CHAMBER OF PROGRESS

November 7, 2022

Division of Regulations, Legislation, and Interpretation
Wage and Hour Division, U.S. Department of Labor
200 Constitution Avenue NW, Room S-3502
Washington, DC 20210

Re: Employee or Independent Contractor Classification Under the Fair Labor Standards Act (RIN 1235-AA43)

On behalf of Chamber of Progress, a tech industry association working to ensure all Americans benefit from technological leaps, I write to express our concern with the Department of Labor's proposed rule regarding employee and independent contractor classification under the Fair Labor Standards Act.

The gig economy has proven to be an economic lifeline for millions of Americans met with increasing financial strain due to inflation. Women, in particular, have relied heavily on gig driving, having been disproportionately impacted by the pandemic due to an increasing need for childcare and homeschooling, as well as job cuts in the home cleaning, hospitality, and service industries. Women now make up 58% of DoorDash drivers[1] and about 50% of Uber's delivery drivers.[2]

Gig work has become increasingly popular, as many app-based workers prioritize the flexibility to choose when, where, and how often to work. Furthermore, a recent survey found that 77% of app-based workers support maintaining their status as independent contractors.[3]

Earlier this year, Chamber of Progress released an economic analysis conducted by two former White House economists, Dr. Robert J. Shapiro, and Luke Stuttgen, on the economic impact of a federal reclassification of independent contractors on our workforce. The study found:

- A national rule reclassifying independent contractors as full-time employees could result in a loss of direct income for approximately 3.4 million American workers.
- A national rule reclassifying independent contractors as employees could result in approximately 4.4 million people being involuntarily reclassified, including:

[1]DoorDash News: A Majority of Dashers Are Women, (August 2021) https://doordash.news/dasher/a-majority-of-dashers-are-women-heres-why-they-choose-doordash/
[2]Erica Pandey, The Rise of Women in the Gig Economy, Axios, (August 2021) https://www.axios.com/2021/08/26/women-gig-economy-doordash-uber-delivery-driver
[3]Morning Consult on App-Based Workers, Flex Association, (October 2022) https://www.flexassociation.org/post/mcworkersurvey

    - 1.5 million people working as full-time contractors
    - 2.0 million people working part-time as contractors with no other jobs
    - 1.1 million people doing freelance work while also holding regular jobs.
- Involuntary reclassification would impact 1.52 million people who chose independent contracting because disabilities, chronic illness, or family responsibilities precluded working in traditional jobs, costing these American an estimated $31.4 billion.
- More than 1.14 million additional contractors could forfeit the freelance work they do outside of their regular jobs.
- 769,000 contractors or 43 percent of the 1.78 million people able to take regular positions could not find such jobs, losing $9.1 billion in earnings
- Job losses due to involuntary reclassification could be nearly half the number of losses seen during the Great Recession when non-farm employment fell by 7.39 million full-time and part-time positions.

With inflation affecting so many families, and a potential recession looming over the next year, this would be the wrong moment to implement such a significant change to work.

That said, the changing nature of the workforce demands new approaches to both work and benefits. Rather than limiting gig work — which has proven to be a lifeline of supplemental income for thousands, especially during the pandemic — we urge the Department of Labor to consider the economic harms that mass reclassification would have for workers and instead explore opportunities to guarantee benefits for all workers without endangering their employment.

Thank you for your consideration on this important matter.

Respectfully,

Jamie Pascal
Director of Civic Innovation Policy
Chamber of Progress

Enclosure: The Many Ways Americans Work and The Costs of Treating Independent Contractors As Employees

The Many Ways Americans Work and
The Costs of Treating Independent Contractors
As Employees

Robert Shapiro and Luke Stuttgen

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Executive Summary

How people earn their livings has been changing rapidly. Drawing on recent technological advances and their own preferences, more Americans can now work as "independent contractors"—finding businesses or other clients that need their services for designated tasks and deciding for themselves when, where, and often how to perform them, with little or no direct supervision by the business. Many companies embrace this rising use of independent contractors to help them reduce their long-term labor costs, including some employer-provided benefits afforded to traditional employees under numerous laws and regulations. By 2020, an estimated 16.7 million Americans worked as independent contractors instead of as traditional employees.

In 2020, California introduced new policies that force businesses to reclassify some of their independent contractors as traditional employees based on a three-part "ABC" test, whatever the preferences of the company or the contractors. Advocates have now called for a nationwide program modeled on that California effort. This study has examined and analyzed how such a nationwide program would independent contractors and the businesses that hire them.

- Applying the ABC test across the economy would force businesses to reclassify 4.4 million people as regular employees instead of independent contractors, regardless of the preferences of the workers and companies.

- Those involuntarily reclassified workers would include 1.5 million people working full-time contractors, 2.0 million people working part-time as contractors with no other jobs, and 1.1 million people for freelance work they do while also holding regular full-time jobs.

Nearly 2.7 million of these reclassified contractors would suffer substantial, direct income losses.

- Nearly 1.52 million people—46 percent of those reclassified—chose independent contracting because disabilities, chronic illness, or family responsibilities precluded working in traditional jobs. Involuntary reclassification would cost those vulnerable people an average of $20,759 across full-time and part-time contractors for direct income losses totaling an estimated $31.4 billion.

- More than 1.14 million additional contractors—20 percent of those reclassified--would forfeit the outside freelance work they do in addition to their regular jobs. Reclassification would cost former freelancers an estimated $9.7 billion in supplemental income.

The remaining 1.78 million independent contractors involuntarily reclassified and able to work as regular employees could try to be hired by a former client or another business. Employers pay employees more than they pay independent contractors, because only traditional employees are covered by laws regarding a minimum wage and overtime, unemployment benefits, employer contributions to payroll taxes, and in many cases healthcare coverage. These benefits cost employers an average of nearly $8,100 across full-time and part-time workers, suggesting that many employers would not hire their former independent contractors as regular employees.

How many contractors could expect to land new positions as regular employees depends on the industry and the economic conditions at the time that they were involuntarily reclassified. We develop estimates for the job losses if broad reclassification occurred during a downturn or during boom, but it would most likely occur during a normal expansion. In that case, we find that 36 percent of reclassified employees would not find new jobs, on top of the job losses by reclassified contractors unable to work as regular employees and the loss of reclassified freelancing positions by people who also hold down regular jobs.

We estimate that if nationwide reclassification occurred during a normal expansion, 769,000 contractors or 43 percent of the 1.78 million people able to take regular positions would not find such jobs and lose $9.1 billion in earnings—on top of the $31.4 billion in lost earnings by 1.52 million reclassified contractors unable to hold regular jobs and $9.7 billion lost by 1.14 million with regular jobs forced to give up freelance work. Only 1.01 million of the 4.44 million reclassified contractors would likely find new jobs and gain additional pay and benefits.

All told, 3.43 million of 4.44 million reclassified contractors would lose part-time or full-time jobs in this scenario with net earnings losses (including the higher compensation for those who find new jobs) of $42.1 billion.

- The impact on jobs and incomes would be greater if broad involuntary reclassification occurred during an economic downturn. Nearly 1.16 million contractors able to take regular positions would be unable to find such work, on top of the 1.52 million contractors unable to hold regular jobs and the 1.14 million people forced to give up their sideline freelancing. All told, 3.81 million of the 4.44 million reclassified contractors would lose their positions, with net earnings losses (including higher compensation for those who find new jobs) of $55 billion.

- If nationwide involuntary reclassification happened during an economic boom, 540,000 contractors able to take regular jobs would be unable to find that work, on top again of 1.52 million contractors unable to hold regular jobs and 1.14 million people forced to give up sideline freelancing. All told, 3.20 million of 4.44 million reclassified contractors would lose part-time or full-time jobs, with net earnings losses of $35.2 billion.

A nationwide reclassification policy could cost the full-time or part-time jobs of 3,196,000 to 3,811,000 independent contractors, or 72 percent to 86 percent of the 4.44 million contractors involuntarily reclassified. Those job losses would be equivalent to between 42 percent and 49 percent of the decline in employment during the Great Recession, from January 2008 to July 2009, when non-farm employment fell by 7,395,000 full-time and part-time positions.

The Many Ways Americans Work and
The Costs of Treating Independent Contractors as Employees[1]

Robert Shapiro and Luke Stuttgen

I. Introduction and Summary of Findings

Employment and work come in a variety of forms; and in the United States, the two principal ones under the law are traditional or permanent employment and work as an independent contractor, sometimes referred to as "contingent workers." This study examines the differences, benefits, and costs of these two types of employment and ways of working.

Over the past decade, the use and numbers of independent contractors have increased, reflecting technological advances and changes in the composition of the workforce; and by 2019, an estimated 16.7 million Americans worked as independent contractors. In 2020, California introduced new policies for determining whether independent contractors should be classified as traditional employees; and advocates have called for a nationwide policy modeled on that effort. Our analysis shows that such a program would have substantial adverse effects. An estimated 4.4 million independent contractors would be involuntarily reclassified. Some of them would land regular jobs and qualify for the benefits and protections of traditional employment. Those additional costs for employers to shift workers from contractors to regular employees would affect wages and the number of jobs available, so many reclassified contractors would not find new positions. In addition, more than 1.5 million reclassified independent contractors would be unable to work as permanent employees for reasons of disability, chronic illness, or family responsibilities, and they would lose their livelihoods. Another 1.1 million people reclassified for freelance work they do on the side also would lose those earnings. This study analyzes these issues and estimates the net effects of a nationwide reclassification policy for the work opportunities and incomes of independent contractors.

