NATIONAL ACADEMY OF SOCIAL INSURANCE

Nonstandard Work

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Workers' traditional relationships with their employers have been fracturing over the past four decades.[1] The trend away from traditional employment arrangements, in which workers are employed for long stretches of time with a well-defined employer, toward nonstandard work leaves workers increasingly exposed to economic risks.[2] Programs such as Unemployment Insurance (UI) and Workers' Compensation rely on the existence of an identifiable employer to assess risk, equitably allocate costs, and minimize moral hazard. In nonstandard work, however, there is often no easily identifiable employer.

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At the same time, the growth in nonstandard work arrangements, especially the large and unprecedented increase since the Great Recession, creates an opening for policymakers. Existing social insurance programs such as Unemployment Insurance, Workers' Compensation, health insurance, and paid leave could be reformed to increase economic security for all workers. Such changes could extend social protections to workers outside of full-time wage and salary employment and ensure that all workers have the prospect of economic security.

Policy Challenges

The nonstandard workforce is growing

There are many ways to estimate the number of workers in "contingent" or "nontraditional" employment. In its Contingent Worker Survey (CWS) from 2005, the Bureau of Labor Statistics (BLS) provided three different estimates of the extent of employment in contingent, or time-limited, work, based on relatively narrower or broader definitions of contingent work.[3] In addition, BLS estimated the number of workers in certain alternative arrangements, regardless of whether the arrangement was contingent.

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[1] Between 2005 and 2015, a period which included the Great Recession, all net job growth occurred in nonstandard work, while the number of standard jobs slightly decreased: Lawrence F. Katz and Alan B. Krueger, 2016, "The Rise and Nature of Alternative Work Arrangements in the United States, 1995-2015," NBER, https://krueger.princeton.edu/sites/default/files/akrueger/files/katz_krueger_cws_-_march_29_20165.pdf.
[2] Ibid.
[3] Bureau of Labor Statistics, 2005, "Contingent and Alternative Employment Arrangements," Economic News Release, https://www.bls.gov/news.release/conemp.nr0.htm.

On contingent work, BLS estimated on the low end that 1.8 percent of the total employed workforce were wage and salary workers who expected their jobs to last for an additional year or less and who had worked at their jobs for one year or less, not including independent contractors. On the high end of BLS's contingent-work estimates was the finding that 4.1 percent of the total employed workforce reported that they did not expect their job to last, whatever the timeframe might be. This larger estimate included workers who had been an independent contractor for less than a year and did not expect to be an independent contractor for more than a year.

> ***With regard to alternative arrangements, BLS estimated that 10.7 percent of the employed labor force was in so-called alternative arrangements.***

With regard to alternative arrangements, BLS estimated that 0.6 percent of the employed workforce were workers provided by contract firms, 0.9 percent were temporary help agency workers, 1.8 percent were on-call workers, and 7.4 percent were independent contractors. In total, 10.7 percent of the employed labor force was estimated to be in so-called alternative arrangements. Not all of these workers were considered contingent, however, as some of them did not report time-limited contracts. Independent contractors were most likely to be in the construction and professional services sectors and were more likely than workers in all other arrangements (including traditional employment relationships) to be white, over 55 years old, and – except for workers provided by contract firms – were more likely to have at least a Bachelor's degree than workers in traditional arrangements.

A 2015 update of this study conducted by academics outside of BLS showed substantial increases over the past ten years in the percent of the workforce employed in alternative work arrangements. The estimate of workers provided by contract firms nearly doubled – the largest increase of all the alternative arrangements measured – to 3.1 percent of the employed labor force. Temporary help agency workers increased to 1.6 percent of the employed labor force, on-call workers increased to 2.6 percent of the employed labor force, and independent contractors increased to 8.4 percent of the employed labor force.[4] Overall, the percent of the employed labor force in alternative arrangements increased 56 percent between 2005 and 2015, from 10.1 percent to 15.8 percent. While the labor market is constantly shifting workers between sectors and types of work arrangements, given the

[4] Lawrence F. Katz and Alan B. Krueger, 2016, "The Rise and Nature of Alternative Work Arrangements in the United States, 1995-2015," NBER, https://krueger.princeton.edu/sites/default/files/akrueger/files/katz_krueger_cws_-_march_29_20165.pdf. The estimates from 2005 used for comparison by the authors vary slightly from the BLS estimates published in 2005 because of updates in the data.

