The Magnitude of Low-Paid Gig and Independent Contract Work in New York State

THE NEW SCHOOL
CENTER FOR NEW YORK CITY AFFAIRS

February 2020 | Lina Moe, James A. Parrott, and Jason Rochford

Acknowledgments

Thanks go to Bruce Cory and Kristin Morse for editorial assistance, to Ana Holschuh for designing the cover, and to Seth Moncrease and Kristin Morse for general support. Richard Blum and Zubin Soleimany generously provided comments. The authors accept sole responsibility for the substance and views presented in this report.

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1. Introduction

Apps and algorithms have had a profound impact on the way we live and work. In recent years, the rise of on-demand labor platforms (e.g. Uber and TaskRabbit) has dominated headlines and offered one vision of what the future of work might hold. While contract jobs mediated through labor platforms promise flexibility and the opportunity to earn supplemental income for some workers, such "gig work" is often unstable, low paid, and lacks the basic labor protections and benefits afforded to traditional employees.[1]

This report estimates that there are about 150,000 app-based independent contractors in New York that represent only 1.6 percent of the state's overall workforce and constitute about 17.5 percent of over 850,000 low-paid independent contractors in the state. This much broader category of independent contractors labor under similar low-paid and precarious conditions.

Growing public concern over the labor conditions of app-based workers and other independent contractors has heightened political interest in the longstanding issue of employee misclassification in the United States. Misclassification occurs when an employer erroneously treats a worker as an independent contractor—either intentionally or inadvertently as a result of ambiguities in current law—rather than properly classifying that worker as a standard employee.

Studies indicate that misclassification leads to substantial losses in tax revenue and funding for government social insurance programs at both the Federal and State levels.[2] Employers who deliberately misclassify their employees as independent contractors often do so as a tactic to cut business costs by avoiding legal compliance with unemployment insurance, workers' compensation, Social Security and other payroll taxes, short-term disability, family and medical leave, safety and discrimination laws, and minimum wage and overtime pay laws.[3] Workers misclassified as independent contractors are not only denied these rights and protections but also lack customary fringe benefits, like health insurance and retirement plans, as well as the right to organize a labor union and collectively bargain for better pay and conditions. Misclassification also hurts law-abiding businesses that face unfair competition from companies that save considerably on costs by misclassifying their workers.

Despite the fact that misclassification is a widespread and persistent problem, the federal government continues to apply lax guidelines that make it easy for employers to misclassify their

[1] Katharine G. Abraham and Susan N. Houseman, *Making Ends Meet: The Role of Informal Work in Supplementing Americans' Income*, Russell Sage Foundation, 2019.

[2] The State of California estimates that the annual state tax revenue loss due to employee misclassification is as high as $7 billion. Celine McNicholas and Margaret Poydock, *How California's AB5 protects workers from misclassification*, Economic Policy Institute, November 14, 2019, p. 2. See also Catherine Ruckleshaus and Ceilidh Gao, *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries*, National Employment Law Project, 2017, and *Employment Arrangements: Improved Outreach Could Help Ensure Proper Worker Classification*, U.S. General Accounting Office, January 2006.

[3] "Employer Misclassification of Workers," New York State Department of Labor's website, https://www.labor.ny.gov/ui/employerinfo/employer-misclassification-of-workers.shtm.

workers as independent contractors.[4] Meanwhile, some states are acting to narrow the legal avenues for hiring independent contractors in place of part-time and full-time standard employees by establishing multi-agency task forces, adopting more straightforward standards, and developing more effective enforcement approaches.[5]

While most app-based labor companies argue that their workers should be classified as independent contractors, recent New York State Unemployment Insurance Appeals Board decisions for at least three unemployment insurance cases have ruled that Uber drivers, e.g., are standard employees and not independent contractors.[6] However, New York has not applied that ruling across the board to all such drivers.[7] New Jersey recently announced that Uber owed the State $650 million in unpaid unemployment and disability insurance taxes, interest, and penalties for misclassifying drivers as independent contractors.[8]

