Insight

Six Questions Policymakers Should Ask About the Gig Economy

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In recent years, more attention has been paid to the emerging "gig" economy. This portion of the U.S. economy is marked by alternative work arrangements that are often temporary in nature and include those gigs that utilize online platforms like Uber, Lyft, and Airbnb. While there are countless claims about the well-being of these workers, there is a lot we simply do not know about the gig economy. Previously, American Action Forum (AAF) found evidence the gig economy is indeed growing and online platforms are becoming more prevalent in today's workforce. With more workers utilizing alternative arrangements, it remains unclear how to characterize these workers and how they fit into the current framework of U.S. labor laws and regulations. As policymakers continue to gather information about the gig economy, here are six important questions they should be asking:

1. What do we know is happening in this sector of the economy?

In previous research, AAF found there were 20.5 million to 29.7 million workers participating in the gig economy in 2014. From 2002 to 2014, while total employment increased 7.2 percent, gig workers increased by between 8.8 percent and 14.4 percent. From 2010 to 2014, independent contractors alone increased by 2.1 million, accounting for 28.8 percent of all jobs added during the time period. Other research indicates that alternative work arrangements are even more prevalent in the U.S. economy. Katz & Krueger (2015) found that alternative work arrangements as a portion of all workers in the United States increased by 5.7 percentage points from 2005 to 2015. The authors suggest that all of the net job growth in that decade occurred in alternative work arrangements. Katz & Krueger also found that gig economy jobs made possible by online platforms are growing rapidly but still represent just 0.5 percent of all jobs in the labor market.

Despite all of these interesting statistics, there are countless characteristics that we still do

not know about gig economy workers. For instance, how often do these workers depend on their gig as a primary source of income and how often do they simply consider it a job on the side? Are there generally several other workers in gig worker households or do gig workers use their compensation to support entire families? How often do gig workers get nonwage benefits? How often do gig workers depend on government assistance? Using data to answer questions like these can help inform policymakers about what to expect in the future as the gig workforce continues to grow in size.

2. What kinds of clarifications are needed for worker classification tests?

American labor law hinges on the classification of workers as either employees or independent contractors. Yet, the legal tests that determine employment status are unclear. Agencies use a number of tests to determine if a worker is an employee or an independent contractor, and the courts have varied their interpretation of these laws, yielding inconsistent results. For example, the National Labor Relations Board (NLRB) uses the right to control test, also known as the common-law test, to determine whether workers are covered by the National Labor Relations Act (NLRA). On the other hand, the Fair Labor Standards Act (FLSA) uses the economic realities test to establish an employment relationship and many state workforce agencies use the ABC test. By the very nature of the current system, there is not a reliable means to define an employee. Congress could help by beginning to think through worker classification standards. Should there be a singular standard be applied to all agencies? How might that hurt or help both workers and industries? Is the Department of Labor's hardline stance that most workers are employees really descriptive of the labor market? Moreover, for those in the online gig economy, could a safe harbor for worker classification be created to push back these important questions until we know more about the changes?

3. How should the FLSA apply to alternative work arrangements and online gig economy work?

Under the FLSA, established labor standards for American workers, including protections against child labor, a minimum wage, and required overtime pay for working beyond 40 hours in a week. Under the authority of the FLSA, the Department of Labor (DOL) also issues regulations enforcing these labor protections. Most recently the DOL issued a rule to expand the number of salaried workers who are entitled to overtime pay.

Flexibility is a key characteristic of alternative work arrangements. If gig economy workers are setting their own hours and choosing when they want to work, then should they still be entitled to the same pay and overtime protections provided by the FLSA? Gig economy jobs

do not necessarily represent the traditional payroll jobs FLSA labor standards are designed to protect. So which aspects of the FLSA should apply to gig economy jobs and which types of gig economy jobs should be protected by FLSA labor standards?

4. How should collective bargaining standards apply to the gig economy?

The NLRA grants to employees protections to collectively bargain and establishes the election process for workers to choose to be represented by a union. The NLRA also empowered the NLRB, an independent government agency, to handle labor disputes and oversee union elections. In its case decisions, the NLRB sets collective bargaining standards that impact the employer-employee relationship.

When it comes to the gig economy, it is not entirely clear how collective bargaining standards should apply to workers in alternative arrangements. Many of these individuals have nontraditional working environments and more fluid hours than workers in traditional jobs that the NLRA was designed to protect. In addition, these individuals work independently of other workers and often do not take direct orders from supervisors.

Deciding whether or not gig economy jobs fall under the NLRB's purview will have wide ramifications for the gig economy, since the NLRB in recent years has made decisions aimed to increase collective bargaining opportunities in the labor market. These include the "ambush election" rule, the broader definition of "joint-employer," and the ability of workers to form smaller micro-unions within a specific company. Whether or not these recent decisions by the NLRB will apply to workers in alternative arrangements will depend on how lawmakers determine collective bargaining standards apply to the gig economy.

5. What will these labor shifts and proposed legislative changes mean for health, retirement, and other benefits?

The determination of an employment relationship triggers a number of mandated benefits programs, like Social Security, unemployment insurance, and workers' compensation, just to name a few. Yet, these programs add cost to employment. As the Bureau of Labor Statistics has detailed, benefits took up 31 percent of every paycheck in December 2015, leaving the rest for wages. Moreover, since 2012, the ratio of wages to compensation has gone down. Meanwhile, workers in the online gig economy are getting into the business to offset dips in income and provide a flexible means of earning additional income. Given the rigidity of the laws, policymakers need to consider how the classification of workers will change their payouts and their desire to be workers in this economy. They should ask, what kinds of benefits do individuals working in this sector really want and need? How many workers already have benefits elsewhere but are using this gig for extra income? Finally,

how might portable benefits be structured to allow workers to choose their own benefit package?

6. Which types of gig economy work should qualify for work requirements in safety net programs?

Some programs in the federal safety net, such as Temporary Assistance for Needy Families (TANF) are designed to help low-income households by encouraging work. They accomplish this by setting time limits for how long an individual or household is eligible for the benefit and by enforcing work requirements. Able bodied persons must either be working or doing a work related activity in order to receive the federal benefit. For low-income workers in alternative arrangements, it is not exactly clear what types of gigs would meet the criteria for a safety net work requirement. For instance, should work requirement criteria for safety net programs only include gig economy jobs that involve performing tasks, such as driving for Uber, or should they also include jobs that involve selling use of assets, such as renting a room on Airbnb? Answering these questions will help clarify how the safety net will be effective in utilizing tomorrow's labor market to both alleviate material hardship and increase self-sufficiency.