schedules. Those who are less educated are more likely to have irregular work schedules. Twenty-two percent of those with a high school diploma or less education had a job that varied based on their employer's needs. This finding compares with 11% of those with a bachelor's degree or higher.[17]

III. Key Issues and Policy Considerations for the On-Demand Workforce

Automation, globalization and the other impacts of technology frequently dominate the conversation about the future of work. Today, national and state policy conversations about work and the economy tend to focus on skills, education and retraining, often within the context of technological disruption. Beyond these discussions, it is important to understand how policy, legal frameworks and corporate structures can affect or incentivize movements toward on-demand work. By focusing on these issues, governors can enhance the competitiveness of their state's economy and increase economic opportunity for the residents of their state. In 2018, the National Governors Association Center for Best Practices and the Institute for Work & the Economy, with support from the Annie E. Casey Foundation and Walmart, accepted a cohort of states into the State Collaborative Consortium to Understand and Support the On-Demand Workforce. Through the consortium, participating states have explored key issues and policy considerations to help governors better understand and support the on-demand workforce in their states.

This white paper highlights the issues related to the on-demand workforce that have emerged through the consortium's work to date. Governors and other policymakers can weigh these items as they consider an array of policy options to address high-priority issues for the on-demand workforce in their state. The discussion that follows is divided into three categories, with each presented as a set of issues and with corresponding examples of solutions developed by state and local entities or by specific programs:

- Supporting economic mobility and advancing the development of on-demand workers.
- Extending protections to on-demand workers.
- Providing legal and administrative clarity for on-demand workers.

Supporting Economic Mobility and Advancing the Development of On-Demand Workers

The growth of the on-demand economy poses new challenges for traditional education and training systems. Many workers face increased economic burden for training and education that could exacerbate existing disparities among populations and geographies.

- *Issue: Education and training costs are shifting to workers.*

The economic burden for training and education has shifted onto workers: Between 1996 and 2008, there was a 42% drop in employer-sponsored training.[18] As more workers find themselves responsible for their own training, the policy agenda for supporting midcareer workers has focused on building more portable and flexible means for them to do so.[19] These actions are supporting investments in worker training generally, but strategies can be broadened to support on-demand workers. As with formal workers, a key issue is who shares responsibility for bearing the cost of training.

- *Opportunity: Support and incentivize participation in lifelong learning.*

Several states offer continuous learning tax credits as incentives for private sector investments in their workers. These tax credits support employers that provide incumbent worker training and may offset some of the initial cost of program development. For example, **Connecticut** employers are credited 5% of all expenses incurred for worker training. **Mississippi** employers receive a 50% tax credit for the costs of training an employee, up to $2,500 per employee per year.[20] To support the on-demand workforce, states may explore broadening the scope of such incentives to include nonemployees in addition to employees.

States can also examine options that allow workers to save for education and training expenses. Most states offer their own Section 529 college savings program, with a state income tax benefit. The Tax Cuts and Jobs Act of 2017 expanded the scope of eligible educational expenses, and states may be able to use these or similar plans to cover retraining expenses for adults over the course of their career. States can also look to global examples. Singapore, for instance, has introduced individual learning accounts for all citizens. More than 431,000 Singaporeans have benefited from access to dedicated funds for education and training.[21] For such programs to succeed, states need to consider how to address the opportunity costs of training — when many workers cannot afford to forgo wages while learning new skills — and acknowledge the difficulty that many families have saving money when living paycheck to paycheck.

About the Consortium

A partnership between NGA Center and the Institute for Work & the Economy, the State Collaborative Consortium to Understand and Support the On-Demand Workforce was formed at the behest of state leaders interested in learning more about the changing nature of work.

The nine states of the consortium — Alabama, Colorado, Connecticut, Illinois, Hawaii, Maryland, New Jersey, Pennsylvania and Virginia — have worked for the past year to identify areas of common interest and potential solutions to shared challenges. Their work is ongoing, but this white paper synthesizes the early findings from states.