In January 2020, California's groundbreaking AB5 legislation went into effect, which subjects employers to an "ABC test" that narrows the guidelines for which companies can classify their workers as independent contractors. (Under an ABC test, a worker can only be considered an independent contractor if the business can demonstrate that workers are free from control and direction by the hiring company, if they perform work outside the usual course of business of the hiring entity, and if they are independently established in that trade, occupation or business.) With some exceptions, this new State law applies to workers from all industries and occupations where companies might improperly treat their employees as self-employed entrepreneurs.[9]

In the wake of California's AB5, New York State lawmakers have begun exploring similar measures to better protect workers against misclassification and exploitation. However, much of the focus in Albany has been limited to the employment status of platform workers, that is, those who work for companies using app-based platforms like Uber and Postmates. Albany's interest in platform workers reflects the visibility of platform workers in the media and in everyday life, and platform workers deserve credit for bringing this issue to the public's attention. Indeed, the Governor's Executive Budget proposes legislation addressing only "the conditions of

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[4] On April 29, 2019, the Acting Administrator of the U.S. Department of Labor's Wage and Hour Division wrote an opinion letter concluding that service providers utilized by a "virtual marketplace company" were independent contractors, not employees. https://www.dol.gov/whd/opinion/FLSA/2019/2019_04_29_06_FLSA.pdf

[5] For example, see New Jersey Department of Labor and Workforce Development, *Report of Gov. Murphy's Task Force on Employee Misclassification*, July 2019.

[6] New York State Unemployment Insurance Appeal Board decisions Nos. 596722-596727, July 12, 2018.

[7] Bloomberg Law recently reported that "the state has not publicly gone after Uber or other platform companies for unpaid unemployment insurance and other taxes since" an initial unemployment insurance case ruling in 2016. Keshia Clukey, *New York Governor Lays Down Ultimatum on Gig Worker Rights*, Bloomberg Law Daily Labor Report, January 22, 2020.

[8] Chris Opfer, *Uber Hit With $650 Million Employment Tax Bill in New Jersey*, Bloomberg Law Daily Labor Report, November 14, 2019.

[9] Sarah Thomason, Ken Jacobs, and Sharon Jan, *Estimating the Coverage of California's New AB5 Law*, UC Berkeley Center for Labor Research and Education, November 2019.

employment and classification of workers in the modern economy of on-demand workers connected to customers via the internet."[10]

But there is in fact no good reason why the debate about gig workers should be limited to platform workers. This report will argue that the misclassification of workers as independent contractors is much broader than just the platform sector, and that many of the largest low-paying industries utilize significant numbers of independent contractors who likely are misclassified.

Using the best publicly available government data, this report highlights the magnitude and characteristics of New York State's low-paid independent contractor workforce over the past decade. While the number of app-based independent contractors has grown significantly in recent years, we estimate that they constitute at most 17.5 percent of all low-paid independent contractors in New York State and that there is a much broader group of workers whose work status needs to be examined and clarified.

2. Highlights

- Growth in work mediated by app-based companies, such as Uber and Lyft, has focused public attention on the question of the appropriate legal status of such workers—are they independent contractors or employees? Decisions in at least three New York State unemployment insurance cases have ruled that Uber drivers are, in fact, employees and not app-based independent contractors. This report suggests that the discussion about the employment status of app-based independent contractors, who often lack the basic labor protections, employee rights, and benefits afforded to traditional payroll employees, should be extended to include a much larger group of independent contractors who work in New York who are not online platform workers.

- Building on a comprehensive study of 2016 Internal Revenue Service (IRS) data, this report estimates there are about 150,000 online platform workers in New York, which includes both primary and supplemental earners. We find that these online platform workers likely constitute only 17.5 percent of all low-paid independent contractors in New York. Using the best available government data sources, we identify a substantial workforce beyond online platform workers who lack labor protections, employment rights, and benefits. This workforce includes hundreds of thousands of workers who are potentially misclassified as independent contractors by the companies that hire them.

