

Protections and Benefits for Workers in Today's On-Demand Economy

Prepared for New Jersey Department of Labor and Workforce Development

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Roadmap

Research Questions

The On-Demand Economy (ODE) in the United States

Methods and Limitations

Responding to Challenges of the ODE

Conclusion

Acknowledgements

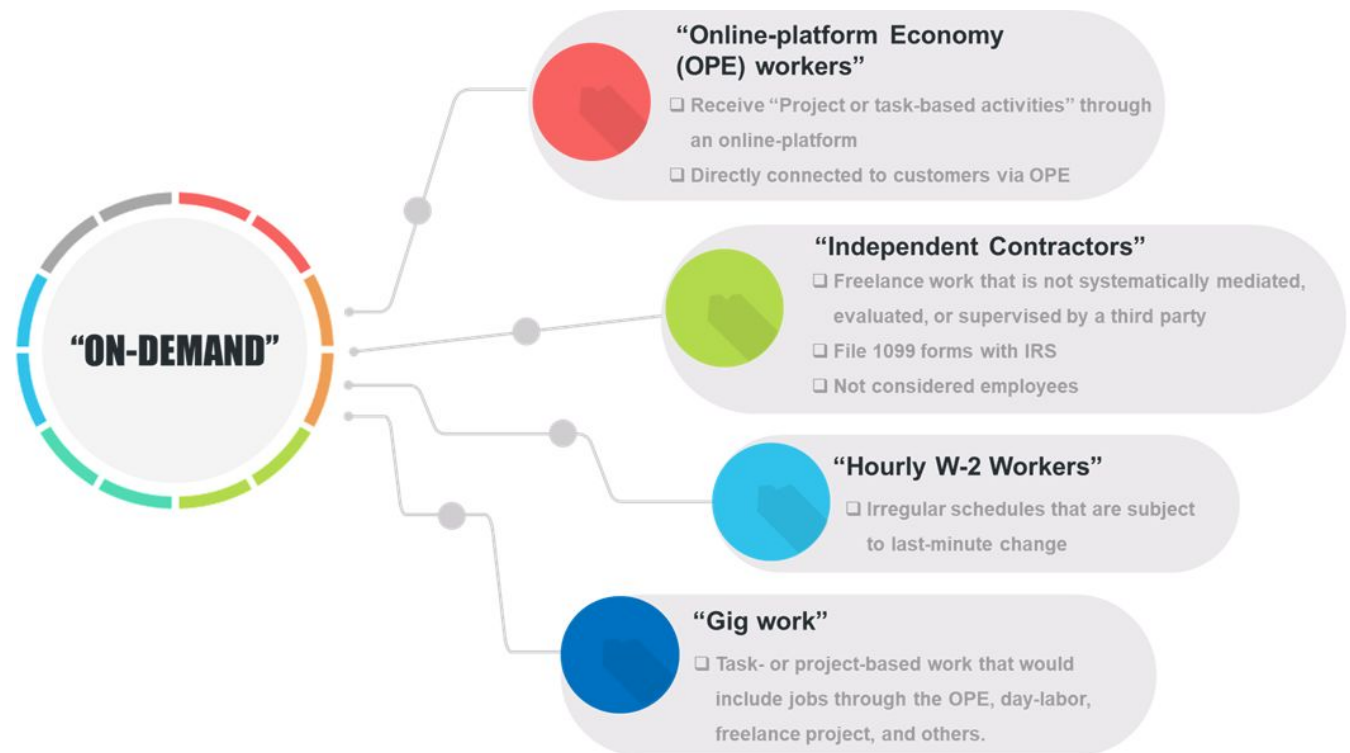
Questions and Answers

Research Questions

- Define the ODE and identify workers' challenges.
- How have other states and municipalities addressed ODE challenges?
- What options are available to New Jersey?

The On-Demand Economy

“On-Demand” refers to arrangements other than traditional, full-time employment.



The On-Demand Economy

We consider all of these individuals “on-demand workers” in this report because:

- their work schedules are not stable,
- their income is neither guaranteed nor consistent, and
- they typically do not enjoy the protections and benefits that are otherwise afforded to full-time employees as mandated by federal and state law.

The On-Demand Economy

Independent contractors as identified through IRS 1099 filings.

1099 workers constitute **1.3% - 3.8%** (~5.9 million people) of total laborforce

- Under 25 years of age;
- Hispanic/Latino background;
- Less educated than W-2 counterparts; and
- Earn 12.9% less per year.

Over **30%** of “traditional” independent contractors (non-OPE) work in industries such as education, construction and administrative services.