- *Issue: Workers face barriers to entering the formal economy.*

Workers licensed by state governments now make up nearly 25% of all employed Americans, up from 5% in the early 1950s.[22] Licenses are intended to set professional standards, ensure safety and quality of work and limit the supply of workers in a given occupation. They can also, however, make it difficult for workers to find jobs within or outside their own state — particularly for veterans, whose military credentials do not translate well into civilian jobs; military spouses; formerly incarcerated individuals; immigrants; and low-income and dislocated workers who do not have the resources to qualify for credentials in a destination state. Noncompete and nondisclosure agreements can also prevent workers from accessing jobs for which they would otherwise be qualified, in effect locking them out of the labor market for these occupations.[23] This roadblock may cause them to turn to alternative forms of employment. Nearly 20% of Americans are currently subject to such contracts, and the number is rising.[24] High wage-paying companies justify the use of such agreements to protect their intellectual property, but such agreements may also prevent specialized talent from pursuing other opportunities in their field. Lower wage-paying companies more often use these agreements to reduce turnover at the cost of worker mobility.[25] Workers who are prevented from working in their industry may turn to more informal, on-demand work.

- *Opportunity: Reduce barriers to work such as occupational licenses and noncompete agreements.*

States may consider action to set clear legal conditions governing the proper use of occupational licenses, noncompete agreements and nondisclosure agreements. For example, in 2017, **Arizona** Gov. Doug Ducey signed an executive order requiring regulatory boards to justify any license that is not required by at least 25 other states.[26] Further, in 2019, the state enacted an occupational license reciprocity policy that allows most workers to practice their profession with their out-of-state license, with some restrictions.[27] In 2017, the **Illinois** Freedom to Work Act prohibited noncompete agreements for workers who earn less than $13 an hour.[28] Governors can evaluate which types of noncompete agreements are necessary in their state to support innovation and which types impose undue hardship on workers. Although these actions were not targeted at on-demand workers, such strategies may provide better pathways to formal jobs for on-demand workers.

- *Issue: Some on-demand workers lack the skills to thrive in an entrepreneurial ecosystem.*

Beyond finances, successful long-term on-demand workers must often learn how to manage and operate what is essentially an independent business. They must learn about tax laws, maintain a bookkeeping and accounting system, obtain necessary insurance and retain legal support. Workers must also be able to manage time lost because of illness or injury, family care and vacation and holidays. And although larger businesses can rely on extensive research to make smart decisions about where to invest time and resources, on-demand workers often do not have such systems to guide their own choices.

➢ *Opportunity: Support programs that provide entrepreneurial opportunities and skill development.*

States can set the conditions for local success through new laws that support various forms of entrepreneurship and employee ownership. These conditions include explicitly permitting incorporation of low-profit, limited liability companies; incentives for worker cooperatives and employee stock ownership; financial incentives and partnerships that support entrepreneurship; and technology incubators. States may also benefit from the lessons learned from the U.S. Department of Labor's Self-employment Training (SET) pilot. SET participants — dislocated workers interested in starting their own business — received customized case management, technical support and seed funding. Participants experienced positive employment outcomes compared with a control group.[29]

Governors are also acting. **Pennsylvania** Gov. Tom Wolf in 2018 launched the PA Business One-Stop Shop as the sole source for guiding entrepreneurs and small businesses through all stages of development, from planning and startup to operation and expansion, consolidating what had previously been several difficult-to-navigate programs.[30] The PA Business One-Stop Shop includes resources for planning a business, registration and permitting, receiving funding and technical assistance. In addition to supporting traditional entrepreneurs, these services provide opportunities for those engaged in independent work to develop skills that will help them thrive. In **West Virginia**, the Governor's School of Entrepreneurship, a free summer program created by the West Virginia Department of Education and West Virginia University, is a three-week boot camp for high school students that teaches them the basics of business and enables them to participate in pitch and startup competitions.[31] The program is designed to prepare youth for work that requires creativity, is more entrepreneurial or self-driven and is less formal in structure. States can also better support entrepreneurial opportunities by addressing critical infrastructure needs, such as broadband access or other digital resources that expand work opportunities in rural communities.

Extending Protections to On-Demand Workers

Most workplace benefits are tied to formal and (often) full-time employment, leaving many on-demand workers without the types of protection that workers with formal employment agreements enjoy. Workers in formal employer-employee relationships are guaranteed certain protections, stability and working conditions under federal regulations, including the Civil Rights Act of 1964, the Fair Labor Standards Act of 1938, the Age Discrimination in Employment Act of 1967 and the Occupational Safety and Health Act of 1970. However, those protections do not extend to those who are not classified as employees. In some cases, they do not cover part-time or temporary employees, either. This absence of protections and benefits may leave independent, part-time and temporary workers in precarious financial, safety and legal circumstances. It also disadvantages businesses that play by the rules by creating an incentive to make staffing decisions based on the cost of one type of employment arrangement versus another instead of based on the actual needs of the business.[32] States can explore how they can provide on-demand workers with opportunities to achieve stability and security and create a more level playing field so that employers can benefit from the flexibility of on-demand work.