- We draw on two main datasets from the U.S. Census Bureau to provide credible estimates of the magnitude and characteristics of New York State's low-paid independent contractor workforce—the annual American Community Survey (ACS) and the Non-Employer Statistics (NES) series based on IRS tax records. The ACS data reveal about 382,000 independent contractors who work in low-paying industries as their main job. The group of

[10] New York State, Division of the Budget, *FY 2021 New York State Executive Budget, Transportation, Economic Development, and Environmental Conservation, Article VII Legislation*, January 2020, Part. GGG p. 439.

low-paying industries have median annual earnings of $20,000. From the NES, we find 984,000 independent contractors who work in low-paying industries either as their main job or for supplemental income. Hence, the number of nonemployers is more than twice as large as the number of primary self-employed unincorporated workers.

- Low-paying industries with the largest numbers of potentially misclassified independent contractors are personal services, construction, transportation, retail, social assistance, and building services. This report sets aside higher-paying sectors, such as finance, information, and professional services, as well as those workers in the arts, entertainment, and recreation industry, since many such workers are highly educated and might legitimately work as independent contractors if they work for multiple businesses, set their own fees, and control the conditions under which they work. Arts and entertainment workers—73 percent of whom have a four-year college degree or higher—include graphic designers, writers and editors, and producers and directors. Netting out arts and entertainment workers, we arrive at 342,000 primary independent contractors in ACS data and 858,000 independent contractors working either as a primary job or for supplemental pay according to NES data.

- While Governor Andrew Cuomo mentioned in his recent State of the State address that "this year 40 percent of the workforce will be in jobs related to the new gig economy," that figure entails an expansive view of "the gig economy" which includes a range of informal activities, such as yard work or housesitting, as well as money earned from selling goods or renting property. The 150,000 estimated number of online platform workers in New York represents 1.6 percent of the state's overall workforce.

- The demographic profile for independent contractors who work in low-paying industries as their main job is similar to standard payroll employees who work in low-paying industries, but with slightly higher shares of men, workers age 55+, and the foreign-born. These workers are slightly less well-educated. Among the low-paid industries with the largest numbers of self-employed unincorporated workers, transportation and construction are heavily male while personal services and social assistance are heavily female. Transportation is also heavily persons of color (77 percent), and foreign-born (80 percent).

- While 44 percent of all New York independent contractors who work in low-paying industries as their primary job are persons of color, two-thirds of low-paid independent contractors in New York City are persons of color. Among primary independent contractors who work in personal services, 74 percent are persons of color as are 87 percent in transportation.

- According to ACS data, small business owners constitute a fairly distinct demographic group compared to independent contractors in low-paying industries. Small business owners are more likely to be male, white, and better-educated, and have median earnings more than twice that of likely misclassified independent contractors in low-paying industries.

- While some industries have experienced rapid growth of independent contractors, in the wake of the 2010 Construction Industry Fair Play Act, the number of independent contractors in construction declined by 14 percent over the past decade while the number of payroll employees rose nine percent. The 2010 Act instituted a three-part ABC test that must be met to establish independent contractor status. Enforcement efforts in recent years under the Fair Play Act, workers' compensation, unemployment insurance, and workplace safety laws have contributed to a reduction in the incidence of independent contractor misclassification in the construction industry in New York State.

- Median inflation-adjusted earnings fell more for independent contractors in low-paying industries than for their standard payroll counterparts over the period 2006-2008 to 2015-2017, falling 11 percent compared to seven percent for payroll workers in low-paid industries. Employees in low-paid industries have fared better since 2013 due to New York's minimum wage increases.

- Independent contractors have missed out on the benefits of New York's historic minimum wage increases. From 2013 to 2018, the inflation-adjusted annual earnings of standard payroll workers in three large low-paying industries—construction, retail trade, and personal services—rose by 20 percent or more. This was much greater than the increases for independent contractors in these industries. In fact, for independent contractors working in the personal services industry, annual earnings (at the 25th percentile) fell by four percent while earnings rose by 25 percent (also at the 25th percentile) for employees working in the personal services industry.