The On-Demand Economy

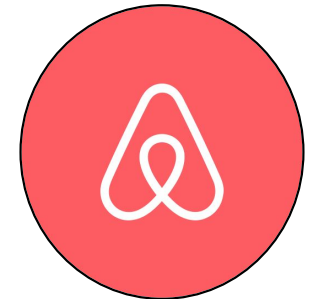
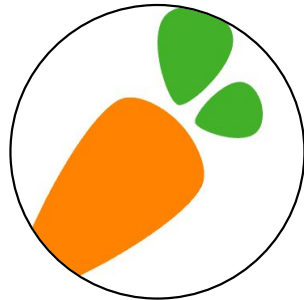
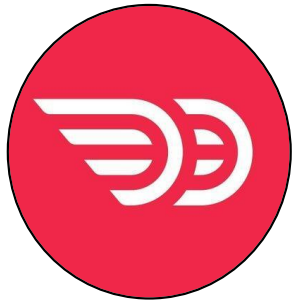
New workers participating in the online platform economy (OPE) are driving growth of ODE; firms in the OPE mediate tasks & transactions between workers and clients.

Proliferation of **online-platforms** has caused rapid expansion of ODE in transportation, delivery services, home and care services.

OPE worker **characteristics**:

- spatially concentrated;
- **\$300 million** in transactions in 2018, sixfold increase from 2012;
- small proportion of workers' total income; and
- work is supplementary to W-2 job, difficult to count OPE workers.

Popular Online Platforms



The On-Demand Economy

Hourly W-2 workers are a significant component of the on-demand workforce.

“Just-in-time” algorithmic scheduling software increased employers’ ability and incentive to:

- Rely on part-time employees; and
- Highly vary employee hours.

This has had adverse wage and non-wage impacts on W-2 workers.

Major industries that use **algorithmic scheduling** include retail and fast-food.

Lack of legal protections regarding predictable scheduling and minimum hours has made workers “on-demand.”

Methods



Review of literature *(February - March)*

Reviewed more than 50 works,
summarized available data &
information

Limitations: We are several steps removed from the policy-making process; we cannot detail full cost of state action and cannot be prescriptive.



13 Interviews with subject matter experts and practitioners *(March - April)*

1-on-1, semistructured phone
interviews
15 - 40 minutes in duration

Responding to ODE Challenges

- Measuring the ODE Workforce
- Worker Compensation
- Worker Benefits
- Worker Protections
- Worker Organizing
- Private Sector Activity

Measuring the On-Demand Workforce

Quantify the on-demand workforce accurately through use of existing data sources for new initiatives to produce regional and local estimates.

Quantify the on-demand workforce by using public tax records to measure participation in on-demand labor to:

- Help understand the magnitude of workforce challenges; and
- Strengthen the imperative for action.

Worker Compensation

“Just-in-time” scheduling allows employers to **adjust staff schedules in near real-time** to achieve ‘peak efficiency’

- Pre-reform NYC: 20% of retail workers received less than 3 days notice.
- Nationwide, **only 25% received the standard two-weeks notice.**

Inconsistent scheduling causes **significant income variance and financial insecurity:**

- Workers reported 34% difference between largest and smallest paychecks within recent months; variance increased to 54% difference for poorest workers.
- **Employees bear the costs** of family stress, last-minute child care costs and transportation challenges.

Worker Compensation: Hours and Scheduling



PHL, NYC, DC, SF, SEA and OR have passed Fair Workweek laws that:

- Require **two weeks advance notice** of schedules for retail, fast food and hospitality employees.
- Guarantees additional **predictability pay** if schedule is changed.
- Establishes a **right to rest**.
- Gives workers the **right to request** scheduling accommodations.
- Employers must **offer additional hours to current employees** before hiring new staff.



NJ requires **one hour** of “reporting” pay when an employee shows up for a shift and is sent home (§ 12:56-5.5).



Expand enforcement of current reporting pay requirement.

&

Increase reporting pay to 4 hours.



Support statewide Fair Workweek legislation (S109).

Worker Benefits

Full-time W-2 workers typically receive a range of benefits (e.g. healthcare, paid leave, retirement planning, workers compensation) from their employers, with mutual benefit to both employee and employer.

On-Demand workers are not able to bargain for benefits, do not develop safety net.

- Employers can realize significant cost-savings by not providing benefits.
- Providing benefits may draw IRS scrutiny.
- Workers in ODE do not pay into Social Security, do not qualify for unemployment insurance.

Worker Benefits: Paid Leave



“[The United States] is **the only high-income country** in the world that **does not** guarantee paid leave [for workers].”

Mckay & Pollack (2017), “Independent Workers Need Paid Leave Too”

Worker Benefits: Paid Leave



CA allows on-demand workers to participate in paid leave and disability insurance programs without employer participation, but workers are responsible for the full annual premium.



WA is currently implementing a new paid leave program this year which will also allow on-demand workers to participate, but enrollment has not yet begun.



NJ has repeatedly expanded the Paid Leave program between 2009-19, but still does not extend to non-W-2 workers.



Expand NJ's paid leave programs to include on-demand workers without employer participation.