➢ *Issue: Federal, state and municipal hourly minimum wage regulations apply only to workers who are legally classified as employees.*

The Fair Labor Standards Act, which sets the national minimum wage and standards for overtime pay, applies only to employees. As a result, most on-demand workers as defined above are not covered by minimum wage laws. Those who are paid on a per-task basis are especially susceptible to low hourly wages because their income depends on the demand for their work at the time they are looking for work. Further, these workers are not compensated for time they spend waiting for a task to begin or transition time between tasks.

➢ *Opportunity: Expand existing minimum wage requirements to more workers.*

States have an opportunity to expand certain minimum wage protections to on-demand workers. For example, during the 2019 legislative session, the **New Mexico** Legislature passed a bill that expanded the state minimum wage and overtime laws to domestic workers, who had previously been exempt. The law requires "every person, firm, partnership, association, corporation, receiver or other officer of the court of this state and any agent or officer of any of the above-mentioned classes employing any person in this state" to pay any domestic worker at least the minimum wage.[33] New York City set a minimum wage for drivers working on specific platforms (Uber, Lyft, Via and Juno). The New York City Taxi and Limousine Commission set the net minimum hourly wage for these drivers at $17.22. This net wage is required to take into account the cost of operating and maintaining their vehicle; it is set higher than the local minimum wage of $15 to account for the additional tax burden that on-demand workers face.[34] Each policy in these examples protects only a portion of all on-demand workers, but it may provide a template that states can apply to different types of workers.

➢ *Issue: On-demand workers face unpredictable and unreliable schedules.*

Surveys indicate that many on-demand workers highly value the scheduling flexibility that such work can offer. However, in practice, some on-demand workers have limited authority over their schedule. First, workers may find it necessary to work far more than 40 hours per week to make ends meet. They are not eligible for overtime pay. Conversely, on-demand workers who are told by their employer when to work may not have the opportunity to work enough hours to earn a sufficient living. Similarly, their schedules may vary to much from week to week to allow them the option of a second job. In addition, some on-demand workers may be required to perform tasks at specific times with limited notice. This inflexibility is not an issue only for on-demand workers but also for many employees who work with irregular schedules in the service sector. These factors can make on-demand workers' schedules unpredictable, and they may be forced to work drastically different numbers of hours and at drastically different times from one week to the next.

➢ *Opportunity: Require that workers be given adequate notice of their schedule.*

Many cities, including Chicago, San Francisco and San Jose, have passed laws that require employers to give employees a certain amount of notice for shift work. **Oregon** is the only state to have implemented similar legislation. In 2017, the Oregon Legislature passed the Fair Workweek Law, which requires certain employers to give their employees an estimate of how many hours they will work each week throughout their employment and at least two weeks of notice in their work schedule. This law is intended to make it easier for workers to schedule child care and to take time to go to school or work another job. A similar regulation could be applied to some types of on-demand workers who do not have complete autonomy over which hours they work to provide greater stability in their work life.[35]

- *Issue: On-demand workers are sometimes forced to work in unsafe conditions because of lack of regulation.*

The federal Occupational Safety and Health Act sets requirements for employers to regulate the working conditions they provide for their employees. Because many on-demand workers are not formally employed, however, they are responsible for their own workplace safety. Without proper incentives or adequate training, on-demand workers may find themselves working in unsafe conditions. Employers invest heavily in workplace safety training for their workers, but many on-demand workers are unable to access similar training, even when it may be applicable to their work environment.

- *Opportunity: Create workers' compensation systems for on-demand workers.*

It may be difficult to enforce safety regulations for some on-demand workers, but creating a system that provides some recourse and stability if these workers are harmed on the job could help alleviate the burden of minimal safety regulations. In early 2019, the New York State Workers' Compensation Board (WCB) launched a new Virtual Hearing Center (VHC), a digital adjudication platform that allows participants in a workers' compensation hearing to attend the hearing remotely. This award-winning, ground-breaking Virtual Hearing service has been instrumental in allowing injured workers, including some on-demand workers, to continue to receive necessary medical care and wage replacement during the COVID-19 Pandemic. The VHC is available to all workers eligible for workers compensation in New York. Other private entities offer workers' compensation to on-demand workers at a cost to the worker, depending on the risk associated with the worker's job. A model in which a tax is imposed on the consumer but based on the risk of the job could provide an incentive to those who hire on-demand workers to improve safety conditions, minimize risk and keep costs low for consumers to drive demand. Such a solution minimizes risk for on-demand workers because they are more likely to work in safe conditions and should be less burdened financially if they are injured on the job.