- Earnings are so low for self-employed unincorporated independent contractors that over a quarter (27 percent) are covered by Medicaid—twice the rate for all New York workers—while 20 percent do not have any health insurance coverage, compared to eight percent of all workers. For low-paid independent contractors, 52 percent of those in construction and 53 percent of those in personal services have no health insurance or rely on Medicaid, and in the transportation industry the figure is 65 percent.

- The on-the-job fatality rate for self-employed workers is over three times as great as for private payroll employees. Industries with concentrations of low-paid independent contractors are also the industries with the highest fatality rates, including construction, transportation, administrative and support services, agriculture, and personal services.

3. The Magnitude of New York's Independent Contractor Workforce

Previous estimates of the magnitude and characteristics of the "gig economy" and independent contractor workforce are wide-ranging and inconsistent. This is largely due to the lack of a shared understanding of what the gig economy actually is, and the different methods that researchers use to collect and analyze their data. In his State of the State address, Governor Cuomo noted that "this year 40 percent of the workforce will be in jobs related to the new gig economy." However, that figure involves a very expansive view of "the gig economy" which must include a very wide range of informal activities (such as yard work or housesitting), as well as earning money from selling goods or renting out property.[11] Below we estimate there are about 150,000 app-based workers in New York State, a number that represents 1.6 percent of the state's overall workforce, and about one out of every six low-paid independent contractors.

Independent contractors as a group have long been marginalized in labor market and economic analysis. In the government economic data tracked most closely by economists or in the media, self-employed workers and independent contractors, whether properly classified as such or not, are not considered employees and are not counted in traditional payroll employment data. Too often, therefore, they remain a hidden part of the workforce, left out of economic analyses of employment trends. While this broader workforce of "independent contractors" has not attracted the media attention focused on "gig workers," they are no less in need of legislative attention to clarify their employment status and employment rights and to ensure they are protected by appropriate labor standards.

Data sources

Understanding the size and importance of the independent contractor workforce for the New York State economy overall has been challenging over the past decade even as the rise of the "gig worker" has become a topic of heated debate. Because there is no single government data source identifying the number of independent contractors in New York State, this report relies on two data sets to construct an estimate of this workforce. First, the American Community Survey (ACS) published by the Census Bureau identifies workers who are "self-employed," and not considered "employees" working for someone else. The ACS identifies workers based on their primary job, whether full-time or part-time. The ACS does not ask respondents about second or third jobs nor does it probe about work performed for supplementary earnings.

For workers who indicate that their primary earnings come from self-employment, the ACS creates two categories: incorporated and unincorporated. Self-employed workers who are *incorporated* are essentially small businesses.[12] Self-employed workers who are *unincorporated* are much less likely to be operating small businesses. To improve the reliability of the ACS survey data, we pool three-years of data for 2015-17 (and for 2006-08 when making comparisons to a decade ago.)

The second dataset we rely on is the Nonemployer Statistics (NES) published by the Census Bureau, which draws on tax data from the IRS and documents payments for work performed by independent contractors. The NES data capture the receipts for work performed either as a

[11] While the Governor's State of the State cited the most recent Bureau of Labor Statistics contingent work survey, that survey found that about 10 percent of all U.S. employees work in an "alternative employment arrangement." This includes any worker who is an independent contractor, on-call worker, and temp or contract worker for their main job. Bureau of Labor Statistics, *Contingent and Alternative Employment Arrangements, May 2017,* Press Release June 2018. The BLS Contingent Worker Survey only considered a worker's primary job.
[12] There may be instances in which employers require employees to form S corporations and to continue providing the same or very similar services as independent contractors through those corporations, but there is no data that would allow us to identify that form of misclassification.

primary job or for supplemental earnings. The discussion below draws from both the ACS and NES datasets to provide a more complete picture of New York State's independent contractor workforce. Similar to the way the ACS divides incorporated and unincorporated self-employed workers, the NES data separate individual proprietorships (unincorporated) from incorporated businesses (and partnerships).[13] In this report, we refer to self-employed incorporated workers as "small business owners" and self-employed unincorporated workers as "independent contractors." By using both the NES and ACS data, we capture independent contractors whose primary earnings are from their self-employment earnings, as well those who work as an independent contractor to supplement their primary earnings.

