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The Vermont Legislative Research Service

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A Modern Work Force

The modern economy is currently facing a changing workforce dynamic. In this report we compile the definitions of contingent workers, highlight recent trends in self-employment, identify potential effects of worker misclassification in Vermont, discuss a case-study of Uber Transportation Company to highlight possible issues and solutions, and finally look at potential future implications of these labor force changes. The definition of a contingent worker has a great deal of variation, which leads to differences in the estimated number of contingent workers. Additionally, it was found that misclassifying contingent workers can lead to losses in tax revenue.

Defining a Contingent Workforce

Below are several different sources, both public and private firms, which provide definitions of a contingent worker.

A 2005 Government Accountability Office study¹ categorized contingent workers as follows:

- **Agency Temporary Workers (Temps):** Individuals are employed by temporary employment agencies. These agencies assign the workers to work for other companies known as “client firms.”
- **Contract Company Workers:** Individuals who work for firms and provide services to other firms under a contract, such as security or landscaping.
- **Day Laborers:** Individuals who find work by waiting at a site (sometimes a hiring site) where an employer comes and picks people up to work for the day, for example, low-skilled construction workers.
- **Direct-Hire Temps:** Individuals who are hired directly by a firm to work for a temporary time period, such as seasonal employees.

¹ Government Accountability Office (GAO), "Employment Arrangements: Improved Outreach Could Help Insure Proper Worker Classification," July 1, 2006, accessed February 10th, 2015, <http://www.gao.gov/new.items/d06656.pdf>, p. 6.

- **Independent contractors:** Individuals who hire themselves out to customers to provide a product or service. Included in this category are realtors and child care providers.
- **On-Call Workers:** Individuals who work on an as-needed basis and are called in to work, such as substitute teachers.
- **Self-Employed Workers:** Self-employed like independent contractors, but do not work under a contract, for example restaurant owners.
- **Standard Part-Time workers:** Individuals, who work less than 35 hours a week for the same employer and can either, earn wages or salaries.

The estimated numbers of workers in each category can be found in Table 1.

Category of Worker	Estimated numbers of workers (in thousands)	Estimated percentage of the workforce
Contract company workers	813	0.6
Agency temps	1,217	0.9
On-call workers/day laborers	2,736	2
Direct-hire temps	2,972	2.1
Self-employed workers	6,125	4.4
Independent contractors	10,342	7.4
Standard part-time workers	18,360	13.2
Subtotal: contingent workers	42,567	30.6
Standard full-time workers	96,385	69.4
Total workforce	138,952	100

Table 1: Contingent Workers and the Total Employed Work Force, February 2005

Source: GAO, "Employment Arrangements: Improved Outreach Could Help Insure Proper Worker Classification."

A 2014 MBO Partners² study categorized a contingent worker as “anyone 21 years or older who self-describes his/her job status as one or more of the following: an independent consultant/contractor, self-employed, a freelance worker, a temporary worker, a fixed term contract worker, an on-call worker, or a small business owner with fewer than 4 employees.” The MBO Partners report further shows an estimated 17.9 million “solopreneurs,” people working more than 15 hours a week outside of traditional employment, and 12.1 million “side-giggers,” people who do independent work, but for less than 15 hours a week.³

In a research survey conducted by Edelman Berland⁴ on behalf of the Freelancers Union, an independent trade union for those workers whom identify as freelancers, the term freelancer was defined as “[i]ndividuals who have engaged in supplemental temporary, or project-or-contract-based work in the past 12 months.” In the survey, Edelman Berland broke down the different kinds of freelancers as such:

- **Independent Contractors** (40% of the independent workforce/ 21.1 million)
- **Moonlighters** (27%/14.3 million) who have a primary source of income that could be traditional full-time employment, but also partake in freelance work. Example: a web-developer who works for a company full time, but also takes on other assignments in his/her free time.
- **Diversified Workers** (18%/ 9.3 million) with multiple sources of income, some from traditional employment such as a part-time job and then also does other work to supplement his/her income. Example: Someone that works 20 hours a week as a receptionist and then does freelance writing.
- **Temporary workers** (10%/ 5.5 million) who are on a job assignment for only a temporary period of time.
- **Freelance Business Owners** (5%/ 2.8 Million) that employ 1-5 people who still considers him/herself to be a freelancer. Example: A social marketer who hires other team members to create a small agency and considers the work they do freelancing.⁵

In a 2006 news release the United States Bureau of Labor Statistics (BLS) defined contingent workers using three categories to estimate the percentage of contingent workers in the workforce. The first estimate is the narrowest definition and includes “[w]age and salary workers who expect their jobs will last for an additional year or less and who had worked at their jobs for one year or less,” this estimate yields 1.8% of the total

² MBO Partners is a firm that provides professional consultants a business operating platform to ease their entrance into the market-place.