➢ *Issue: Many workplace protections and benefits are tied to formal employment, leaving many on-demand workers unprotected.*

Benefits such as health insurance, paid time off (PTO) and unemployment insurance are often connected to a formal employment relationship and in many cases, full-time employment. This structure leaves many on-demand workers without the financial security that those benefits provide. Further, "job lock" effects, where workers remain employed for the sake of access to benefits, can prevent individuals who would prefer to engage in on-demand work or even start their own business from doing so.[36]

➢ *Opportunity: Expand access to benefits to on-demand workers.*

Several smaller-scale efforts exist to provide benefits to on-demand workers through private entities and public-private partnerships (PPPs), although no comprehensive state-level action has yet been taken. These efforts are targeted at specific industries or geographies, but they may provide ideas for larger scale, more comprehensive efforts that states can consider to provide benefits to on-demand workers in the future. These benefits increase financial stability for on-demand workers and could make on-demand work a more sustainable career option for many. **Washington** recently launched a new public Long-Term Care Insurance Program to help workers offset the costs of long-term care. The program is funded through a payroll tax.[37] Table 1 provides several examples of benefit programs for specific groups of on-demand workers.[38,39,40]

Table 1: Examples of Portable Benefits Platforms

Program	Structure	Funding Mechanism	Benefits Provided	Target Population
Alia	Private; sponsored by the National Domestic Workers Alliance	Voluntary contributions from clients of domestic workers	• Paid time off • Disability insurance • Accident insurance • Critical illness insurance • Life insurance	Domestic workers
Trupo	Private; sponsored by Freelancers Union	Workers pay a monthly premium	• Dental insurance • Accident insurance • Disability insurance	Freelancers Union members working an average of 15 hours per week
UPoints	Private; provided by Hyr (a staffing platform)	Workers accrue PTO for each dollar they earn	• Paid time off	Hyr platform workers

- *Issue: On-demand workers do not have recourse for legal challenges.*

On-demand workers do not have the same protections against discrimination and retaliation as employees do under Title VII of the Civil Rights Act of 1964. This lack of protection is particularly problematic because many on-demand workers rely heavily on ratings and referrals to secure work. As a result, they may put themselves in potentially dangerous situations to appease their customer. This same dynamic can apply to consumers who must rely on their own rating to access the service or platform. Though some on-demand workers may be able to report instances of a hostile work environment to the entity for which they perform work, no formal legal framework guarantees recourse for on-demand workers in the face of discrimination or retaliation.

- *Opportunity: Establish an entity to which on-demand workers can report questionable activity and receive legal counsel.*

Most companies have a human resources department that can advise workers in cases of discrimination, harassment and retaliation. On-demand workers do not have access to such a support system. States could set clear guidelines for what constitutes discrimination and retaliation for on-demand workers. Then, they can provide services that advise on-demand workers about options for recourse when such events occur. With improved clarity and legitimate recourse for addressing inappropriate behavior, on-demand workers will have more equitable opportunities for stability and advancement in their work.

Providing Legal and Administrative Clarity for On-Demand Workers

Ultimately, the ongoing lack of clear rules, regulations and oversight for the on-demand economy makes enforcement of and compliance with existing laws more difficult. Certain actors may benefit from this lack of clarity, to the detriment of on-demand workers. As a result, states may look to fairly and clearly enforce existing laws as well as provide new guidance to make clear the definition of “employee” for purposes of determining whether workers are entitled to the benefits and protections of formal employees.

- *Issue: Worker classification is not consistently enforced.*

In most cases, the protections to which workers are entitled depend on their classification as an employee. States have the authority to enforce classification laws, and many are acting to ensure that employees are classified correctly. Recently, several states have established task forces to investigate issues of classification in their state and develop a strategy to address those issues. States can then enact legislation to provide clarity in classification. In the absence of federal guidance, states have taken different approaches to this issue.