Low-earning and high-earning industries

This report separates workers into three broad categories: standard payroll workers, self-employed incorporated workers ("small business owners"), and self-employed unincorporated workers ("independent contractors"). Furthermore, two other groupings emerge after taking a closer look at the earnings of independent contractors by industry in New York State. Ranking industries by average earnings in both datasets shows a clear and consistent division between what we refer to as "low-paying" and "higher-paying" industries.

The group of independent contractors working in low-paying industries has median yearly earnings of $20,000, whereas independent contractors working in higher-paying industries have median yearly earnings of $41,300. This report focuses on low-paid independent contractors who, as a group, have annual median earnings of only $20,000, less than two-thirds of the annual income ($32,000) of standard payroll employees in the same low-paying industries.

In estimating the universe of potentially misclassified independent contractors, this report sets aside independent contractors who work in the arts, entertainment, and recreation industry. We assume that workers in this industry are, for the most part, properly classified as independent contractors since the majority of them are better-educated (73 percent have a four-year college degree or higher) and the nature of their work usually entails contracting with multiple businesses, setting their own fees, and controlling the conditions under which they work. This group includes graphic designers, writers and editors, and producers and directors. There may also be some self-employed unincorporated workers in the arts and entertainment industry who might be *mis*classified as independent contractors whose status should be subject to an ABC test.

Aside from the overall numerical importance of independent contractors, whether app-based or not, this report focuses more closely on earnings trends rather than levels. This is due to the fact that independent contractors tend to underreport their earnings in both the survey and administrative data. Moreover, the ACS reports gross earnings, which does not account for business expenses. Since independent contractors tend to have more business expenses than

[13] Published NES state tabulations provide data by legal form of organization. In this report, we focus on individual proprietorships, excluding C and S corporation and partnership nonemployers. https://www.census.gov/programs-surveys/nonemployer-statistics/technical-documentation/methodology.html

standard payroll employees, we refrain from analyzing and comparing earning levels. Assuming the extent of underreporting has not changed over time, there may be value in analyzing trends over time in independent contractor earnings. In that regard, we show that low-paid independent contractors have experienced a loss in median annual earnings over the past decade and that their pay has not kept pace with that of standard payroll workers.

Figure 1. New York low-paid independent contractors, 2015-17

	Number	Median earnings
Total low-earning industries	**381,679**	**$20,000**
Personal services	81,345	$14,868
Construction	66,960	$25,519
Transportation	42,402	$25,519
Arts, entertainment & rec.	39,180	$24,000
Retail trade	34,421	$19,617
Social assist. & home health	33,635	$15,311
Admin. & support services	32,614	$18,585
Educational services	15,516	$16,332
Agriculture & forestry	13,390	$20,650
Manufacturing	11,850	$21,682
Accomm. & food services	10,366	$20,000

Source: ACS-IPUMS, persons working in New York State, three-year sample, 2015-17. Earnings in $2017.

With few exceptions, these low-paid industries, in whole or in part, are industries identified by the New York State Joint Task Force on Worker Exploitation and Employee Misclassification as "industries with the highest rates of employer noncompliance and where workers are least likely to come forward, for fear of retaliation." The task force also found that these industries also have a "prevalence of off the books employment."[14] This suggests that our estimate of full-time low-paid independent contractors is likely low. Also, because many of these workers are likely misclassified, though working full-time, they earn only two-thirds what their standard employee counterparts do, because of their employment status.

[14] The exceptions are manufacturing, arts and entertainment, administrative and supports services, and educational services. The Joint Task Force on Worker Exploitation and Employee includes in its list of target industries: janitorial services that is part of administrative & support services; child care that is part of Social Assistance; Restaurants that are part of Accommodation & food services; and Laundry and Nail salons and beauty salons that are part of Other Personal Services. See: https://www.ny.gov/end-worker-exploitation/task-force-combat-worker-exploitation#industries.