current structure of the labor force, all of the employment growth from 2005 to 2015 was roughly equal to the growth of alternate work arrangements.[5]

Other analyses of the nonstandard workforce have come to different conclusions about its size.[6] A 2015 study by the Government Accountability Office estimated that 40.4 percent of the employed workforce were contingent workers in 2010.[7] This estimate includes independent contractors, self-employed workers, and standard part-time workers, regardless of how long their current work is expected to last. Other analysts count workers with irregular schedules, whatever their job classification, as nonstandard.[8] None of these estimates, however, directly sheds light on the effect of digital platforms like Uber on the labor market, which to date are only a small share of the workforce. The JPMorgan Chase Institute estimated that 0.5 percent of adults (both officially employed and unemployed) participated in online labor platforms in June 2016.[9]

Nonstandard workers face unprotected risks

Many nonstandard workers lack access to valuable employer-based benefits, such as a retirement plan or health insurance. They often also lack social insurance protections against workplace injury, disability, and involuntary unemployment, even though they are affected by these risks at least as much as traditional workers. Different forms of nonstandard work pose different policy problems. Indeed, in cases of voluntary self-employment, where an individual purposefully structures an arrangement as an independent contractor, no public policy problem may exist at all. This is often the case with doctors, lawyers, or others engaged in white-collar professions who decide to leave a firm in older adulthood, scale back their workload, and increase their flexibility by continuing to work as consultants. On the other hand, workers classified as independent contractors are sometimes dependent for most or all of their income from one employer, but are not compensated as employees. They are often not affluent and are cut off from the risk pooling of social insurance programs, which puts them in a precarious situation due to exposure to the uninsured risks of injury, sickness, disability, unemployment, and financial insecurity in old age.

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[5] Ibid.

[6] Estimates are sensitive to how a particular analysis defines nonstandard work and to which data sources it uses. In an independent survey conducted by the McKinsey Global Institute, the Institute found that independent workers made up 27 percent of the working-age population in the U.S., compared with their analysis of existing government and private data sources, which showed that independent workers made up only 22 percent of the working-age population: McKinsey Global Institute, 2016, "Independent Work: Choice, Necessity, and the Gig Economy," http://www.mckinsey.com/global-themes/employment-and-growth/independent-work-choice-necessity-and-the-gig-economy.

[7] Government Accountability Office, 2015, "Contingent Workforce: Size, Characteristics, Earnings, and Benefits," http://www.gao.gov/products/GAO-15-168R.

[8] Nancy K. Cauthen, Annette Case, and Sarah Wilhelm, 2015, "Promoting Security in a 21st Century Labor Market: Addressing Intermittent Unemployment in Nonstandard Work," Family Values @ Work, http://familyvaluesatwork.org/wp-content/uploads/2015/05/nonstandard_work_final-1.pdf.

[9] Diana Farrell and Fiona Greig, 2016, "The Online Platform Economy: Has Growth Peaked?" The JPMorgan Chase Institute, https://www.jpmorganchase.com/corporate/institute/document/jpmc-institute-online-platform-econ-brief.pdf.

All told, nonstandard workers of various kinds experience many forms of risk, including:

Income volatility and inadequacy are heightened risks for nonstandard workers because they lack consistency of employment, while also missing out on traditional workplace protections that lower the risk of job or income loss.

- *Income risk.* The risk common to all nonstandard workers is income risk, in a threefold sense: the risk of losing access to income altogether; the risk of volatility in income from month to month; and the risk of income inadequacy. Income volatility and inadequacy are heightened risks for nonstandard workers because they lack consistency of employment, while also missing out on traditional workplace protections that lower the risk of job or income loss.
- *Health risk.* The Affordable Care Act (ACA) addressed the health risk faced by nonstandard workers by providing new subsidized options for insurance coverage, albeit imperfectly (for a detailed analysis of the ACA, see Section 2.a of this *Report*). The percentage of full-time independent workers/freelancers who report having health insurance increased from 64 percent in 2013 to 82 percent in 2015.[10] If the ACA were repealed, depending upon the replacement, many of these workers could lose coverage and be exposed to increased health and economic risk.