- *Opportunity: Audit state processes for enforcing worker classification and develop clear guidelines for determining classification.*

In 2019, **New Jersey** Gov. Phil Murphy’s Task Force on Employee Misclassification audited just 1% of employers. The audit found 12,315 instances of misclassification totaling more than $13 million in lost revenue for the state.[41] Other states have taken action to clarify which types of work should be encompassed within the definition of employment. **California** enacted a blanket law (AB5) that establishes a three-part "ABC" test for establishing employment in all but a handful of cases. This law is being interpreted as extending employee rights to platform workers, such as Uber and Lyft workers.[42] Both rules provide further clarity to workers and employers in this space.

- *Issue: Many on-demand workers struggle to track their earnings and clearly report them to tax agencies.*

On-demand workers' confusion about tax obligations leads to lost tax revenue for the state and financial stress for workers. An audit by the U.S. Government Accountability Office identified significant likely sources in underreporting of federal Form 1099 income, contributing to more than $69 billion in possible lost revenue at the federal level. It is almost certainly the case that this shortfall carries over to the state level.[43] Currently, on-demand workers who are unincorporated and paid $600 or more by an individual or business should receive a Form 1099-Misc to ensure that income is reported to the IRS.[44] The reporting threshold for those receiving a Form 1099-K is $20,000 if the income is received from a third party (typically, a credit card processing firm or by a platform business such as Uber), even though the third party is required to file taxes on this income. The result is that relatively high rates of income are underreported, and careful budgeting and accurate quarterly tax estimations are required to fulfill tax obligations when they are due.

- *Opportunity: Provide on-demand workers with official documentation that clarifies their tax obligations.*

To provide more documentation and clarity for on-demand workers, **Vermont** and **Massachusetts** have lowered the threshold for receiving a Form 1099-K from $20,000 to $600. This policy is intended to help reduce underreporting and clarify tax obligations for workers.[45] When it is easier for workers to pay the correct amount of taxes, the state benefits from bringing in more tax revenue. Workers benefit because they are less likely to be audited and they receive the maximum Social Security benefits in retirement.

- *Issue: Data and algorithms used in the on-demand economy lack transparency and can lead to inequitable outcomes.*

Policymakers are concerned about how data may be used to manage and gather information about workers, often in ways that are opaque to workers and to the public. Ongoing research shows that many of the data-gathering and management programs inherit the biases of their creators, leading to inequitable outcomes.[46] These biases may not be deliberate or obvious, but the effects are discrimination on the basis of age, race, gender or disability. These systems are often categorized as trade secrets; therefore, they are not generally open to audit by outside entities. Consequently, the resulting biases may be discovered only after a pattern emerges — one that requiring many transactions over long periods. Creating greater transparency in the on-demand economy is complicated given how much goes unreported and unregulated.

- *Opportunity: Require greater transparency and independent evaluations of worker information and employment algorithms.*

Given the complexities surrounding this issue, no clear examples yet exist of how public policy can improve transparency and equity in the on-demand economy. State leaders could experiment with regulations aimed at requiring independent validation of performance or customer ratings, by making market information more transparent and by providing audits of employment algorithms.

IV. Conclusion

On-demand work can provide many workers with the opportunity for a more flexible work schedule or with the ability to earn additional income to support themselves and their family. On-demand workers face challenges and risks that make it difficult for them to fully benefit from engaging in this type of work. As new types of on-demand work emerge and employer-employee relationships evolve, it is important that states consider how they can provide opportunities for workers to achieve stability and security while navigating new ways to describe and regulate work. Given that these issues are likely to persist and affect a growing sector of the workforce, it is important that states evaluate the needs of on-demand workers and identify solutions that successfully support them.

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Appendix A: Defining the Universe of On-Demand Workers

This ontology of on-demand work is designed to organize policies and research pertaining to the world of on-demand work. Broadly, it can serve as a checklist when considering the reach of policy-related research and the consequences of policies pertaining to the on-demand world. Specifically, it organizes knowledge, policies and work on the on-demand world and shows the intersections between elements. The following tables outline the world of on-demand work:

- **Table 1**. This table focuses on the work the on-demand workforce produces. It describes two basic categories of relationships between on-demand workers and the entities that pay for the work (but not to formal workers):
    - *Dependent workers*. Workers who depend on one economic unit or series of units.
    - *Independent business workers*. Workers who have established or are in the process of establishing independent, legally incorporated businesses and who have a primary goal of growing the business into an ongoing enterprise.