Independent contractors who work in low-paying industries make up the large majority (69 percent) of the independent contractor workforce in New York State.[15] Trends in the number of independent contractors in high- and low-paying industries have diverged over the past 10 years. While the overall number of independent contractors in low-paying industries has remained steady, independent contractors in high-paying industries declined by 8.5 percent. High-paying industries include professional services, finance and insurance, and information.[16] By comparison, employment trends for standard workers have grown more evenly across high-paying (+ 5.8 percent) and low-paying industries (+6.7 percent). Independent contractors are therefore increasingly likely to be engaged in low-paid work.

What can the nonemployer data tell us?

As noted above, the ACS surveys self-reporting individuals and the nonemployer data series compiles administrative data, including 1099 forms submitted by companies that engage workers as independent contractors. Thus, the NES records all workers considered by *businesses* to be independent contractors. The data shown below in Figure 2 represent individual proprietorships without employees.

In 2017, there were 984,000 independent contractors in New York State in the same low-paying set of industries identified in Figure 1, above. For the entire group, the number of independent contractors increased by 11.4 percent between 2008 and 2017, close to the 13.4 percent growth in the number of payroll workers in low-paying industries.[17]

There is a strikingly close correspondence to the relative ranking of the number of workers in low-paying industries in the ACS self-employed unincorporated data (Figure 1) and in the NES data (Figure 2). The closeness in the relative rankings by size as well as in earnings in the two series suggests the two data series are capturing a similar group of workers. Both reflect the use of independent contractors, with the main difference being that the nonemployer series includes workers for whom that activity is a secondary job, in addition to those for whom it is a primary job (while the ACS categorizes workers according to primary job).

In both data series, the personal services industry has the most independent contractors and the top four industries are the same, with the order for the next three largest industries slightly different—construction is the second-largest source of jobs in the ACS series while transportation is the second-largest in the nonemployer series. The fifth through the eighth industries with the largest numbers are the same in both data series.

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[15] See the first row in Figure 3 below.

[16] See Appendix Figure 1 for a list of all low-paying and high-earning industries.

[17] 13.4 percent growth in payroll employment in low-paid industries based on Quarterly Census of Employment and Wage data, 2008 and 2017.

Figure 2. New York low-paying nonemployer individual proprietorships, 2017

	# of estabs. (independent contractors)	gross receipts per estab. *
All low-paying industries	**983,969**	**$26,565**
Personal services	193,923	$20,819
Transportation	177,985	$36,256
Arts, entertainment & rec.	126,125	$27,211
Construction	112,248	$34,784
Retail trade	99,203	$33,374
Admin. & support services	97,116	$17,959
Social assist. & home health	79,582	$16,065
Educational services	53,832	$14,125
Accommo. & food services	24,687	$21,860
Manufacturing	13,199	$34,213
Agriculture & forestry	6,069	$37,483

* Note: gross receipts are before business-related expenses

Source: Census Bureau, Nonemployer Statistics, 2017.

The overall growth in the nonemployer series is dominated by the doubling in the number of independent contractors in transportation, to 178,000 in 2017. This reflects the rapid expansion in app-based, for-hire vehicle (FHV) services in recent years.

There was some decline in construction nonemployers between 2008 and 2017, likely the result of enforcement related to the 2010 legislation. Misclassification of workers as independent contractors and "off-the-books" employment has been an historically prominent issue in the construction industry with studies estimating that 15 percent or more of construction workers may be misclassified in New York State.

Though construction remains an industry in which independent contractors still play a large role, the number of independent contractors who work in this industry has fallen over the past decade (-14 percent), while the number of payroll employees has grown (+9 percent). Though the number of independent contractors remains large (construction represented nearly 18 percent of the total independent contractor workforce in 2015-17), the construction industry is an example of how effective scrutiny of employment can shift hiring practices.