Independent contractors miss out on employer contributions to Social Security and lack employer-provided retirement plans.

- *Retirement risk.* Nonstandard workers face an elevated risk of financial insecurity in retirement.[11] Independent contractors miss out on employer contributions to Social Security and lack employer-provided retirement plans. Even part-time employees with an identifiable employer often lack access to workplace retirement plans. Only about a quarter of part-time workers have access to a 401(k)-type plan at work.[12]

[10] MBO Partners "State of Independence 2016," http://www.smallbizlabs.com/2015/09/freelancers-embrace-health-insurance.html. Full-time independent workers are defined as those who work at least 15 hours a week as independent workers/freelancers (self-employed, independent contractors, etc.) in an average work week.
[11] William G. Gale, Sarah E. Holmes, and David C. John, 2016, "Retirement Plans for Contingent Workers: Issues and Options," The Brookings Institution, https://www.brookings.edu/wp-content/uploads/2016/08/rsp923paper1.pdf.
[12] Bureau of Labor Statistics, 2016, "Retirement benefit combinations: Access," Employee Benefits Survey, https://www.bls.gov/ncs/ebs/benefits/2016/ownership/civilian/table03a.htm.

- *Unemployment risk.* Independent contractors are ineligible for Unemployment Insurance because they are legally self-employed, even if they are economically dependent on a particular client for work or their business dries up through no fault of their own. In addition, many other nonstandard workers face challenges to accessing UI benefits because they often do not meet eligibility requirements, which are designed for traditional, full-time workers.
- *Injury risk.* Many nonstandard workers cannot seek Workers' Compensation if they are injured on the job because they fall outside of mandatory coverage laws, leaving those workers to shoulder the costs of health care and lost wages on their own.
- *Tax-compliance risk.* Nonstandard workers also face tax-compliance risks. These include not being informed of the need to pay quarterly self-employment and income taxes and then being penalized at tax time; having to borrow to absorb a very large tax shock when taxes are due, with the associated interest costs; and facing criminal penalties for underreporting their income because of an inability to come up with a tax payment at the end of the year. If they underreport, even if they are not penalized for doing so, their lifetime financial security will be adversely affected by lower Social Security benefits in disability or old age.

Policy Options

Leverage the portability and universality of social insurance

Social insurance programs ensure that workers are protected against unforeseen economic hardship due to a temporary or permanent inability to work. A suite of programs provides these protections. Workers' Compensation and Social Security Disability Insurance (SSDI) replace lost wages due to disability. Unemployment Insurance replaces lost wages due to involuntary unemployment during employer downsizing or economic downturn. Social Security old-age insurance is the cornerstone of retirement security for most workers. These and other social protections have ensured that workers, especially those in low-paying, poor-quality jobs, have some assurance of economic security in a competitive economy.

Some proposals to address the problem of providing workplace protections to an increasingly fragmented workforce involve portable benefits via individual accounts to which employers and employees could contribute. These accounts could theoretically provide an individual, matched savings-based alternative to traditional social-insurance programs and employer-provided benefits. Proposals for individual accounts may be appropriate for providing certain employment benefits not covered by social insurance, but are an inadequate substitute for the stability, efficiency, and adequacy provided by pooled-risk social insurance systems. Many Americans are already unable to save enough for even the expected risk of retirement.[13] Only a tiny fraction of the workforce would be able to save enough on their own to provide for themselves and their families at the same level as current social insurance programs do in the event of unforeseen unemployment, disability, or poor health. Ultimately, insurance is required to help workers weather foreseen and unforeseen risks in an efficient and equitable way.

Even though most of the American social insurance system was designed well before the rise of non-standard work, programs like Social Security and Medicare are in many ways ideally suited to the needs of the 21-century workforce.

Even though most of the American social insurance system was designed well before the rise of nonstandard work, programs like Social Security and Medicare are in many ways ideally suited to the needs of the 21st century workforce. These programs are portable, covering workers as they move from one employer to another. Policymakers should thus consider ways to build on this successful social insurance model.