³ MBO Partners, "2014 State of Independence in America Report," accessed February 10, 2015 http://info.mbopartners.com/rs/mbo/images/2014-MBO_Partners_State_of_Independence_Report.pdf, p. 3-15.

⁴ A research organization held by DJE Holdings under the Edelman PR firm and operated under a code of ethics to promote transparency and well documented research.

⁵ Freelancers Union, "Freelancing in America: A National Survey of the New Workforce," Freelancing in America: A National Survey of the New Workforce, September 4, 2014, accessed February 10, 2015, <https://www.freelancersunion.org/blog/dispatches/2014/09/04/53million/>, p.3-8.

employed. The second is “workers including the self-employed and independent contractors who expect their employment to last for an additional year or less and who had worked at their jobs (or been self-employed) for 1 year or less,” this estimate yields 2.3% of the working population. The third estimate is “workers who do not expect their jobs to last,” which is the broadest definition used by the BLS and yields an estimate of 4.1% of the total work force population. The BLS also includes several forms of alternative employment and their percentages of the total employed, the categories are as following:

- **Independent Contractors:** 7.4%
- **On-Call Workers:** 1.8%
- **Temporary Help Agency Workers:** 0.9%
- **Workers Provided by Contract Firms:** 0.6%⁶

Trends in Self-Employment

Self-employment is a major subsection of all the contingent worker classifications. Self-employment is the only non-employee employer relation measured by the monthly Bureau of Labor Statistics report. Figure 1 shows the number self-employed workers as a percentage of total employment over time. The numbers used to make the graph are from the current population survey conducted by the Census Bureau. The question used to determine if someone is self-employed was, “Last week were you employed by government, by a private company, a nonprofit organization, or were you self-employed?”

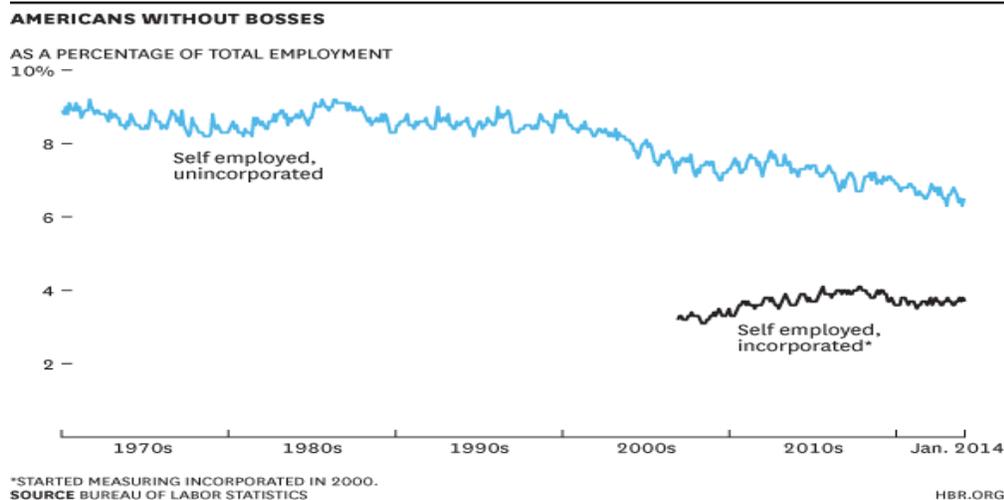


Figure 2: Self Employment in the US

Source: Fox, Justin, "Where Are All the Self-Employed Workers?" *Harvard Business Review*, February 7, 2014, accessed February 1, 2015, <https://hbr.org/2014/02/where-are-all-the-self-employed-workers/>.