Worker Benefits: Retirement Savings Plans




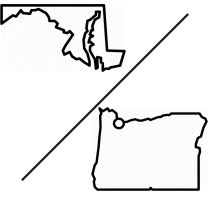
In **2012**, the average income of a “contingent worker” was **<\$15,000**.




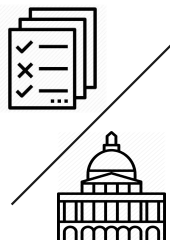
Estimates (based on traditional workers with comparable incomes) suggest that **62% to 75%** have **no pension plan or payroll savings** deductions at work.

Worker Benefits: Retirement Savings Plans

 CA, OR, IL, MA, & CT, have all created “secure choice” retirement savings options.

 MA & OR included language in the legislation authorizing their secure choice programs that allows on-demand workers to participate.

 NJ passed the New Jersey Secure Choice Savings Act in March, but it is unlikely to extend to on-demand workers based on existing precedent.

 Expand NJ’s secure choice program to include on-demand workers without employer participation.

Worker Benefits: Portable Benefits



NY Black Car Fund acts as “employer of record” for workers compensation; funded through 2.5% surcharge on rides.



Healthy San Francisco required employer to contribute toward employees’ healthcare.



WA bill would require employer contribution to workers’ compensation fund and benefits fund.



NJ bill (S-67) would create portable benefits system for workers who “provide services to consumers;” employers pay lesser of 25% of transaction or \$6/hr of work to “qualified benefits providers” (QBP) that provides benefits to workers.

Worker Benefits: Portable Benefits

A state-regulated, nonprofit “workers’ benefit corporation” can serve as a QBP that also acts as the **employer of record for on-demand workers**.

- Funded through prorated employer **contributions**, service **surcharges** and worker **deductions**.
- Ensures **portability** of benefits and creates system of **earned benefits**.
- Extends workers compensation and UI eligibility.
- May enable group purchase of **health insurance, 401(k) planning, paid leave**.
- Can circumvent federal labor laws and MEP regulations.

Worker Protection

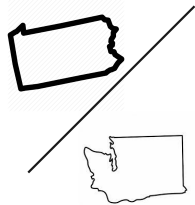
Title VII protections **do not extend** to independent contractors and OPE workers in particular face various forms of **workplace discrimination**.

- Platform companies illegally **reject** workers who have criminal records.
- Women rideshare drivers are **paid 37% less** per hour than men and receive fewer reviews for comparable tasks; African-American workers receive **fewer and more negative ratings** than White workers.

Independent contractors often have dangerous jobs, but typically **do not** receive **workers' compensation** and **bear the full burden** of medical care costs.

- Transportation workers have **high injury & homicide rates**.
- Homecare workers are **susceptible to back and joint injuries**.

Worker Protection: Anti-discrimination



PA & WA **explicitly** include independent constructors in their anti-discrimination laws.

For any employer because of the race, color, religious creed, ancestry, age, sex, or disability of **any individual or independent contractor**, to refuse to hire or employ...

43 P.S. § 955



NJ Law Against Discrimination (LAD) **only includes W-2 employees.**



Amend LAD to also protect independent contractors against workplace discrimination

Worker Organizing

Collective bargaining helps **guarantee workers' rights and benefits**



CA bill would allow OPE workers to organize and bargain.



SEA ordinance would allow rideshare drivers to organize and bargain for “matters of mutual interest” but not wages.

Neither is in effect; both raise concerns of NLRA preemption and antitrust violations.





NJ does not have current or pending legislation concerning non-employee organizing or bargaining.





Consider legislation that enables independent contractors to organize and bargain.

State Action, Court Cases and Private Actors

 AK 'banned' Uber for misclassification of drivers; Uber paid settlement to state workers' compensation fund (2015)

 OR Bureau of Labor issued guidance stating OPE drivers are employees for purposes of minimum wage, workers' compensation and protections (2015)

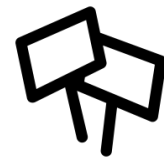
 CA Supreme Court used the 'ABC test' to determine certain independent contractors were actually employees (2018)

 NJ & MA assume 'presumption of employment' and rely on the ABC test for classification and benefits eligibility

'Angel employers' can set industry standards, e.g. Microsoft requires vendors to provide PTO to employees



Workers use **social media** to share workplace grievances and organize protests that pressure companies to change their labor practices, e.g.



#ChangeZara

Conclusion

Workers face major challenges arising from the shift away from the traditional, full-time employment model toward on-demand labor.

- Workers bear the costs of the on-demand economy otherwise taken on by employers but have limited recourse for securing commensurate compensation or benefits.

This alone is enough imperative for state action to support on-demand workers.

- NJ can develop state-level guidance and policies that address on-demand workers and the companies that hire them; this can minimize litigation that would consume valuable public and private resources.

Acknowledgements

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