Working as an independent contractor or traditional employee differs in important ways. Generally, employees have continuing responsibilities to work in the ways that their employers designate and define, and employers support their employees' efforts by providing direction and oversight, facilities and equipment, training, and the assistance or collaboration of other employees. Further, most traditional employees depend on a single employer to support themselves. Since that employer has significant control over how and whether regular employees will continue to earn their wages and salaries, laws and regulations establish limits on how the employer can treat them, principally through provisions for a minimum wage, overtime pay, unpaid family and medical leave, healthcare coverage in most cases, a safe and healthy work environment, and the right to organize and bargain collectively. Employers also are required to cover the costs of their employees' unemployment coverage and half of their payroll taxes.

[1] We gratefully acknowledge the Chamber of Progress for supporting our research. The analysis and views are solely those of the authors.

By contrast, companies engage independent contractors only for stipulated tasks; and the contractor normally determines when, where and how to perform those tasks and usually without assistance from the company's permanent employees. Independent contractors also provide their own training, facilities, and equipment to carry out their tasks. Since these contingent workers control many of the conditions for earning their living and usually are not tied to one company, they cannot claim the benefits and guarantees of traditional employees.

Each of these two ways of earning earn a living involves trade-offs for both businesses and workers. A company generally pays regular employees more than independent contractors because the company gets to control and direct their work process and product. In exchange, traditional employees have more job security and receive certain legally mandated benefits and protections. Independent contractors who carry out comparable tasks may earn less and enjoy fewer benefits and protections; and in exchange, they gain flexibility to determine when, where and how to work and usually can leave one company without sacrificing most of their income.

Calls to enact nationwide rules that would reclassify many independent contractors as employees, even against their wishes, usually draw on versions of a three-part "ABC test" to legally distinguish the two types of work, a test usually used only to determine eligibility for unemployment benefits. The ABC test asks, 1) is a person's work under a company's daily control and direction; 2) is a person's work integral to the company's main business; and 3) is the person working in the same trade, occupation, or business as her employer.

Massachusetts and California have enacted laws applying the ABC test more broadly to determine if someone working as an independent contractor should be reclassified as an employee and receive the accompanying benefits and protections, whether they choose to or not.[2] The impact of the broad approach is still unfolding in California. The Massachusetts law was enacted in 2004, when companies used independent contractors to a substantially lesser degree. However, with appropriate adjustments, the experience in Massachusetts can be applied to help gauge the likely impact of a nationwide ABC test for the 16.7 million Americans working today as independent contractors.

Based on the relative reduction in independent contracting in Massachusetts following its use of an ABC test under the 2004 law, we estimate that national application of ABC tests would reclassify as traditional employees 1.2 million to 1.3 million people who currently work full-time as independent contractors, another 1.9 million to 2.1 million people who currently work only as part-time contractors, and another 1.1 million to 1.2 million people with traditional jobs who also do freelance work on the side. All told, a nationwide ABC test would involuntarily reclassify 4.2 million up to 4.6 million independent contractors, for a midpoint of 4.4 million.[3]

To gauge the impact of such large-scale reclassification on employment and earnings, we start by comparing how much companies pay regular employees compared to independent contractors. Based on public and private studies and surveys, independent contractors working full-time or part-time earned wages averaging $20 per-hour in 2019, and their average earnings

[2] New Jersey's Supreme Court in 2015 directed state agencies to use a version of the ABC test, despite limited legislative backing. The New Jersey version has had limited effect because the court weakened the B) and C) prongs.
[3] This total does not include Massachusetts, since ABC tests reclassified people there 15 years ago.

from that work were $20,759. Studies and surveys also found that hourly wages of independent contractors were 10.6 percent lower than regular employees doing the same work, controlling for occupation, experience, and other factors.[4] Studies further show that non-wage benefits of traditional employees raise employers' costs on average by 15.3 percent to 24.3 percent.[5] Therefore, we estimate that reclassified contractors who find regular jobs would earn higher wages and benefits worth an average of $8,096, raising their average earnings to $28,855.

But many reclassified contractors would be unable to accept jobs as regular employees. Some 46 percent of independent contractors choose the work because disabilities, chronic illness, or family obligations prevent them from working in a traditional office, factory, or other facility. Our analysis found that about 1.52 million full-time or part-time contractors unable to work as traditional employees would be reclassified. As a result, a nationwide reclassification policy would cost those 1.52 million contingent workers earnings averaging $20,759.

Another 26.0 percent of independent contractors do part-time freelance work while holding regular jobs. Our analysis found that about 1.14 million people would find their freelance work reclassified as regular employment and have to give up that freelancing. Based on studies of people with regular jobs who freelance or do other contingent work on the side, a nationwide reclassification policy would cost those 1.14 million people earnings averaging $8,515.

Our analysis also found that that a nationwide program would reclassify an estimated 1.78 million independent contractors who could work as regular employees. Since reclassification would increase a company's costs for reclassified workers by about 39 percent, including salary and benefits, and a company's demand for workers declines as their costs increase, some of those 1.78 million reclassified "potential" employees would find regular jobs and some would not. How many would or would not find permanent jobs would depend on the state of the economy and labor demand.

We analyzed three scenarios based on whether reclassification occurred during an economic boom, a period of normal growth, or an economic downturn. Drawing on the economic literature examining the relationship between a company's cost to hire an employee and businesses' demand for another employee during those three stages in the business cycle—economists call this "labor demand elasticity"—we estimated how many reclassified workers who could hold regular jobs would not be rehired and how long it would take them to find new employment. We estimate that following nationwide involuntary reclassification, the share of those potential employees who would not be rehired as regular employees would be about 30 percent during a boom, 43 percent during normal times, and 65 percent during a downturn.

Depending on prevailing economic conditions, reclassification would result in higher wages and benefits for, respectively, 1.24 million, 1.01 million, or 624,000 reclassified potential employees—and cost the jobs of 540,000, 769,000 or 1.15 million other potential employees, on top of 1.51 million reclassified contractors unable to work as regular employees and the freelance work of another 1.14 million people with regular jobs who freelance on the side.

[4] Government Accountability Office (2015).
[5] Habans (205).

On this basis, a nationwide reclassification program would likely lead to substantial net income and job losses. Under normal economic conditions—neither boom nor bust—769,000 reclassified potential employees would be unable to find regular jobs after their compensation costs increased 39 percent. Including the reclassified contractors unable to work in regular jobs and those whose freelance work on the side was reclassified, the full-time and part-time job losses from involuntary reclassification in normal times would total 3.43 million and the net earnings losses would come to $42.1 billion.

In the boom-time scenario, gains by 1.24 million reclassified potential employees expected to find traditional jobs would exceed the losses by the 540,000 who would not find work as regular employees within a half-year. However, the losses by the 1.14 million freelancers on the side and the 1.52 million reclassified contractors unable to hold traditional jobs would be far greater than those gains and produce total losses of 3.0 million full-time and part-time jobs and $35.2 billion in earnings for 4.44 million contractors reclassified involuntarily. However, if a nationwide reclassification program occurred during a downturn and only 35 percent of potential employees landed regular jobs within a half-year, full-time and part-time job losses would total 3.81 million with $55.0 billion in net lost earnings. And under any economic conditions—normal times, a boom, or a recession—vulnerable people would bear much of the costs, especially those with disabilities, illness, or family obligations precluding them from holding most regular jobs.

A nationwide reclassification policy would affect people and companies in every industry. Based on each industry's share of all independent contractors, the construction and professional and business services industries would be most affected. Such a policy also would affect people and companies in every state. Based on independent contractors' share of total employment in each state, the 10 states affected most by such a program would be Vermont, Maine, Colorado, Oklahoma, Utah, Wyoming, California, Florida, Montana, and Oregon, plus the District of Columbia. Similarly, every demographic group would be affected; but based on the characteristics of independent contractors, the costs of reclassification would be borne disproportionately by male, white, and older people.

Legislation currently proposed in Congress, called the PRO Act, also would use ABC tests to reclassify people under the National Labor Relations Act (NLRA), which protects the right of traditional employees to organize and join unions. Without adjudicating the tradeoffs in wages and jobs associated with unionization, the PRO Act would likely affect those industries that are significantly unionized and employ independent contractors as a substantial share of their workforces. On this basis, reclassification under the PRO Act would have the greatest effects on the information industry, the transportation industry, and the construction industry.