⁶ Bureau of Labor Statistics, "Contingent and Alternative Employment Arrangements," February 1, 2005, accessed February 10, 2015, <http://www.bls.gov/news.release/pdf/conemp.pdf>, p. 2.

According to a study done by economicmodeling.com, the Vermont self-employment rate is the highest in the country, at just over 10 percent. Nationally the self-employment rate has been falling slowly, since the Great Recession.⁷ This number only includes people who reported the majority of their income came from their self-employment and did not include people that are self-employed for only a part of their income.

In the independent Edelman Berland survey, commissioned by the Freelancers Union, it is estimated that 53 million people in today's economy are engaged in freelance work, 34% of the workforce. This survey of 5,052 adults in the US also shows that of the people who identify as freelancers, 32% reported an increase in demand over the past year, while 15% reported a decrease.⁸

According to an ACS 2013 Five Year Estimate, a service run by the Census Bureau, 45,994 people over the age of 16 identify as self-employed (incorporated and unincorporated) in Vermont. This makes up 14.2% of the total employed population of Vermont; a survey of 324,350 people. The American Community Survey 5 year estimates are run by the Census Bureau and consist of 60 months of consecutive data. This figure is higher than what was noted by economicmodeling.com.⁹

Worker Misclassification

According to the National Conference of State Legislatures,

[e]mployee misclassification is the practice of labeling workers as independent contractors, rather than employees. The practice allows employers to avoid paying unemployment and other taxes on workers, and from covering them on workers compensation and unemployment insurance.¹⁰

The Vermont Department of Labor classifies most workers as employees if they are hired by someone to complete a task according to workers compensation insurance law. The Department goes on to describe the classification of independent contractors as "someone

⁷ Wright, Joshua, "America's Self-Employment Landscape," Economicmodeling.com, February 6, 2014, accessed January 25, 2015, <http://www.economicmodeling.com/2014/02/06/americas-self-employment-landscape/>.

⁸ Freelancers Union, "Freelancing in America: A National Survey of the New Workforce," p. 7 p.13.

⁹ Data processed by: "US Demography 1790 to Present," 2013 ACS 5-Year Projections via Social Explorer, accessed February 10, 2015. <http://www.socialexplorer.com/6f4cdab7a0/explorer> (Change data field to 2013 ACS 5 year estimates for Employment. Select Self-employment incorporated and unincorporated. Scroll over VT to reveal figures) Original figures available directly from the census via http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_pums_csv_2009_2013&prodType=document (Find Vermont Population records to reveal a zip excel file that contains roughly 32,000 observations) "US Demography 1790 to Present," 2013 ACS 5 Year Projections via Social Explorer, accessed February 10, 2015, <http://www.socialexplorer.com/6f4cdab7a0/explore>.

¹⁰Jeanne Mejeur, "Employee Misclassification," National Conference of State Legislatures, January 1, 2014, accessed February 10, 2015, <http://www.ncsl.org/research/labor-and-employment/employee-misclassification-resources.aspx>.

you hire who performs a job that is not similar or connected to your business, and whose work you have no direction or control over.”

Vermont uses a two-part test to determine if a worker should be classified as an employee or an independent contractor. First, there is a right-to-control test that uses a series of questions to determine the extent to which the employer controls the worker. The Internal Revenue Service has a similar right-to-control test with twenty factors.¹¹ If the right-to-control test proves inconclusive then the nature-of-the-business test is applied. This test is meant to determine if the job the worker completed could be completed by another employee at the company who is covered by workers’ compensation.¹² This two-part test is similar to those used by other states, including New Hampshire, New York, and Maine.¹³

According to a NELP (National Employment Law Project) report from August 2014, 10-14% of employees in VT are misclassified. This figure came from a 2009 report issued by the Vermont Worker’s Compensation Task Force, a team set-up by the Vermont State Government to combat worker misclassification.¹⁴

In 2014, legislation regarding independent contractors was introduced in 23 states and 11 states passed a total of 15 bills. Massachusetts wrote a bill that defines what categorizes and individual as a freelance employee and developed another bill titled “Independent Contractor Labor Laws.” Massachusetts enacted two bills regarding worker classification and contingent employment.¹⁵ One bill serves to amend the MA General Code regarding categorization and tracking of construction worker compensation. The second bill was a related to the intellectual property rights of freelancers.