Workers' Compensation and Unemployment Insurance are two social insurance programs that have not transferred as readily to nonstandard work because they require an identifiable employer to assess risk and apply the corresponding premium assessments.[14] But solutions could be designed to make this requirement more flexible. New York City's Black Car Fund offers one example. The Fund provides Workers' Compensation insurance to black car taxi drivers by establishing an intermediary organization that takes the place of a traditional employer for the purposes of state Workers' Compensation law.[15] Similar intermediary employers could be established in other sectors as well.

An important consideration in providing social insurance protections to nonstandard workers is avoiding, whenever possible, the loss of contributions traditionally paid by the employer. The entire burden of social insurance contributions is untenable for most low- to medium-wage nonstandard workers. As one alternative, the organizations contracting with workers could

[13] Jack VanDerhei, 2015, "Retirement Savings Shortfalls: Evidence from EBRI's Retirement Security Projection Model," EBRI Issue Brief No. 410, Employee Benefit Research Institute, https://www.ebri.org/publications/ib/index.cfm?fa=ibDisp&content_id=5487; Alicia H. Munnell, Wenliang Hou, and Anthony Webb, 2014, "NRRI Update Shows Half Still Falling Short," Center for Retirement Research, http://crr.bc.edu/briefs/nrri-update-shows-half-still-falling-short/.

[14] In some states, statutory employee laws require certain classes of workers to be considered employees for the purposes of social insurance programs. California is one example of these states: California Employment Development Department, 2011, "Statutory Employees," Information Sheet, http://www.edd.ca.gov/pdf_pub_ctr/de231se.pdf.

[15] New York State Workers' Compensation Board, n.d., "Workers' Compensation Coverage: Black Car Operators," http://www.wcb.ny.gov/content/main/onthejob/CoverageSituations/BlackCarOper.jsp.

match workers' contributions on a pro-rata basis. Another is to have the consumers buying the goods or services of the worker cover some or all of the cost of the worker's contributions.

Establish "independent worker" status

Some analysts have proposed creating a third category of worker between employee and independent contractor – the "independent worker."[16] This could allow some benefits and social insurance contributions to flow from the employer to the employee without requiring the employer to maintain full employee status for the employee. This status could be written into social insurance laws to provide some level of protection otherwise not available to nonstandard workers. One potential problem with this approach is the possibility that a new employment classification would merely expand the possibilities for misclassifying workers as something other than employees in order to reduce employer costs, as has already happened with many independent contractors.[17]

Enact a system of portable "safety net" benefit accounts

Others have proposed a system of portable, pro-rated "individual security accounts" to which entities of any kind that use the labor of workers would contribute a "safety net fee" in proportion to the number of hours (or where appropriate, total earnings) that the worker is paid by that entity.[18] For example, a worker who is employed 20 hours a week by one employer, another 10 hours per week by another employer, and also receives 1099 contract income from a third source would earn 50 percent of her benefits from the first employer, 25 percent from the second, and another percentage based on her gross income from the entity with which she contracts for work. In total, this worker would earn over three-fourths of her full benefits (based on a forty-hour work week).

In this way, such accounts could facilitate contributions from multiple businesses to work-based social insurance coverage, such as Social Security, Medicare, Unemployment Insurance, and Workers' Compensation, by passing through the "safety net fee" to existing social insurance programs. Accounts also could be used for leave benefits provided through state-based social insurance programs, such as paid sick leave, or to pre-fund leave benefits, including vacation. They could be used to fund savings-based benefits, like retirement savings.

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[16] Seth D. Harris and Alan B. Krueger, 2015, "A Proposal for Modernizing Labor Laws for Twenty-First-Century Work: The 'Independent Worker,'" Discussion Paper 2015-10, The Hamilton Project, The Brookings Institution, http://www.hamiltonproject.org/assets/files/modernizing_labor_laws_for_twenty_first_century_work_krueger_harris.pdf.

[17] Benjamin Sachs, 2015, "Do We Need an 'Independent Worker' Category?" On Labor, https://onlabor.org/2015/12/08/do-we-need-an-independent-worker-category/.

[18] Steven Hill, 2015, "New Economy, New Social Contract: A Plan for a Safety Net in a Multiemployer World," New America, https://www.newamerica.org/economic-growth/policy-papers/new-economy-new-social-contract/; Nick Hanauer and David Rolf, 2015, "Shared Security, Shared Growth," Democracy, Summer 2015, No. 37, http://democracyjournal.org/magazine/37/shared-security-shared-growth/.