II. The Basis for Different Tax and Regulatory Approaches for Regular Employees And Independent Contractors

While economists debate the precise definition of employment,[6] laws and regulations apply distinct obligations and rights to companies and individuals based on how a person's work is classified. As already noted, employees in most businesses are covered by minimum wage and

[6] Harris (2018); Cunningham-Parmeter (2016).

overtime rules, occupational health and safety protections, unpaid family and medical leave, requirements for healthcare coverage, and rights to organize and bargain collectively, while independent contractors are usually not so covered.[7] Further, companies pay for unemployment insurance for their employees but not for independent contractors, and companies and their employees divide the burden of Social Security and Medicare taxes while independent contractors pay a "self-employment tax" covering the full costs of those taxes.[8]

These distinctions have become increasingly salient as the internet and other technologies have changed the way businesses operate, including how they employ people. Recently, attention has focused on "gig" workers who perform specific short-term tasks for clients on the model of a musician playing a gig. Beyond gig work, Americans today work in many varied ways; and discussions of independent contracting often also include entrepreneurs, and consultants, along with freelancers and on-call workers. Further, millions of people work in more than one way—for example, as both a regular employee and a freelancer or as an entrepreneur and a temporary worker.

The range of ways that Americans work and are paid today reflects decisions by businesses to treat and pay people under a variety of terms and the personal decisions of millions of people to work and be paid under a variety of terms. The distinctions between the regulatory and tax coverage for employees and independent contractors reflect those varying terms.[9] Minimum wage and overtime protections are difficult to apply to independent contractors who are paid by the task, work when they choose, and work outside established places of business. Similarly, since independent contractors usually provide their own equipment and control their own working conditions, there is little basis for holding a business responsible for the health and safety of the equipment and working conditions of those contractors.

Apart from those considerations, economists have reasoned that the basis for providing employees certain regulatory protections lies in a structural imbalance of power between them and their employers.[10] Regular employees invest time and effort to acquire knowledge and skills pertinent to working for a particular firm. They come to know its operations, preferences, and personnel; and over time, their compensation increases to reflect their firm-specific capacities. However, these dynamics create a power imbalance when, for example, an employer decides to change an employee's hours or working conditions. Any employee can reject a proposed change and quit. But both sides know that the employee risks more than the employer because the salary at a new job usually will not reflect the skills and knowledge acquired for the current job. That dynamic helps explain why people who lose or leave their jobs usually have to accept less pay to

[7] National Labor Relations Board (2021). Federal, state, and local governments employees also are not covered under the National Labor Relations Act.
[8] This distinction does not affect how much payroll taxes the government collects. It also does not apply to income taxes: Businesses pay corporate income tax on profits generated by their employees and independent contractors, and those employees and contractors pay personal income tax on their wages and contract fees.
[9] Posner (2020).
[10] Posner (2020).

land a new position. Much labor regulation is intended to limit the impact of this imbalance of power by constraining an employer's ability to impose unreasonable demands or conditions.[11]

This underlying asymmetry in bargaining power is much less for independent contractors. Since those contractors are hired for specific, time-limited tasks, they usually do not invest time and effort to acquire knowledge and skills specific to one business. Since independent contractors also perform the same or similar tasks for a range of clients and businesses—from designing websites to delivering restaurant orders—the value of their work is generally unrelated to their relationship to one company and its employees.[12] Consequently, the power imbalance is less if a company tries to change some aspect of an independent contractor's engagement—for example, by unilaterally reducing compensation or expanding the scope of the tasks. The contractor can leave without an expectation that the next engagement will pay less; and beyond that, many independent contractors work for more than one firm at a time.

These economic dynamics inform the legal criteria distinguishing employees and independent contractors. Courts interpreting the Fair Labor Standards Act (FLSA) that regulates a worker's hours and wages, for example, often apply an "economic realities" test that asks whether the company exercises actual or functional control over the worker's efforts and whether the worker depends on a single business for employment.[13] Similarly, the Internal Revenue Service (IRS) distinguishes the wages a business pays its employees from its payments to independent contractors based on the extent of the company's control over the worker, including whether the worker is in business for themself, whether the contracted services are an integral part of the company's underlying business, and whether the worker is engaged for an indefinite period.[14] For purposes of distinguishing employees and contractors, the IRS also asks whether a business determines a worker's hours and location, the equipment they use, where any ancillary services are purchased, and who pays for them.[15]

The FLSA and IRS standards differ in important ways from the three-part "ABC" test used to determine eligibility for unemployment insurance coverage in many states and eligibility for the range of benefits and protections in Massachusetts and California.[16] However, the test addresses many of the same issues. Its three parts ask, A) does the person perform the work free from a company's direct control and direction; B) is the work a person performs outside the usual course of the company's business; and C) does the person customarily work in a trade, occupation, or business of the same type as the work performed in this case.[17]

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[11] In Posner's view, this imbalance constitutes a form of labor monopsony.
[12] Posner (2020).
[13] Cunningham-Parmeter (2016); Posner (2020).
[14] Woo and Bales (2017).
[15] In some case, the IRA also asks whether the worker can realize a profit or face a loss as a result of her efforts.
[16] New Jersey's Supreme Court issued a ruling in a 2015 case directing the state to use the ABC test to determine whether a worker was an employee for purposes of the Wage Payment Law and Wage and Hour Law. However, the Court's version of the test incorporated substantially weaker versions of the B) and C) prongs than California, Massachusetts, or the PRO Act. Our analysis includes New Jersey with non-ABC test states. See *Hargrove v. Sleepy's, LLC*, 220 N.J. 289 (2015).
[17] In this regard, we note that Uber drivers are not considered to be professional drivers.

The Greater Use of Independent Contracting Reflects Basic Economic Changes

In recent decades, large-scale economic changes have altered the way many businesses are organized and increased their use of independent contractors. The changes began with the early stages of contemporary globalization in the 1970s, when technological advances enabled multinational manufacturers to deconstruct their processes and distribute tasks across an international network of countries based on where costs were lower and markets were growing. With the spread of computerization and advanced telecommunications, many domestic service and manufacturing companies adopted a similar model: They deconstructed certain operations so that regular employees retained some tasks while contractors performed other tasks.[18]

This process accelerated with the growth of internet-based companies and operations. Unlike multinational manufacturers that built their own global production networks, the internet provided the network for domestic companies, especially in certain services. Companies across most industries now use the internet to coordinate the work of outside contractors working independently; and in many personal service areas, businesses use online platforms to recruit independent contractors and algorithmically match the supply of contract workers with the demand for their services.[19]

These developments reflect market-driven economic changes that have increased the demand for and supply of independent contractors. The demand for independent contractors ranges from specialized computer programmers, journalists, and consultants in finance and healthcare, to data transcribers, Uber drivers, dog walkers, and customer assistance operators. The supply of independent contractors also increased as many two-earner families and young people came to value greater flexibility in their work lives and, in part, in response again to the advance of globalization. BLS data on employment by education show that across America's increasingly technology-based economy, businesses provide new jobs almost exclusively for college graduates while opportunities for people who have not attended college have contracted. From 2007 to 2019, employment increased by 14.5 million among college graduates and by 1.7 million among those who attended college without earning a bachelor's degree, while employment fell by 4.1 million among people with high school diplomas or less (Table 2).

Table 2. Employment of Civilian Population Ages 25 and over, by Education, 2007 and 2019[20]

Education	Total Change	2019	2007
College Degree or More	+ 14,483,000	57,665,000	43,182,000
Some College (including AA)	+ 1,670,000	36,282,000	34,612,000
HS Diploma or Less	- 4,100,000	44,278,000	48,378,000

However, the supply of labor has outpaced demand by businesses: The number of working-age Americans with college degrees or a record of having attended colleges increased

[18] From 1995 to 2005, an estimated 40 percent of temporary labor worked in manufacturing. Dau-Schmidt (2017).
[19] Todoli-Signes (2017); De Stefano (2016).
[20] U.S. Bureau of Labor Statistics (2008) and Bureau of Labor Statistics (2019). We use 2007 data to avoid the impact of the 2008-2009 recession, including the financial crisis, and 2019 data to avoid the impact of the pandemic.

substantially more than demand, based on actual employment, while the number of working-age people with high school diplomas or less declined less than the numbers of employed people with that education. For example, the number of working-age people with high school diplomas or less declined 2.2 percent while the number of employed people in this group fell 8.5 percent. (Table 3A below) Similarly, the number of working-age people with college degrees increased 41.0 percent while the number of employed college graduates rose 33.5 percent.

Table 3A. Changes in Population and Employment, By Education, Working-Age People, 25 and Older, 2007 to 2019[21]

Education	Employment	Population
College Degree or More	+ 33.5%	+ 41.0%
Some College (including AA)	+ 4.8%	+ 15.4%
High School Diploma or Less	- 8.5%	- 2.2%

Economists use employment-population ratios to measure these developments. As suggested by the trends explained above, those ratios declined at all education levels:

Table 3B. Employment-Population Ratios, By Education, Working-Age People, 25 and Older, 2007 and 2019[22]

Education	2019	2007
College Degree or More	72.2%	76.3%
Some College (including AA)	63.1%	69.5%
High School Diploma or Less	51.4%	55.0%

The growing use of independent contracting by skilled workers and increased gig and temporary work among less skilled workers reflect the same economic development: The supply of workers for regular jobs has outstripped business demand at every education level, providing the economic conditions for growth in independent contracting, and especially gig and temporary workers. Since 2019, COVID-19's impact on the economy has further increased this structural labor surplus, especially among less-skilled workers who fill many gig and temporary positions.