Implications of Worker Misclassification

The National Conference of State Legislatures states that employee misclassification can be very problematic in that it reduces labor costs for the employer and can create problems for state and federal governments. The government may be shorted millions of dollars in tax revenue. Additionally, this incentivizes firms to misclassify workers to reduce their own costs. In today’s labor market of contingent workers this could prove to be a growing problem as the classifications of workers are shifting dramatically. Most state and federal employment laws do not protect independent contractors.¹⁶

¹¹ I.R.S. Twenty Factors, Right-to-Control test, <http://www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/20FactorTestforIndependentContractors.pdf>.

¹² Vermont Department of Labor, “Who Is an Employee vs. an Independent Contractor,” accessed February 10, 2015, <http://labor.vermont.gov/workers-compensation/misclassification/>.

¹³ See NH 281-A:2 IV, <http://www.gencourt.state.nh.us/rsa/html/XXIII/281-A/281-A-2.htm>; and Maine Law 26 M.R.S.A, <http://legislature.maine.gov/statutes/26/title26sec591-A.html>.

¹⁴ National Employment Law Project, “Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Employees,” August 2014, accessed February 10, 2015, <http://www.nelp.org/page/-/Justice/IndependentContractorCosts.pdf?nocdn=1>, p. 3, p. 13.

¹⁵ Jeanne Mejeur, “2014 Employee Classification Legislation,” 2014 Employee Classification Legislation, December 12, 2014, accessed February 10, 2015, <http://www.ncsl.org/research/labor-and-employment/2014-employee-classification-legislation.aspx>.

¹⁶Jeanne Mejeur, “Employee Misclassification.”

Uber Transportation Company

The company Uber offers an example of this new style of employee to employer relationship. The Uber platform allows qualified drivers, whether professional or not, to become part-time or full-time independent contractors of the company.

Uber drivers range from professional drivers to students looking for part time work. The service has created freelance style work for people across the country including Burlington, Vermont. Data released by Uber says that the number of Uber drivers in the U.S. is around 160,000.¹⁷ In December 2014, alone 40,000 new drivers began driving for Uber.¹⁸ Seventy-five percent of Uber drivers have at least one other source income outside of Uber in the form of full-time, part-time, or multiple part-time jobs. Only 8 percent of Uber drivers were unemployed when they started working for Uber.

Uber drivers are very diverse group of people; the connecting trend between drivers is their demand for work place flexibility and additional income.

Demand for work opportunities that offer flexible schedules is partly driven by the aging of the workforce and the increase in secondary earners, and it will likely increase as a result of ongoing demographic trends. In addition, as changes to the health care system help reduce job lock—by making health insurance more readily available and accessible to individuals —more people are likely to become entrepreneurs and take advantage of the flexibility and income-generating potential made possible by the on-demand-economy.¹⁹

Uber's rapid growth has not come pain free. The company faces a range of legal and regulatory issues across the country. Major concerns include insurance coverage, rider safety, worker classification of drivers, and legal status of unlicensed taxis.

Conclusion

The contingent workforce is a substantial part of the work force in America. The data suggests that Vermont has a large number of contingent workers. Unfortunately much of the data on contingent workers is outdated. The Bureau of Labor Statistics has not reported figures on this group since 2005. Other data sources have a wide range of definitions for a contingent worker. The difference in definitions from each groups leads to variation of the number of contingent workers. Major policy concerns related to this

¹⁷Alan Krueger and Jonathan Hall, "An Analysis of the Labor Market for Uber's Driver - Partners in the United States," Princeton University, Working Paper #587, January 22, 2015, accessed February 1, 2015, <http://dataspace.princeton.edu/jspui/bitstream/88435/dsp010z708z67d/5/587.pdf>, p. 18.

¹⁸ Alan Krueger and Jonathan Hall, "An Analysis of the Labor Market for Uber's Driver - Partners in the United States," p. 13.

¹⁹Alan Krueger and Jonathan Hall, "An Analysis of the Labor Market for Uber's Driver - Partners in the United States," p. 3.

segment of the population are health insurance, retirement planning, and worker misclassification.

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Disclaimer: This report has been compiled by undergraduate students at the University of Vermont under the supervision of Professor Anthony Jack Gierzynski, Professor Robert Bartlett and Professor Eileen Burgin. The material contained in the report does not reflect the official policy of the University of Vermont.