  The characteristics of these two subgroups of on-demand workers are not mutually exclusive. What distinguishes one group from the other is its formal organizational structure. In addition, workers who receive a paycheck and whose income is reported on a W-2 form are considered on demand when scheduling, terms and conditions of short-term or temporary employment, etc., are episodic and determined by the entity that pays them.

- **Table 2.** This table categorizes the characteristics of on-demand workers. It supports classification and data by demographics and occupation, addresses the economic factors driving on-demand work and addresses the personal motivations for participating in on-demand work. These elements are not mutually exclusive: In fact, we expect that the combinations of characteristics are innumerable.

- **Table 3**. This table sets the context. It shows that government has an overarching role in the regulations of work and in the provisions of services and support to workers. In addition, the work performed cuts across all industries and places. Some policies are necessarily place based or limited to a specific industry, however, so this provides a means of displaying these contextual variations.

The development of the ontology is ongoing and will be adjusted to reflect the questions of policymakers and researchers as well as the changing circumstances on the ground.

Table 1: Work Relationships Depicting On-Demand Work

<table>
<tr><td rowspan="25">Dependent workers: someone operationally and/or economically dependent on another economic unit that exercises control over their activities</td><td rowspan="19">Nonemployee working independently</td><td rowspan="6">Identity</td><td colspan="2">Contributing family workers of family helpers</td></tr>
<tr><td colspan="2">Freelancer</td></tr>
<tr><td colspan="2">Unincorporated consultant</td></tr>
<tr><td colspan="2">Professional</td></tr>
<tr><td colspan="2">Service worker</td></tr>
<tr><td colspan="2">Manual labor</td></tr>
<tr><td rowspan="13">Engagement</td><td rowspan="4">Modes of engagement</td><td>Platform</td></tr>
<tr><td>Advertisement/word of mouth</td></tr>
<tr><td>Referrals</td></tr>
<tr><td>Job site</td></tr>
<tr><td rowspan="4">Terms of engagement</td><td>Negotiated</td></tr>
<tr><td>Set by third party</td></tr>
<tr><td>Determined by market</td></tr>
<tr><td>Set by entity setting the engagement</td></tr>
<tr><td rowspan="3">Compensation</td><td>Fee for service</td></tr>
<tr><td>Piece rate</td></tr>
<tr><td>Time-based rate</td></tr>
<tr><td rowspan="2">Location</td><td>On-site</td></tr>
<tr><td>Remote</td></tr>
<tr><td rowspan="6">Employee</td><td colspan="3">Irregularly scheduled permanent employee</td></tr>
<tr><td rowspan="2">Fixed-term contract</td><td colspan="2">Time-limited</td></tr>
<tr><td colspan="2">Task-limited</td></tr>
<tr><td colspan="3">Temporary employees</td></tr>
<tr><td colspan="3">Paid apprentices or interns</td></tr>
<tr><td colspan="3">Employees misclassified as nonemployees</td></tr>
<tr><td colspan="2" rowspan="3">Independent worker businesses*</td><td colspan="3">Entrepreneurs</td></tr>
<tr><td colspan="3">Employers in household market enterprises or own account workers in household market enterprises (e.g., farmers, ranchers)</td></tr>
<tr><td colspan="3">Incorporated, self-employed workers</td></tr>
</table>

*In independent worker businesses, the worker (1) owns the economic unit for which they work and controls its activities; (2) makes the important strategic and operational decisions about the economic unit for which work is performed and the organization of that work; (3) is not accountable to or supervised by other people; (4) does not depend on a single other economic unit or person for access to the market, raw materials or capital items; (5) may work on his or her own account or in partnership with other independent workers; and (6) may or may not provide work for others.

Table 2: Characteristics of On-Demand Workers

Economic necessity and motivation	**Economic motivation**	Primary source of income	
		Secondary source of income	Required to make ends meet
			Discretionary expenditures
	Choice	Lifestyle choice	
		Creative choice	
		Forced choice	
Demographic characteristics	Age		
	Race/ethnicity		
	Skills		
	Education		
	Gender		
	Immigration status		
	Disability		
	Marital/family status		
	Occupation		

Table 3: Additional Contexts for On-Demand Work

Government	Employment status	
	Industry regulations	
	Equal protection and civil rights	
	Other social protections	
	Unemployment insurance	
	Healthy and safety	
	Licensure	
	Wage and hours	
	Disability/injury	
	Retirement	
Industry		
Geographic	Metropolitan	Central city
		Ex-urban
		Suburban
	Micropolitan	
	Rural	

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