These developments have serious implications for efforts to reclassify gig workers and other independent contractors as regular employees. The increases in gig work and other forms of independent contracting reflect underlying labor market conditions, and reclassifying people as regular employees will not change those conditions. As a result, the demand for additional full-time employees will not meet the additional supply created by reclassification. Proponents

[21] *Ibid*.
[22] *Ibid*.

of large-scale reclassification have argued that the reduced benefits and protections for independent contractors have exacerbated income inequality, especially for gig and temporary workers with little bargaining power.[23] But reclassification that entails additional costs to employ those workers can only result in lowering their wages or reducing their employment, especially among less-skilled people.

III. The Economics of Independent Contracting and Other Nontraditional Work

All working Americans enjoy certain protections and benefits extending to both employees and independent contractors, and often also to those without jobs. For example, the federal government provides housing and food subsidies and health benefits under Medicaid and the Affordable Care Act based on income, regardless of a person's type of employment, if any. As noted, some benefits are limited to regular employees, including minimum wage and overtime protections and an employer's responsibility for half of a worker's Social Security and Medicare taxes. Apart from issues of bargaining power, the usual practice of independent contracting also precludes a reasonable application of wage, benefit, and tax-related protections to independent contractors. Overtime and minimum wage coverage rely on a clear record by companies and employees of the hours a person works. Companies cannot control how much or how little a gig worker works, for example, or how many gigs they complete. If a platform company were responsible for a minimum wage and overtime for gig workers, the company would have to pay them for the time they spend waiting for their next gigs and generating no revenues, which would force the company to substantially raise the charges to customers. Alternatively, if minimum wage or overtime coverage applied only to the time gig workers spend in actual transit for a client, their pay could be lower than under the current arrangements.

Mandating that companies pay the company side of payroll taxes and the tax for unemployment coverage for gig workers and other independent contractors also would reduce their pay, since economists have long established that when workers value their Social Security and Medicare benefits, the employer's payments for unemployment and payroll taxes come from the employee's wages.[24] The provision of unemployment benefits also assumes that a recipient would be working but for an employer's decision to no longer engage their services. However, most people engage in gig work and other forms of independent contracting to supplement their earnings from other sources. Consequently, determining whether a contractor meets a state's eligibility criteria for part-time employment would entail large administrative costs to support relatively few people. [25]

More generally, an employer pays for unemployment coverage and payroll taxes for employees whose work the employer monitors and controls based on instructions, oversight and often training it provides.[26] Gig platforms in particular cannot control the quality and production

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[23] See Harris (2018).
[24] This also assumes that wages and flexible. Gordon (1972); Summers (1989); and Gruber (1994).
[25] The extension of unemployment benefits to gig workers and other independent contractors during the pandemic is reported to have produced substantial fraud. See Iacurci (2021).
[26] Todoli-Signes (2017).

of the services provided by their contingent workers. Stated differently, companies pay for their employees' unemployment coverage and half of their payroll taxes, as well as minimum wages and overtime, in exchange for the right to instruct and maintain control of the work by the employees receiving those benefits.

In economic terms, the work and associated income that gig workers and other independent contractors earn depend on the cost savings they provide for companies that hire them.[27] If a company cannot adjust wages to take account of newly mandated benefits and taxes, the company will cut those workers' hours or job.

The Efficiency of Nontraditional Work Arrangements

People choose to work as independent contractors for the benefits it provides and knowing the associated costs. A BLS survey of people who used independent contracting as their main source of income found that 28.4 percent made that choice for the independence and freedom it provides, another 26.9 percent valued the flexibility of contingent work, and 8.5 percent said it paid better than a traditional job.[28] Another 5.6 percent specifically cited health or family-related reasons, but based on other surveys, those factors also influenced many who said they valued the freedom or flexibility of independent contracting.[29] Only 6.5 percent said that adverse circumstances forced them into contracting work: 5.6 percent said it was the only work they could find, and 0.9 percent said they had been laid off and rehired as temporary workers.

The BLS survey did not include employees who also do gig work on the side to supplement their incomes, and an industry survey covering people who earned income from any form of non-traditional employment at any time over the previous year found that 51 percent cited health or family-related issues while 24 percent cited the freedom or flexibility of independent contracting.[30] This may suggest that many of these gig workers choose their work arrangements for different reasons than other independent contractors. In this regard, a JP Morgan Chase study found that a majority of gig workers did gig work to supplement their incomes from other sources, accounting for an average of one-third of their total labor income.[31] Further, their gig work occurred or increased in periods when their other earnings declined, so gig work helped them stabilize their monthly incomes.

It is evident that independent contracting provides benefits and efficiencies valued by millions of workers. For people whose health issues or disabilities preclude most regular employment, these arrangements enable them to be productive and self-supporting. Other independent contractors gain the flexibility to manage their schedules as they choose and better balance work and their family responsibilities, studies, and leisure activities. Independent

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[27] Lobel (2018); also, De Stefano (2016).
[28] Bureau of Labor Statistics (2018).
[29] Edelman Intelligence (2018).
[30] *Ibid.*
[31] Farrell and Greig (2016).

contracting also involves lower entry barriers for many people to find work—for example, most gig workers are hired without references or showing a history of stable employment. Gig work also allows people to earn income buy using their "underused" personal assets, such as their automobiles for transport and delivery services.

For companies, independent contracting enables them to apply just-in-time personnel practices. They can engage the talent needed for an immediate task—building a website, analyzing a set of financial conditions, updating a personnel system—and reduce their long-term labor costs by compensating them on a pay-as-you-go basis. Independent contracting also allows businesses to reduce their investments in the facilities and the equipment needed for certain tasks. The platform companies also save other capital investment costs, as Uber and DoorDash drivers provide their own cars, and Angie house cleaners and Care dog and elder sitters provide their own materials.

Like other arrangements that lower costs and enhance efficiency, nontraditional forms of work involve tradeoffs. For workers, the tradeoffs for greater flexibility, freedom, and low barriers to work are less job security and often lower compensation than full-time regular employment. For companies, using independent contractors can reduce their costs by as much as 30 percent to 40 percent.[32] However, those cost savings are not strictly instances of "regulatory arbitrage" in which businesses simply shift tasks from fulltime employees to contract workers, because the workers receiving lower pay and fewer benefits usually know little about the company, its work practices, and personnel.[33]

IV. How Many Americans Work as Independent Contractors and Could be Reclassified under the ABC Test

Government surveys and private analysts have tried to estimate how many Americans earn income in ways other than through a traditional full-time or part-time job with a single employer. The most recent BLS survey of contingent and alternative workers in 2017 estimated that 10.6 million people worked as independent contractors.[34] However, that total did not include people working as contractors at times other than during the week of the survey or people whose independent contracting work was not their main source of income. If we consider the BLS data as a baseline and add those who worked as independent contractors but not on a weekly basis, the estimate rises to 16.6 million people; and adjusting that result for employment growth in 2018 and 2019 raises the number of independent contractors in 2019 to 17.1 million people.

Other studies broadly support this general estimate. A survey by Edelman Intelligence found that 57 million Americans - or 35 percent of the working population - performed

[32] Walter and Bahn (2017). Also, Harris (2018).

[33] Harris and Krueger (2015). These authors argue for a third categories of workers who can choose when and whether to work, and work for several companies, but the company has some control over how the worker performs the work—they would get rights to organize and bargain collectively and employer contribution to FICA taxes, but no overtime or minimum wage protection.

[34] Bureau of Labor Statistics (2018).

some form of "freelance work" in 2019.[35] This survey used a much broader definition than independent contracting, since it included people who own businesses with employees but nevertheless see themselves as "freelancers," and people whose freelancing entailed charging people to use the freelancer's assets, such as renting out an apartment on Airbnb or selling crafts on Etsy. We estimate than excluding those categories would lower the number to 17.4 million people. Similarly, an academic study using IRS data estimated that 15.3 million people earned income as independent contractors in 2016;[36] and adjusting that total for job growth in 2017, 2018 and 2019 would raise that estimate of independent contractors to 16.0 million people.

Based on these studies, 16.0 million to 17.4 million people were employed primarily as independent contractors in 2019, with a midpoint estimate of 16.7 million people.

Assessing How Many Independent Contractors Would Be Reclassified under the ABC Test

The next challenge involves estimating how many of those 16.7 million independent contractors would be reclassified as employees under a nationwide ABC test. To review, the ABC test has three parts: A) does the person work free from daily the control and direction of a company; B) is the work being performed outside the usual course of the company's business; and C) does the person customarily work in a trade, occupation, or business of the same type as the work being scrutinized for possible reclassification. Unfortunately, direct data on the test's B) and C) prongs are not available.[37]

Instead, we can use state-level data on the reclassification of tens of thousands of people based on versions of the ABC test. Several states have used forms of the ABC test to determine eligibility for unemployment compensation, but only Massachusetts and California have applied the test for a range of wage and tax regulations. The California data are not useful here, because the state started to apply the test in January 2020, just before the pandemic disrupted labor markets. Therefore, we will rely on Massachusetts data.

