Responding to Gig Economy Implications on New York City's Workforce

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Interview with executives from the New York City Office of Labor Policy & Standards

The Office of Labor Policy & Standards (OLPS) serves as New York City's focal point for labor issues and workers in the city, giving a dedicated voice in city government to the issues facing workers. OLPS enforces key municipal workplace laws, conducts research, and develops policies that are responsive to the rapid evolving economy and issues affecting workers in New York City. Read all about their perspective and response to the rising Gig Economy in their city.

What is the Gig Economy and how big is it in New York City?

There is no fixed definition for the "gig economy," a term that has been used loosely to describe unstable work where a worker lacks a long-term job with one employer that takes on employer responsibilities, sometimes including freelancers, other workers classified or misclassified as independent contractors, workers hired through staffing agencies or subcontractors and dispatched to the job site of another company, temporary workers, day laborers, and on-call or involuntary part-time workers. Recent analysis by our office to measure the size of one part of this workforce – independent contractors – shows that there are currently 293,000 independent contractors who are contracting as their main job and who are not incorporated as their own business in New York City.

> *"The total universe is much larger. The retail sector and food and drink service sectors, two groups marked by on-call and involuntary part-time scheduling, have 422,000 and 320,000 workers in New York City respectively, for example."*

There is evidence that contingent work may be on the rise nationally. According to a report issued last year, the percentage of workers engaged in alternative work arrangements – defined by the report's authors as including 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.[i]

The platform-based or "on-demand" economy, in which companies dispatch workers via an on-line platform or app, still constitutes only a small slice of the overall U.S. workforce (about 0.4%) but has recently been in the spotlight over the companies' labor practices and disputes with regulators.[ii]

What are the challenges the Gig Economy causes for New York City?

Workers' and their families' well-being is severely compromised when they don't have steady hours or paychecks that allow them to budget for and plan their lives, or when the company they work for does not provide traditional employment protections and benefits, such as workers' compensation insurance, unemployment insurance, or health insurance (in the US, employers are generally required to provide the first two to their "employees," and employers above a certain size must offer health insurance). "Gig" work also correlates with lower health and safety standards for both workers and the public, because a company is not generally as invested in protecting workers with whom it has only a temporary or attenuated relationship.

> *"Some - though not all– companies use low-road subcontractors or wrongly label their employees independent contractors specifically to evade their legal responsibilities under wage and hour and other workplace laws."*

Gig workers who are called into work at the last minute or who are picking up side jobs to make ends meet may be missing their kids' doctor appointments or school events, or not taking care of their own health, damaging the city's social fabric. And the city's economy suffers when workers can't count on a steady income, aren't be able to spent money in and support their neighborhood stores or pay rent on time, and may have to

turn to emergency services.

> *"New York City must confront these challenges now to ensure low-road gig economy practices do not become the norm."*

Why is it important to solve these challenges?

In September 2017, our office released a report titled "The State of Workers' Rights in New York City ," which details emerging gaps in labor protections and offers policy solutions to these growing concerns. This report summarizes the testimony of 110 workers given during a public hearing in April 2017 that was convened by Department of Consumer Affairs in collaboration with the New York City Commission on Human Rights and the Mayor's Office of Immigrant Affairs. The workers made clear that the contingent work practices that we have long associated with low-wage gig work are now pervasive in higher-paying and white-collar jobs, which we have counted on to provide steady middle-income jobs to New York City. Day laborers, retail workers, fast food workers, writers, producers in the TV industry all complained that their employers dodge responsibility for paying them fair wages and providing decent jobs, instead attempting to pass blame to a higher-level multinational corporation or a general contractor, and some even have trouble finding *any* employer to call to task.



What is the role of NYC?

New York City must pursue all innovative strategies to prevent employers from dodging their existing legal responsibilities to workers, to reduce the business incentives of breaking the law, and to protect workers from abusive contingent work practices through new workplace protection laws. Concurrently, the city must encourage the development of good business models, whether by supporting companies that strive for higher

standards than their industry counterparts or the development of worker-owned cooperatives and other alternative business forms that empower workers.

> *"The city also has a role to play in supporting unions, worker centers, and other groups organizing to protect workers and defend low-income communities."*

Finally, by fighting to protect the rights of its immigrant residents, promote access to healthcare, expand affordable housing, and provide and expand high quality public education to all New Yorkers (including early childhood education), the city is helping to meet the needs of its most vulnerable workers.

What are the strategies of NYC to solve these challenges?

Some of the strategies of the Office of Labor Policy and Standards include:

- A set of innovative measures to combat wage theft (when employers do not pay workers what they are owed for their work);
- OLPS is taking proactive measures to investigate industries with high levels of complaints and characterized by nonstandard work structures; in July 2017, OLPS launched an investigation into nearly 40 home healthcare agencies across the city that represent upwards of 33,000 workers. The shift to this strategic enforcement model will help address many of the wage and hour abuses that workers voiced in their testimony.
- In 2017, OLPS is set to implement the City's Fair Workweek legislation that takes aim at abusive, contingent practices in the retail and fast food industries by requiring that fast food employers give workers advance notice of their work schedules, including, at the start of their employment, an estimate of their hours and schedules, and regular written and accurate schedules from then on.;
- We take complaints about workplace laws and investigate claims under those laws we enforce. For other issues, we connect workers to relevant government agencies, legal service providers, and resources to help them access and protect their rights and get critical services;
- OLPS is dedicated to defending the rights of paid care (home care and domestic) workers, improving the quality of paid care jobs, and strengthening the paid care system. Our Paid Care Division is responsible for developing policies and programs that apply to paid care workers; conducting public outreach and information campaigns for paid care workers, employers, and care recipients; engaging in and promoting research on the paid care industry; and coordinating with appropriate

stakeholders to provide development programming and training, and;
- Implementing a new law, The Freelance Isn't Free Act, the first of its kind in the country that gives freelance workers the right to a written contract, to timely payment for their work, and meaningful remedies if the hiring party does not comply, including attorneys' fees and double damages. This law will hopefully help start to reset the financial incentives employers may see in misclassifying workers who are really employees as independent contractors.

> *"Our experience in NYC is that coordinating among NYC agencies as well as collaborating with other cities is valuable in helping us build our programs, develop smart policies that make sense at a local level and that put the interests of working people front and center, and contribute to broader policy debates at the state and federal level."*

Sources

[i] Lawrence Katz & Alan Krueger, "The Rise and Nature of Alternative Work Arrangements in the U.S., 1995-2016 (March 2016), https://krueger.princeton.edu/sites/default/files/akrueger/files/katz_krueger_cws_-_march_29_20165.pdf .

[ii] "Paychecks, Paydays, and the Online Platform Economy: Big Data on Income Volatility," (JP Morgan Chase Foundation, Feb. 2016), https://www.jpmorganchase.com/corporate/institute/document/jpmc-institute-volatility-2-report.pdf