In 2010, the New York State Construction Industry Fair Play Act took effect, establishing a presumption of employee status for workers in the construction industry and instituting a three-part ABC test which companies must pass to classify their workers as independent contractors.[18] In recent years, enforcement under New York's Fair Play Act and compliance under workers'

[18] New York State Department of Labor, "Fair Play Act, New York State Construction Industry" Fact Sheet. n.d. https://www.labor.ny.gov/formsdocs/factsheets/pdfs/P738.pdf

compensation, unemployment insurance, and workplace safety laws have contributed to a reduction in the incidence of independent contractor misclassification in construction.

It should also be kept in mind that the receipts shown in the figure are gross receipts, before business-related expenses which can be fairly significant in certain industries, such as for-hire car services. The Parrott-Reich report on the New York City app-based industry found that drivers' expenses amounted to about one-third of their gross receipts.[19]

Figure 3 below shows the totals of independent contractors identified in the ACS and NES data, as well as the data for incorporated self-employed and non-employers (which we deem small businesses). Each category of worker is separated into low- and higher-paying industries. Unincorporated self-employed or independent contractors make up 64 percent of all self-employed working in low-paying industries. Among nonemployers in the NES dataset, unincorporated independent contractors make up over 90 percent of the total.

As noted above, most independent contractors engaged in the arts and entertainment industry might legitimately be independent contractors. If that industry is excluded, the total number of potentially misclassified independent contractors according to the ACS data is 342,000 workers who rely on contracting for their primary earnings and 858,000 who rely on contracting for primary or supplemental earnings. Thus, for every independent contractor engaged in an industry, there are likely 1.6 more workers active in that industry earning supplemental income.

Figure 3. New York State small businesses and independent contractors

	Low-paying industries	High-paying industries	TOTAL
Self-employed *ACS data 2015-17*			
Unincorporated (independent contractors)	**381,700**	170,300	552,000
Incorporated (small businesses)	211,100	154,800	365,900
All self-employed (based on primary job)	592,800	325,100	917,900
Nonemployers NES data 2017			
Unincorporated (independent contractors)	**984,000**	442,400	1,426,400
Incorporated (small businesses)	99,600	226,200	325,800
All nonemployers (primary & supplemental work)	1,083,600	668,600	1,752,200

Note: see Appendix Figure 1 for lists of low- and high-earning industries.

Sources: Census Bureau, ACS-IPUMS, persons working in New York State, three-year sample, 2015-17; and Census Bureau Nonemployer Statistics, 2017.

[19] James A. Parrott, Michael Reich, Jason Rochford, and Xingxing Yang, *The New York City App-based Driver Pay Standard: Revised Estimates for the New Pay Requirement*, Report for the New York City Taxi and Limousine Commission, Center for New York City Affairs and the Center on Wage and Employment Dynamics, January 2019.

4. The New York State app-based independent contractor workforce

Using IRS administrative data, Collins et al. recently published data on the number of "online platform economy" workers for every state and the District of Columbia. Using 1099 data and identifying the companies engaging independent contractors that are primarily labor platforms, the authors found nearly 87,000 online platform workers in New York State in 2016, the latest year in the tax data they examined.[20] As Figure 4 indicates, this number had grown rapidly from only 1,254 in 2012.

We update the Collins et al. 2016 level to 2018 by relating the annual growth to the growth in the average number of for-hire vehicle trips in New York City that are mainly supplied by drivers working for Uber and Lyft. The overwhelming majority of online platform workers in New York State are FHV drivers in New York City, so it is reasonable to project the growth in the statewide app-based independent contractor workforce with reference to the growth of the FHV sector in New York City. According to data from of the City's Taxi and Limousine Commission, Uber and Lyft together engage an average of about 86,000 unique drivers monthly in New York City. Over the course a year, it is likely that more than 100,000 drivers work at some point for Uber or Lyft in New York City. Using this method, we roughly estimate that there were slightly more than 151,000 platform workers in the state in 2018 (see Figure 4).

