



The Gig Economy

Background

While it sounds related to the technology industry, the “gig” economy actually refers to the growing sector of jobs in the United States that operate on a freelance and on-demand basis. Each piece of work is an individual “gig,” with companies offering to pay for that gig instead of paying traditional hourly or salaried wages. Common examples include hiring an Uber or Lyft driver for transportation to and from the airport, renting an apartment for a few days through Airbnb, or paying a local handyman through TaskRabbit to fix a broken porch stair.

Intuit, the owner of Turbo Tax, estimates that about 34% of the workforce today is in the gig economy and predicts that percentage to rise to 43% by 2020.¹ Some of these workers also are in the traditional workforce and use side gigs to make extra money. Gig apps have made connecting the worker to the desired gig seamless.

The gig economy, however, poses a problem for child support programs across the country. The State Directory of New Hires provision in section 453a of the Social Security Act requires companies to report only the hiring of “employees,” not independent contractors.² Therefore, unless there is a specific state law requiring companies to report the payment of income to someone other than an employee as defined by the Internal Revenue Service, the child support program will not be alerted when a parent owing child support starts working in the gig economy. This results in a lost opportunity to collect support from gig income through the withholding process and there is a push in several states to change that reality.

Legislative Intervention and Lessons Learned from Virginia

Several states are attempting to gain authority to attach gig economy workers’ wages by enacting legislation to expand their definition of *employee* to include independent contractors so that employers will be required to report them as new hires. For example, in 2015, Texas expanded its definition of *employee* to include “an independent contractor as defined by the Internal Revenue Service.”³

Other states are attempting to pass similar legislation but appear to be having little success thus far. For example, in 2017, Oregon introduced a bill specifically related to transportation network companies such as Uber and Lyft that would have considered their drivers as independent contractors under certain conditions, but the bill died in committee.⁴ New York has legislation pending that would expand the definition of *employee* to include workers “under an independent contractor arrangement”; similar legislation has been introduced without success in New York’s

¹ Patrick Gillespie, “Intuit: Gig economy is 34% of US workforce,” <https://money.cnn.com/2017/05/24/news/economy/gig-economy-intuit/index.html> (2017).

² 42 U.S.C. § 653a.

³ Texas Family Code § 234.101. The IRS requires employers to report independent contractor payments if the employer made payment (1) to someone who is not his/her employee (2) for services in the course of the employer’s business or trade, (3) to an individual, estate, or in some cases a corporation, and (4) equaling at least \$600 during the year.

⁴ Oregon House Bill 3246.

last four legislative sessions.⁵ Proposed 2018 legislation in Virginia included independent contractors in the definition of employees.⁶ The legislation also added a specific requirement that employers report new independent contractors to the Virginia New Hire Reporting Center within twenty days of the start of the contract arrangement. The bill did not pass, but a similar bill will likely be introduced in 2019.

States may want to consider using terminology other than *independent contractor* when drafting legislation. Virginia legislators expressed concern with using the term *independent contractor*; instead, they would have preferred a narrower term specifically aimed at gig economy workers. California uses the term *service-provider* that, although not new, could apply to gig economy employers and workers.⁷ *Freelance workers* may be another option, as used in several recent articles on gig economy workers.⁸ It may also be prudent for states to consider using broad terminology to encompass all gig economy workers rather than limiting language to a specific type of worker (i.e., transportation network company drivers).

Another consideration is the dollar amount used as the reporting threshold. In order to avoid sweeping up private citizens who pay an independent contractor a minimal amount for a specific service or event (i.e., yard work, home repair, occasional babysitting), some states have proposed legislation with a specific income amount as a reporting threshold. Some, such as Texas and California, use the \$600 threshold used by the IRS for reporting independent contractors; others use a higher threshold.⁹ For example, New York's pending new definition of *employee* includes "an individual under an independent contractor arrangement with contracts in excess of twenty-five hundred dollars."¹⁰

Finally, states may wish to consider the demographics of gig economy workers and whether these workers earn enough to justify pursuing legislation. There is conflicting information about the most typical demographic of gig economy workers; some say the platform is made up mostly of older workers,¹¹ while others indicate that millennials are the largest group.¹²

Child support agencies may want to look at the demographics in their particular state to determine whether the gig work force is comprised largely of workers who would not be likely to have child support obligations. In addition, if the income is largely supplemental, do these workers earn enough that an income withholding order would yield much child support? In other words, will the characteristics of and income earned by this group of workers provide enough "bang for the buck" to make going through the legislative process worthwhile?

⁵ New York's S2140 has passed its Assembly but has been pending in the Senate's Investigations and Government Operations Committee since January 2018.

⁶ Virginia Senate Bill 938, 2018 General Assembly Session.

⁷ California Code, UIC § 1088.8. A service-provider is "individual who is not an employee of the service-recipient...and who received compensation or executes a contract for services performed for that service-recipient within or without the state."

⁸ See for example Brian O'Connell, "3 Things to Know About the Growth of a Freelance Nation," <https://www.thestreet.com/story/12763121/1/3-things-to-know-about-the-growth-of-a-freelance-nation.html> (2014).

⁹ Virginia also used the \$600 threshold in its failed legislation.

¹⁰ New York Senate Bill S2140.

¹¹ O'Connell, "3 Things to Know About the Growth of a Freelance Nation."

¹² "Freelancing in America 2017," annual study commissioned by Freelancers Union and Upwork, <https://www.upwork.com/i/freelancing-in-america/2017/>.

Conclusion

The answer likely is a resounding “yes.” All children deserve child support regardless of whether their parents work in a traditional job or the gig economy. It is critical that child support programs have the tools they need to collect support for children, including tools that will alert programs to income that currently flies under the radar. It also is important not to provide an incentive for parents to use the gig economy as a way to avoid paying child support. NCSEA currently is looking at the problems posed by the gig economy and is considering national solutions to this national problem.

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Craig currently serves as president of the National Council of Child Support Directors. He also serves on the National Child Support Enforcement Association's Board of Directors and chairs its membership committee. Craig earned a Bachelor of Science degree in Hospitality Management from Florida International University and his Juris Doctor degree from the University of Richmond School of Law.

Diane Potts joined the Center for the Support of Families as a Senior Associate in 2015, after serving for 6 years as Illinois Deputy Attorney General for Child Support. During her 20-year career with the Office of the Illinois Attorney General, Diane argued over 100 cases on behalf of the State in the Illinois Supreme Court, Appellate Court, and the Seventh Circuit Court of Appeals. In 2015, she won the Lifetime Achievement Award from the Illinois Family Support Enforcement Association. Diane is a frequent speaker at National Child Support Enforcement Association Conferences, and at other national events including annual conferences for WICSEC and ERICSA. She also traveled to Hong Kong in 2015 and Germany in 2013 to present at the International Recovery of Child Support and Family Maintenance Conferences.

On September 1, 2017 Diane became the President of NCSEA and has served as its past President-Elect, past Secretary, and a member of NCSEA's Board of Directors since 2013. She also is the current Chair of NCSEA's Legislative Education Subcommittee, and was the co-chair of NCSEA's 2015 and 2016 Policy Forums. In 2016, Diane was appointed as NCSEA's official observer to the Uniform Law Commission's amendment of the Uniform Parentage Act. She served for 6 years on the Illinois Child Support Advisory Committee, and was a member of the legislative drafting team for the Illinois Parentage Act (2016) and the income shares child support legislation (2016). Diane received her law degree from Washington University Law School and her undergraduate degree from University of Illinois.