Contributions to these accounts could be made not only by the worker, but also by other entities, such as the firms or individuals that contract with the worker, which can in turn pass some of the cost onto consumers. There are many questions to consider when implementing a system of portable benefits or shared accounts. Among them are whether the funding will be mandatory, what classes of workers will be covered, how much oversight the government would require, how to adapt current rules such as experience rating for Unemployment Insurance contributions to a multiple employer and independent contractor setting, and what benefits would be provided.[19]

Other reform options

A range of other policy options are available to enhance the economic security of nonstandard workers, including:

- Reform the eligibility criteria for partial UI benefits – currently available to some part-time workers – to account for the volatility of nonstandard work.[20]
- Better enforce laws regulating employee classification.
- Make employee status the statutory presumption for workers, requiring active steps to achieve independent contractor status.[21]
- Improve tax compliance year-round among independent contractors so as to facilitate social insurance contributions and to reduce expense shocks from taxes. Intermediaries that use workers' labor could withhold taxes on behalf of the worker and could make employer contributions to social insurance programs.[22]
- Extend Family and Medical Leave Act (FMLA) protections to part-time workers (for more on family and medical leave, see Section 5 of this *Report*).[23]
- Make self-employment assistance (SEA) available for unemployed workers in all states. SEA allows workers receiving Unemployment Insurance to work full time in starting their own business while still receiving UI benefits. This small change would provide at least a minimum level of support in the new economy for workers transitioning from traditional employment into ever-more-prevalent nontraditional employment situations.[24]

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[19] A more complete list of questions to consider in implementing portable benefits is provided in Shayna Strom and Mark Schmitt, 2016, "Protecting Workers in a Patchwork Economy," The Century Foundation, https://tcf.org/content/report/protecting-workers-patchwork-economy/.
[20] Andrew Stettner, Michael Cassidy and George Wentworth, 2016, "A New Safety Net for An Era of Unstable Earnings," The Century Foundation, https://tcf.org/content/report/new-safety-net-for-an-era-of-unstable-earnings/.
[21] AFL-CIO, 2013, AFL-CIO Legislative Guide, http://www.aflcio.org/content/download/1728/15559/file/2013%20Legislative%20Handbook%20-%20Chapter%206.pdf.
[22] Harris and Krueger, 2015. It is worth noting that many of these proposals, including tax changes and shared security accounts, would not help the many nonstandard workers who are undocumented immigrants and therefore lack Social Security numbers.
[23] AFL-CIO, 2013.
[24] Christopher J. O'Leary and Stephen A. Wandner, 2016, "Unemployment Insurance Research and Reform," Presented at the 38th Annual Fall Research Conference of the Association for Public Policy Analysis and Management.

- Enact statutory employer laws to automatically classify certain classes of workers – for example, 1099 employees in certain industries like transportation, home services, or delivery – as employees for the purposes of social insurance programs. [25]
- Require employers to offer additional work first to existing part-time employees before hiring new employees or using contractors or a temporary services or staffing agency to perform work. [26]

Conclusion

The growth of work outside the standard employment relationship has exposed millions of workers and their families to new risks and has heightened existing ones. The uncertain future of the individual health insurance market in the context of current efforts to repeal the Affordable Care Act compounds this insecurity. Efforts to provide adequate economic protection to the nation's growing nonstandard work force could build on the successful models of Social Security and Medicare, which provide universal, portable, flexible coverage to workers in all employment relationships. Extending Unemployment Insurance and Workers' Compensation protection to nonstandard workers could be accomplished by letting workers buy into existing national programs in these areas, with matching contributions coming from intermediary employers, consumers, unions, or the government. Moreover, the eligibility criteria for Unemployment Insurance and SSDI could be reformed to better account for the volatility of income in the nonstandard sector. With most net job growth occurring in the nonstandard sector, policymakers should develop systems to protect against the risks these workers face in the coming years.

[25] Rebecca Smith and Sarah Leberstein, 2015, "Rights on Demand: Ensuring Workplace Standards and Worker Security in an On-Demand Economy," National Employment Law Project, http://www.nelp.org/content/uploads/Rights-On-Demand-Report.pdf.
[26] See, e.g., San Francisco, California, San Francisco Police Code Art. 33F, § 3300F.3 (2015).