Massachusetts enacted an ABC test in 1990 and began applying it broadly following several amendments to the 1990 law in 2004.[38] The amendments stipulated that the results would apply to the state's minimum wage law, overtime regulation and employer-provided benefits and also imposed substantial penalties on companies for misclassifying employees. The 2004 legislation also simplified the test by revising the B) prong requirement to stipulate that contractors must perform their services "outside of all places of business of the [hiring] enterprise." This approach is also consistent with the early application of the test in California and with recent discussions of the PRO Act.

To apply the Massachusetts results to the rest of the nation, we start by analyzing the state data reported by the BLS 2001 and 2005 Contingent Work Surveys (CWS). These data allow

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[35] Edelman Intelligence (2018).
[36] Lim, Miller, Risch, and Wilking (2019).
[37] As a result, implementing the California reclassification law, AB5, created confusion and debate among companies and independent contractors, and the issues continue to be debated through civil suits in the state.
[38] Morse (2005).

us to determine the number of self-identified independent contractors in Massachusetts before and after the state enacted the 2004 law and then compare those results to data from the other states that did not apply the ABC test in those years. We found that from 2001 to 2005, the number of independent contractors in Massachusetts increased by 0.8 percent, compared to a growth rate of 18.8 percent for the entire country. On this basis, we can estimate that applying the ABC test in Massachusetts reduced the number of people classified as independent contractors by 15.1 percent, relative to the level expected based on the 2001 data and the national trend. Therefore, we can estimate that a nationwide ABC test would reclassify as regular employees an estimated 15.1 percent of those who identified themselves as independent contractors in 2004.

However, this initial finding underestimates the share of independent contractors nationwide who would be reclassified today under an ABC test for several reasons. First, Massachusetts had applied a partial ABC test since 1990, so the 2001 baseline did not include independent contractors reclassified before the 2004 legislation. Second, economic changes since 2005 substantially broadened the scope of independent contracting, further indicating that a larger share of independent contractors would be reclassified under a national ABC test today. The most notable change is the rise of gig workers. Many advocates of California's reclassification law (AB 5) and the PRO Act proposal have focused on targeting gig workers for reclassification, and the 2019 survey by Freelancing in America found that gig workers accounted for 6 percent of full-time freelancers. Therefore, we assume that a nationwide ABC test would reclassify gig workers and apply the 15.1 percent reclassification rate to other independent contractors. After considering all of these issues, we estimate that a nationwide ABC test would reclassify 20.2 percent of full-time independent contractors as regular employees.

Next, we determine the baseline from which to apply the 20.2 percent estimate, since our previous estimate of 16.0 million to 17.4 million independent contractors in 2019 included those residing in Massachusetts and thus already subject to ABC testing. The BLS data on contingent workers in 2017 show that 2.3 percent of independent contractors nationwide lived in Massachusetts, lowering the number of full-time workers who could be reclassified under a nationwide ABC test to between 15.6 million and 17.0 million people in 2019. This baseline includes independent contractors in California, because they were not subject to reclassification until January 2020.[39] This analysis suggests that a nationwide ABC test would result in reclassifying 1.2 million to 1.3 million full-time contractors as employees in 2019.

Part-time independent contractors also would be subject to reclassification, and studies have found that a majority of contingent workers do independent contracting on a part-time basis. The 2019 freelancers survey found that 28 percent were full-time contingent workers, 44 percent worked as part-time independent contractors, and 25 percent were full-time employees who earned extra money doing freelance work on the side. Using these data, we can estimate that for every full-time independent contractor, 1.6 people worked part-time as independent contractors and 0.9 people were full-time employees freelancing on the side. Applying these ratios to the previous estimate of full-time contractors who would be reclassified under the ABC

[39] In 2017, independent contractors in California accounted for 12.2 percent of the national total.

test, we find that a nationwide ABC test would reclassify 1.9 million to 2.1 million people working part-time as independent contractors and another 1.1 million to 1.2 million full-time employees for their freelance work on the side, in addition to the 1.2 million to 1.3 million full-time independent contractors. (Table 4 below)

All told, we estimate that between 4.2 and 4.6 million independent contractors would be reclassified as traditional employees, for a midpoint of 4.4 million.[40]

Table 4. Independent Contractors Likely to be Reclassified Under a National ABC Test, 2019

	Lower Bound	Upper Bound
Full-Time Independent Contractors	1,200,000	1,300,000
Part-Time Independent Contractors	1,900,000	2,100,000
Full-Time Employees Who Also Freelance	1,100,000	1,200,000
Total	**4,200,000**	**4,600,000**

V. The Impact of a Nationwide Reclassification Policy on Work Opportunities and Wages

To understand how reclassification would affect work opportunities and incomes, we start with reclassified independent contractors who say they would be *unable to work* as employees. Under the ABC test, the A) prong stipulates that unlike regular employees, independent contractors are not under a company's day-to-day direction and control. Personal circumstances prevent millions of people from working as employees under the daily direction and control of the companies that hire them. The 2019 freelancers survey found that 46 percent of contingent workers said that personal circumstances required them to work as independent contractors. Within that subgroup, 43 percent cited health issues such as disabilities and chronic illness and another 40 percent cited family obligations including caregiving and childcare, as factors preventing them from working in a traditional workplace. Based on those data, strict application of the ABC test on a nationwide basis would result in reclassifying an estimated 2.5 million to 2.8 million independent contractors unable to work as regular employees.[41] However, the data underlying this estimate includes people reclassified for freelance work they performed on the side while holding down regular jobs. After removing this group from the job loss total, we estimate that a national application of the ABC test would result in 1.5 million to 1.6 million involuntary job losses by people unable to work as regular employees for personal reasons, or about 1.0 percent of all nonfarm employment in September 2021.

To be sure, some of those people might find other forms of independent contracting work that would survive the ABC test. Further, the use of the ABC test in California exempts certain occupations, industries, and types of contracts.[42] To estimate the dimensions of those exemptions, we use data from the 2019 American Community Survey (ACS), because it uses

[40] This assumes that an independent contractor's probability of being reclassified is independent of their full-time or part-time status.

[41] This estimate again excludes Massachusetts, where workers were reclassified under its ABC test 16 years ago.

[42] California also exempted business-to-business transactions, which we do not include in our estimates.

industry and occupational codes that align closely with the exemptions.[43] We applied the ACS data to the California exemptions and found that 9.7 percent of independent contractors worked in those occupations and industries. However, California's exemptions reflected features of that state's economy and lobbying activity, and the exemptions under a federal reclassification law could be more narrow or even broader. Therefore, our calculations will not incorporate occupational exemptions. The underlying estimate of contractors who would be subject to reclassification under the ABC test also drew on Massachusetts data from the early 2000, and those data do not take account of the increased use of independent contractors since that time, apart from the adjustments already incorporated for gig workers. On balance, we use an estimate of 1.58 million independent contractors who would be reclassified and unable to work in a regular job.

Apart from independent contractors with disabilities or medical conditions that preclude traditional jobs, the 2019 survey also found that contingent workers are more likely than traditional employees to live paycheck-to-paycheck and carry substantial college loans or other debt. Research from JP Morgan Chase supports that finding for gig workers: That study found that while income earned as gig workers accounted on average for about 20 percent of their annual earnings, in any given month gig work income accounted for up to 50 percent or more of their monthly income.[44] This finding suggests that people do gig work and other independent contracting to supplement their incomes when their earnings from other sources decline. A national ABC test for independent contracting, therefore, would be especially harmful to people under economic stress as well as vulnerable people unable to earn a living any other way.

The Impact on People Who Could Work in Traditional Jobs

Next, we examine the employment effects of a nationwide ABC test that would reclassify other independent contractors who could work in regular jobs. Based on the 2019 survey, 54 percent of full-time and part-time independent contractors could become regular employees if they were reclassified under the ABC test.

Earlier, we described how companies give independent contractors much more flexibility than they give their regular employees, in exchange for lower labor costs. If a nationwide ABC test reclassified millions of independent contractors as employees, businesses would have to determine whether the additional costs justified retaining them as regular employees. The economics of independent contracting make such determinations unavoidable. The fact that a business hires someone as an independent contractor establishes the economic demand for that contractor's services. Since reclassifying these people as traditional employees would directly increase their labor costs, those additional costs would reduce that demand for their labor, which in turn would reduce the employment and/or wages of reclassified workers. The challenge is to determine how much of the effects would be felt as job losses.

First, we examine the cost differences for a company's employees and independent contractors. A 2015 study by the Institute for Research on Labor and Employment (IRLE) found

[43] Thomason, Jacobs, and Jan (2019) also use this approach.
[44] Farrell, Greig, & Hamoudi (2018).

that using an independent contractor reduced a company's costs by \$0.29 to \$0.39 for each \$1.00 in pay and provided total labor cost savings of 22 percent to 28 percent.[45] Those cost savings vary across industries, occupations, skill levels, and firms. A study by the Government Accountability Office (GAO) focused on the earnings gap and found that contractors, defined broadly, earned 10.6 percent less per-hour than regular employees after controlling for full-time or part-time status, industry, unionization rates, education, age, occupation, and location.[46] Based on both studies, we estimate that the non-wage benefits of reclassified contractors would increase a company's costs by between 15.3 percent and 24.3 percent. This additional cost to businesses would be immediate, as statutes guarantee that regular employees receive most of those non-wage benefits.

Some analysts assume that reclassified contractors hired as regular employees also would receive wage increases corresponding to the wages of a typical permanent employee in their positions. However, many companies facing a 15.3 percent to 24.3 percent increase in labor costs for the benefits for those new employees are unlikely to also voluntarily raise their wages to align them with other employees. Reclassified contractors hired as regular employees likely would receive such pay increases in unionized companies, although only 6.3 percent of private-sector employees are union members.[47] Moreover, even in unionized companies, the substantial and sudden increase in labor costs would be expected to weaken the demand for their labor, reducing the reemployment of those reclassified independent contractors, which in turn would affect future wage increases.[48]

However, to capture the maximum value that reclassification could provide for contractors hired as permanent employees, we will assume that they would receive a 11.9 percent wage increase in addition to the 24.3 percent upper bound for the value of their non-wage benefits.[49]

Given these additional costs for companies and the underlying labor market development noted earlier, some share of independent contractors will not be hired as regular employees merely because a government test held that their work can no longer be classified as independent contracting. Moreover, economic conditions directly affect the willingness of employers to hire people at the compensation levels for regular employment.[50] Therefore, we propose a range of possible employment effects for "potential employees"—the 54 percent of reclassified independent contractors who could work as regular employees. The share of those reclassified contractors who would be hired as regular workers will depend not only on the work they do and demand for that work, but also on aggregate labor supply and demand, since

[45] Habans (2015).
[46] Government Accountability Office (2015).
[47] Bureau of Labor Statistics (2021).
[48] These wage effects also will depend on a worker's specific position and skills and on local labor market conditions.
[49] This estimate is also conservative because it uses the 39 percent upper bound cost differential from the IRLE study and assumes that the worker captures all of the value of the increased cost burden on the company.
[50] Even so, determining the adverse effects of reclassification on employment and wage income with precision would require data on the marginal productivity of many types of workers and businesses, data not available at a national level. Further, these allocation decisions occur at the firm level and so also depend on local supply labor supply and economic conditions at local and industry as well as national levels.

reclassified contractors not hired by the company that had retained them could eventually find jobs in another company or a different field. Here, we provide three scenarios corresponding to reclassification occurring during an economic boom, a period of average growth, and a downturn.

Since wages adjust over time, we use the estimate by the Institute for Research on Labor and Employment that the overall cost differences between contractors and regular employees are about 39 percent. Next, we draw on the most comprehensive analysis of the relationship between those costs for employers and their demand for workers—the labor demand elasticity—based on a meta-analysis of 942 elasticity estimates from 105 studies published since 1980.[51] The results show a range of labor demand elasticity of -0.947 to -1.109. Next, to adjust these elasticities for the business cycle, we draw on a recent analysis of the dynamic effects of exogenous increases in labor costs (such as reclassification) that found, as expected, that labor demand elasticity is correlated with the business cycle and that the elasticity is about 50 percent higher than average during downturns and 30 percent lower than average during boom times.[52] And to determine the income losses of those not hired based on those elasticities, we draw on data from the Current Population Survey on the duration of unemployment, based on the age, gender and racial distribution of independent contractors under different economic conditions. Our reference periods were January 2013 to December 2014 for a normal labor market, January 2017 to December 2018 for a boom, and January 2008 to July 2009 for a downturn.

Using these findings and the expected cost increases to employers, we calculate that if reclassification occurred during a normal economic period, 635,000 of our estimated 1,778,000 potential employees or about 36 percent would be out of work for an average of five months (19.7 weeks); during a boom time, 444,000 of those potential employees or about 25 percent would be out of work for an average of just under five months (19.1 weeks); and during a downturn, 952,000 of the potential employees or nearly 54 percent would be out of work for an average of more than 10 months (41 weeks).

To translate their income losses—and income gains of reclassified contactors who are promptly hired by one of their clients or another employer—we use the $20 per-hour median wage for contractors reported by the 2019 Freelancing survey.[53] Applying the data on full-time and part-time freelancers and the convention that full-time contingent workers work 2,000 hours per-year, we estimated that potential full-time and part-time employees earned an average of $20,759 as independent contractors in 2019. This income estimate also represents the annualized income loss of each reclassified contractor and potential employee not hired for a regular job, as well as the income loss of those reclassified contractors unable to work as regular employees. We also estimated that people who hold regular jobs and freelance on the side earned $8,515 per year from their freelancing, based on freelancing 426 hours per-year at $20 per-hour. Finally, for the reclassified contractors who are hired as regular employees, we increase

[51] Lichter, Peichi and Siegloch (2014). They report overall labor demand elasticity ranging from -0.834 to -0.996 in the short-term and from -0.947 to -1.109 in the medium term. Their worldwide analysis is the most comprehensive assessment in the literature; and the U.S., Canada, and Europe account for 70 percent of the data used.

[52] Ferraro and Fiori (2020). The analysis uses tax policy changes as the source of the exogenous effects, pertinent of reclassification as a legal and administrative source of the wage effects.

[53] The survey also estimated that freelancers generated 4.8 percent of GDP in 2019 or just under $1.0 trillion.

their average $20 hourly wage by 10.6 percent to $22.27 and add the value of a traditional employee's non-wage benefits (24.3 percent). By this analysis, the annualized compensation of a reclassified potential employee hired as a permanent employee would increase on average by $8,096.

Applying these findings and values, we estimate that if reclassification occurred during normal economic times, 1,009,000 of the 1,778,000 reclassified independent contractors who could work in traditional jobs would be hired as regular employees, and their collective compensation would increase by $8.2 billion, while another 769,000 would be out of work on average for about five months at an aggregate cost to them of $9.1 billion. (Table 5 below) In addition, the 1,143,000 full-time regular employees who freelance on the side and have their freelancing reclassified would lose an average of $8,515 each, at an aggregate cost to them of $9.7 billion. Further, another 1,515,000 reclassified contractors would be unable to work productively in regular jobs and so would forfeit aggregate income of $31.4 billion. During normal economic times, nationwide involuntary reclassification would cost 3,426,000 full-time and part-time jobs and net earnings losses totaling $42.1 billion.

Table 5. Estimated Employment and Wage Effects of ABC Reclassification For Full-Time and Part-Time Independent Contractors and Freelancers

Scenarios of Reclassified Potential Employees Rehired	**Boom**	**Normal Times**	**Downturn**
Labor Demand Elasticity	- 0.78	- 1.11	- 1.66
Job Losses by Potential Employees with 39% Cost Increase	540,000	769,000	1,153,000
Change in Their Earnings	- $4.1 B	- $9.1 B	- $18.9 B
Potential Employees Hired at Higher Wages	1,239,000	1,009,000	624,000
Change in Their Earnings	+ $10.0 B	+ $8.2	+ $5.1 B
Change in Total Earnings of Potential Employees	*+ $5.9 B*	*- $0.9 B*	*- $13.8 B*
Freelance Job Losses by Freelancers with Regular Jobs	1,143,000	1,143,000	1,143,000
Change in Their Earnings	*- $9.7 B*	*- $9.7 B*	*- $9.7 B*
Job Losses by Contractors Unable to Take Regular Jobs	1,515,000	1,515,000	1,515,000
Change in Their Earnings	*- $31.4 B*	*- $31.4 B*	*- $31.4 B*
Net Change in Total Earnings of All Reclassified Workers	**- $35.2 B**	**- $42.1 B**	**- $55.0 B**
Total Full-Time and Part-Time Job Losses	**3,196,000**	**3,426,000**	**3,811,000**

The net costs would be less if reclassification occurred during a boom when labor markets are tight. Even under those favorable economic conditions, some potential employees who greatly value the flexibility of independent contracting will not seek a regular job, and the substantially higher costs to hire these workers would leave many others unable to land a regular job.[54] During boom labor market conditions, 1,239,000 former contractors would gain benefits and salary increases worth an average of $8,096 and the other 540,000 would be out of work for

[54] Companies could pay former contractors less than the 39 percent increase, but businesses rarely risk the impact on worker morale of hiring people at below-market wages. See Kawaguchi and Ohtake (2007).

an average of nearly five months. All told, the aggregate income gains of those potential employees who are rehired would exceed the aggregate income losses of those left out of work by $5.9 billion. However, the 1,515,000 vulnerable independent contractors reclassified under the policy but unable to work in regular jobs would forfeit income totaling $31.4 billion, and the 1,143,000 full-time regular employees whose freelancing on the side is reclassified would forfeit $8,515 each or $9.7 billion. Even during a boom, nationwide reclassification would produce 3,196,000 full-time and part-time job losses and a net cost for all independent contractors of $35.2 billion.

If reclassification occurred during a downturn, the job and income losses would be much greater. Under this scenario, we estimate that 624,000 of the 1,778,000 reclassified potential employees would find regular jobs despite the additional costs to companies, while the other 1,153,000 would not. Under these circumstances, the aggregate income losses of those who would lose their jobs would exceed the aggregate income gains of those who would gain better-compensated positions by $13.8 billion. And once again, an estimated 1,143,000 full-time traditional employees whose freelancing on the side would be reclassified would forfeit $9.7 billion, and another 1,515,000 reclassified contractors unable to perform in regular jobs would face income losses totaling $31.4 billion. All told, a nationwide involuntary reclassification program during an economic downturn would result in an estimated 3,811,000 full-time and part-time job losses and aggregate net income costs of $55.0 billion.

These estimates of income losses are based on annualized wages and values for non-wage benefits for potential employees over their estimated periods of unemployment and do not represent recurring annual economic losses on an ongoing basis.

VI. The Impact of Reclassification by Industry, State, Gender, Race, and Age

The Impact of Reclassification by Industry

Largescale reclassification would affect companies and workers in every industry. The precise distribution of the costs and benefits by industry would depend on how many reclassified contingent workers in each industry are unable to work in traditional, permanent jobs, and such data are not available. Instead, we assess the relative impact of reclassification by industry based on each industry's share of all independent contractors and the share of each industry's employment filled by those contractors. Based on industry and occupational data for 2017, a nationwide reclassification policy would particularly affect contractors working with companies that provide professional and business services or "other" services and companies in the construction industry. These three industries each employ a significant share of all independent contractors, and independent contractors represent a significant share of total employment in each of these industries. (Table 6 below.)

Companies selling professional and business services employed the largest share of independent contractors in 2017, 25.1 percent or 4.2 million people, and those contractors comprised 14.4 percent of the industry's total employment. This industry's substantial reliance on contingent workers ranges from highly skilled computer, management, and technical consultants to lower-skilled people working in call centers, telemarketing, and temp services.

Similarly, reclassification would have a substantial impact on construction companies and their workers: The 3.2 million independent contractors working in that industry in 2017 accounted for 19.5 percent of all industry employment and 19.3 percent of all independent contractors. The large role of independent contracting in the construction businesses reflects the industry's regular practice of hiring people on a monthly, weekly, or daily basis, because the various stages of most construction projects require varying numbers of workers with varying skills. Reclassification also would materially affect companies and workers providing "other services," a catch-all industry group that employed 9.7 percent of all independent contractors, who represented 13.7 percent of the industry's total employment. Those 1.6 million contingent workers range from skilled workers who repair and maintain people computers, electrical equipment, and machinery, to less skilled people who provide pet sitting and child and elder care, often through platform companies.

Table 6. Distribution of Independent Contractors and Employment by Industry, 2017[55]

Industry	Share of Independent Contractors	Number	Share of Industry Employment
Professional and Business Services	25.1%	4,190,000	14.4%
Construction	19.3%	3,222,000	19.5%
Other Services	9.7%	1,615,000	13.7%
Educational and Health Services	9.6%	1,608,000	9.6%
Financial Activities	9.6%	1,601,000	2.9%
Wholesale and Retail trade	7.9%	1,316,000	4.3%
Leisure and Hospitality	6.2%	1,043,000	4.7%
Transportation and Utilities	5.7%	951,000	7.8%
Manufacturing	2.2%	363,000	1.4%
Information	2.2%	361,000	7.9%
Agriculture and Related Industries	2.0%	334,000	8.7%
Government – Public Administration	0.4%	65,400	0.6%
Mining	0.1%	23,300	1.9%

Reclassification would affect hiring practices in four other industries in which contingent workers accounted for some 8 percent to 10 percent of each industry's employment in 2017. Companies selling education and health services employed 9.6 percent of all independent contractors in 2017, and those 1.6 million people comprised 9.6 percent of total employment in the industry. U.S. agriculture companies employed 334,000 independent contractors in 2017, including seasonal workers, who represent 8.7 percent of the industry's workforce, though only 2.0 percent of all contingent workers. Similarly, the 1.0 million independent contractors working for companies in the information industry in that year—software programmers, data processors,

[55] Bureau of Labor Statistics (2021-A) and Bureau of Labor Statistics (2018-A).

web content designers, and so on—represent 7.9 percent of the industry workforce but only 2.2 percent of all independent contractors. A nationwide reclassification policy also would impact transportation and utility companies that also employ nearly 1.0 million independent contractors, including platform-based drivers and delivery service people; and those workers accounted for 7.8 percent of the industry's workforce and 5.7 percent of all independent contractors. Companies in the remaining industries rely less on independent contractors, including the workforces of the wholesale and retail trade, finance, and leisure and hospitality industries. Finally, a reclassification program for contingent workers would have the least effects on companies and their workers in the mining, manufacturing, and public administration sectors.

The Distribution of Independent Contractors by State

Nationwide reclassification of contingent would affect the 50 states and the District of Columbia to varying degrees; but based on the share of each jurisdiction's labor force that worked as independent contractors in 2017, those differences are less dramatic than those seen across industries. Table 7 presents the states in descending order based on that criterion.

Table 7. Independent Contractors as a Share of Employment, By State, 2017

Vermont	12.0%	**Washington**	7.4%	**Minnesota**	6.1%
Maine	9.6%	**Virginia**	7.3%	**Mississippi**	6.0%
Colorado	9.3%	**Texas**	7.3%	**New Mexico**	6.0%
Oklahoma	8.7%	**South Dakota**	6.9%	**West Virginia**	5.9%
Utah	8.7%	**Arizona**	6.8%	**New Jersey**	5.7%
District of Columbia	8.6%	**Georgia**	6.7%	**Illinois**	5.7%
Wyoming	8.5%	**North Carolina**	6.7%	**Michigan**	5.6%
Florida	8.5%	**Rhode Island**	6.7%	**Missouri**	5.6%
California	8.5%	**Maryland**	6.5%	**Ohio**	5.4%
Oregon	8.5%	**Arkansas**	6.4%	**Kansas**	5.4%
Montana	8.5%	**Iowa**	6.4%	**Pennsylvania**	5.3%
Idaho	8.1%	**Massachusetts**	6.4%	**Nevada**	5.2%
Nebraska	7.9%	**Indiana**	6.4%	**Kentucky**	5.1%
Louisiana	7.9%	**Delaware**	6.3%	**New Hampshire**	5.0%
Hawaii	7.8%	**Alaska**	6.2%	**Alabama**	5.0%
New York	7.5%	**North Dakota**	6.1%	**Connecticut**	4.9%
Tennessee	7.4%	**South Carolina**	6.1%	**Wisconsin**	4.6%

Independent contractors comprised between 5 percent and 10 percent of the workforces in 47 of the 50 states plus the District of Columbia. The states that would be affected most by a nationwide reclassification policy are Vermont, Maine, Colorado, Oklahoma, Utah, Wyoming, Florida, California, Oregon and Montana, plus the District of Columbia; Connecticut and

Wisconsin would be least affected. Contingent workers accounted for 8 percent to 12 percent of total employment in 12 states. Using Census Bureau regions, five of those 12 states are located in the Mountain West region, two states were in the Pacific West region, two states were in the New England region, and two states and the District of Columbia were in the South.

The Demographics of Independent Contractors //

The nationwide application of ABC tests also would directly affect some demographic groups more than others, based on gender, race and age because independent contractors differ demographically, at least modestly, from all employed workers. The data required to reliably estimate the wage and employment effects of a national reclassification policy by gender, race, and age are not available. However, we can construct a demographic picture of most of those who would be subject to reclassification, compared to all workers, by drawing on data from the May 2017 BLS Contingent Workers Supplement and May 2017 BLS Household Survey.[56] The caveat is that the BLS data on contingent workers do not include regular employees who freelance on the side. With that qualification, independent contractors most likely to be affected by a reclassification program would be male rather than female, white rather than minority, and at least 45 years old rather than younger. (Table 8 below)

Table 8. Distribution of Independent Contractors and All Employment By Gender, Race, and Age, 2017

	Independent Contractors	**All Employed Workers**
Gender		
Male	64.3%	53.2%
Female	35.7%	46.8%
Race		
White	84.6%	78.4%
Black	8.3%	12.1%
Asian	4.3%	6.2%
Other	2.8%	3.3%
Age		
16 to 24	3.5%	12.4%
25 to 34	15.0%	22.4%
35 to 44	20.4%	20.8%
45 to 54	24.1%	21.3%
55 and Older	37.0%	23.1%

The gender-based differences between independent contractors and all working Americans are substantial: Men comprise about 53 percent of all workers but more than 64 percent of independent contractors, while women represent about 47 percent of working people

[56] Bureau of Labor Statistics (2018); Bureau of Labor Statistics (2017).

but account for less than 36 percent of independent contractors. This suggests that men would be nearly twice as likely to be affected by reclassification as women. The race-based differences also are significant. Whites account for more than 78 percent of all employment and nearly 85 percent of independent contractors, while Blacks, Asians, and "Others" (multi-race people and those who decline to identify by race) hold nearly 22 percent of all jobs compared just over 15 percent of contracting positions. Minorities' share of all employment, therefore, is 43 percent greater than their share of independent contractors.

Finally, these data suggest that the effects of reclassification would likely be skewed towards working people ages 55 and older and away from working people 34 years old or younger. However, the 2019 survey of freelancers found that freelancers tended to be younger—but the survey was conducted online, perhaps weighting its sample towards younger people, and included Airbnb hosts and others not usually considered to be independent contractors. The BLS found that older people accounted for 37 percent of contingent workers compared to just over 23 percent of all employed people, while younger people accounted for nearly 35 percent of all employment compared to 18.5 percent of contingent workers. In the middle, people ages 35 to 44 and 45 to 54 accounted for roughly comparable shares of all employment (42.1 percent) and all independent contractors (44.5 percent).

VII. The PRO Act Proposal and Unionization

The PRO Act proposal would also apply the ABC test to determine whether independent contractors should be reclassified as traditional employees for purposes of the National Labor Relations Act (NLRA), which codifies workers' rights to organize and join collective bargaining organizations and exempts people working as independent contractors. The PRO Act also would preempt state "right to work" laws and so limit the ability of people covered under the NRLA to opt out of union membership. The PRO Act would not require companies to determine if their independent contractors should be reclassified under the ABC test, as in Massachusetts and California. However, companies would have to do so if and when those employees join unions and to determine in some cases if those employees are covered by existing union contracts.

The impact of unionization on wages and employment has been analyzed extensively, and virtually all economists would agree that unionization increase wages for union members.[57] BLS reports that the median weekly earnings of unionized workers in 2019 were $1,095 or 22.8 percent more than the $892 median weekly earnings of unionized workers. However, this overall wage difference does not take account of differences in the occupations and industries that are unionized or not. Researchers at the Economic Policy Institute (EPI), a pro-union research

[57] Some researchers have reasoned that unionization also can decrease wages for non-union members in the same or similar industries. This view is based on evidence that the higher compensation for union workers achieved through collective bargaining reduces demand for unionized workers, increasing the labor supply for non-union workplaces and thereby generating downward pressure on the wages of non-union employees. Neumark and Wachter (1992). Other researchers dispute this case, reasoning that higher union density can improve the earnings of non-union workers because some employers will raise the wages of their non-union workers to discourage them from joining unions and preserve their workforces. Rosenfield, Denice and Laird (2016).

organization, have estimated that after taking account of workers' occupations, education, and experience, the difference in median earnings is 11.2 percent.[58]

If the PRO Act results in the reclassifications of independent contractors who then join unions—by choice or necessity—and the reclassification comes to cover the wage, benefit, and tax protections for regular employees, the increases in a company's costs would be about 50 percent for reclassified and unionized contractors. Such a sudden and dramatic increase in labor costs will likely result in fewer jobs for the unionized reclassified contractors. The dimensions of this impact on jobs will depend on factors that cannot be measured or even known at this time, including how much the PRO Act would spur new unionization efforts, how many reclassified contractors would or would not join unions, and how courts will interpret the law's right-to-work-related provisions. We can identify the industries most likely to be affected by the PRO Act based on the share of an industry's employees that are independent contractors and the share that are union members.

Based on these measures, the PRO Act could have substantial effects on companies and independent contractors in the construction, information, and transportation industries. In 2017, nearly 20 percent of construction workers were independent contractors, and 14.0 percent of the regular employees in the industry were union members. (Table 9 below.) These data suggest that under the PRO Act, significant numbers of workers could be reclassified, and they would then likely have a union to join, by choice or by necessity. As noted earlier, the industry's substantial use of contingent workers reflects the staging of construction projects, which typically involve weekly, monthly, or even daily changes in the numbers and types of workers needed.

Table 9. Share of Workers Who are Independent Contractors and Union Members, By Industry, 2017

Industry	Independent Contractors	Union Members
Construction	19.5%	14.0%
Professional and Business Services	14.4%	2.3%
Other services	13.7%	2.8%
Finance	9.6%	2.4%
Information	7.9%	9.8%
Transportation and Utilities	7.8%	18.3%
Leisure and Hospitality	4.7%	2.9%
Wholesale and Retail Trade	4.3%	4.5%
Educational and Health Services	2.9%	8.1%
Mining	1.9%	4.4%
Manufacturing	1.4%	9.1%
Public Administration - Government	0.6%	34.4%

[58] McNicholas, Lynn Rhinehart, Poydock, Shierholz, and Perez (2020).

The PRO Act could also materially affect companies and workers in the information industry. In 2017, just under 8 percent of the industry's workforce were independent contractors—software programmers, data processers, website builders, and people creating internet content or working in the production of movie, television, and cable entertainment. But the industry is somewhat unionized, with nearly 10 percent of its regular workforce union members, and those unions would try to enlist contractors reclassified under the PRO Act. A similar dynamic would occur in the transportation industry: Independent contractors comprise nearly 8 percent of all industry employment, including platform-based transport and delivery companies and their gig workers; and more than 18 percent of the industry's regular employees were union members.

Independent contractors also account for substantial shares of the workforces of three other industries—professional and business services, other services, and finance. However, less than 3 percent of regular employees in those industries are union members, so the effects of reclassification under the PRO Act would likely be less than expected in the construction, information, and transportation industries. Regular employees working for U.S. manufacturers and companies offering educational and health services are more unionized, but independent contractors account for less than 3 percent of their total workforces. Finally, public administration and government are the most unionized sectors in the economy, but the public sector depends less on independent contractors than any private industry.

VIII. Conclusions

Most Americans work today as regular employees or independent contractors, and this study analyzed the differences, benefits, and costs of these two types of work. We examined how technological advances and changes in the workforce have led to recent increases in both the supply and demand for independent contractors and estimate that 16.7 million Americans worked primarily as independent contractors in 2019. Next, we examined the tradeoffs involved in each way of working: The higher wages and non-wage benefits employers provide their regular employees but not their independent contractors, and the more extensive control employers have over their regular employees—compared to the flexibility and freedom that independent contractors have over where, when, and how they do their work and the substantial savings for companies from using independent contractors. And while independent contractors get to work on their own, they also have to pay for their own facilities, equipment, supplies, and support.

Laws and regulations recognize these distinctions and tradeoffs. Regular employees have legal protections regarding a minimum wage, overtime, and for full-time workers in companies with 50 or more employees, health care coverage and unpaid family and medical leave. Companies also pay the cost of unemployment coverage and half of payroll taxes for their regular employees – in addition to paying higher wages. As a result, it costs businesses as much as 39 percent more to use regular employees than independent contractors for the same tasks.

Two states, Massachusetts and California, have directed companies to apply "ABC" tests to determine who qualifies as an independent contractor rather than a regular employee. We analyzed the costs and benefits of a nationwide policy to apply the ABC tests to all independent contractors. First, we estimated that these tests applied nationwide would reclassify 4.4 million independent contractors as regular employees. Next, we found that 1.52 million of the 4.4 million reclassified contractors would be unable to take on regular employment because disabilities, chronic illness and/or family responsibilities require that they control when and how they carry out their tasks. Across all full-time and part-time independent contractors, their average annual earnings in 2019 was $20,759, and reclassification could force those 1.52 million reclassified contractors to forfeit those earnings. We also found that more than 1.14 million people who freelance on the side while also holding regular jobs would be reclassified for their freelancing, and they would forfeit earnings averaging $8,515 each.

The other 1.78 million reclassified contractors could work as regular employees. Based on economic conditions and labor demand, some share would find work as regular employees, gaining an average of $8,096 each in higher benefits and compensation. However, a substantial share would not either be rehired given the significant additional costs to companies or find other regular jobs, depending on economic condition and the job market. We analyzed three scenarios based on hiring rates at different points in the business cycle: Of the reclassified contractors able to take regular jobs, we found that more than 56 percent would actually land them in normal economic times and gain an average of $8,096 each, compared to 35 percent during a recession and 70 percent during a boom. The other 44 percent, 65 percent, and 30 percent, respectively, would not be rehired or hired by another company over the next six months, costing each of them $20,759.

The bottom line for the 4.44 million independent contractors involuntarily reclassified as regular employees would be full-time and part-time job losses totaling 3,196,000, 3,426,000, and 3,811,000, depending, respectively, on whether largescale reclassification occurred during a boom, normal times, or a downturn. The 4.44 million reclassified contractors would face net income losses totaling, respectively, $35.2 billion, $42.1 billion, and $55.0 billion. Much of those job and income losses would be borne by very vulnerable people unable to work as regular employees in traditional offices or factories, because they are disabled, suffer from a chronic illness, or care for elderly parents, spouses, or children.

While these costs would be borne by people and companies in every industry, the construction and professional and business services industries would most affected. Similarly, while people and companies in every state would be affected, Vermont, Maine, Colorado, Oklahoma, Utah, the District of Columbia, Wyoming, Florida, California, Oregon, and Montana would be affected most. Similarly, while the costs would be borne by people in every demographic group, male, white and older independent workers also would be disproportionately affected.

Finally, we examined legislation now before Congress that would use ABC tests to reclassify people under the NLRA regarding the rights of employees to join and organize unions. Under the proposal, companies would have to apply an ABC test when someone hired as an independent contractor joins a union and to determine if someone hired as a contractor should be seen as an employee covered by an existing union contract. We found that reclassification under the PRO Act would have the largest effects on companies and workers in the information industry, transportation services, and construction.

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