While the number of platform workers has grown rapidly in recent years, it is only a fraction of the broader group of independent contractors working in low-paying industries. The main source of this rapid growth are FHV drivers who are a part of the transportation industry, one of the largest low-paying industries. Over the past decade, almost all (90 percent) of the net growth in the number of independent contractors in the NES data is from the taxi and limousine service segment that is part of the transportation industry.

Platform workers are only 17.5 percent of all independent contractors in low-paying industries, and about 1.6 percent of the 2018 statewide labor force of 9.6 million workers.

In early 2019, New York City's app-based FHV drivers became the first sizable group of online platform workers in the nation to have their pay regulated. New York City's Taxi and Limousine Commission (TLC) implemented a $17.22 after-expense per hour minimum app-based FHV driver pay standard in February 2019. The $17.22 hourly rate included the employer share of payroll taxes that must be paid by independent contractors and 90 cents per hour for paid time

[20] Brett Collins, Andew Garin, Emilie Jackson, Dmitri Koustas, and Mark Payne, *Is Gig Work Replacing Traditional Employment? Evidence from Two Decades of Tax Returns*, March 25, 2019. As of 2016, New York State did not rank among the states with a high ratio of platform workers to all workers. Twenty states exceeded New York's 0.8 percent share, and five of those states (CA, FL, IL, MD and NV) had shares that were twice New York's.

Figure 4. New York State online platform economy (OPE) workers, 2012-2018

	# OPE workers	change from prior year	
	actual	#	%
2012	1,254		
2013	4,964	3,710	295.9%
2014	24,065	19,101	384.8%
2015	49,773	25,708	106.8%
2016	86,949	37,176	74.7%
	estimated	*assumed growth*	
2017	126,076	39,127	45.0%
2018	151,291	25,215	20.0%

Sources: *actual* Collins, et.al., 2019, p. 63; *estimated* Authors' estimates for 2017 and 2018 based on lagged relative growth in average daily trips by New York City high-volume FHV drivers.

off.[21] Prior to the standard, an analysis prepared for the TLC estimated that 72 percent of all trips paid drivers less than $17.22 per hour, and median after-expense earnings were $13.70.[22] An average of 85,000 drivers provide trips each month for the high-volume for-hire vehicle companies operating in New York City. The New York City pay standard formula incentivized companies to make more efficient use of drivers' time, reducing the time spent cruising while waiting for the next dispatch. For-hire vehicle drivers in New York State are covered for workers' compensation insurance through a State-authorized nonprofit, the Black Car Fund (financed by a 2.5 percent fee applied to all trips).

5. Characteristics of Independent Contractors Working in Low-Paying Industries in New York State

Demographic data from the ACS provide a more detailed picture of independent contractors who work in low-paying industries as their main job in New York State. This section compares independent contractors to standard payroll employees in the same industries and to all workers.

[21] New York City Taxi and Limousine Commission, *Driver Income and Lease Transparency Rules*, Adopted December 4, 2018, https://www1.nyc.gov/assets/tlc/downloads/pdf/driver_income_rules_12_04_2018.pdf. Unlike the New York State minimum wage, the TLC high-volume FHV driver pay standard is indexed for inflation, with the first annual increase effective January 1, 2020.

[22] James A. Parrott, Michael Reich, Jason Rochford, and Xingxing Yang, *The New York City App-based Driver Pay Standard: Revised Estimates for the New Pay Requirement*, Report for the New York City Taxi and Limousine Commission, Center for New York City Affairs and the Center on Wage and Employment Dynamics, January 2019; see also, James A. Parrott and Michael Reich, *An Earnings Standard for New York City's App-based Drivers: Economic Analysis and Policy Assessment*, Report for the New York City Taxi and Limousine Commission, Center for New York City Affairs and the Center on Wage and Employment Dynamics, July 2018. http://www.centernyc.org/an-earnings-standard

Overall, the low-paid independent contractor workforce and low-paid payroll employees have similar demographic compositions. See Figure 5. Furthermore, by focusing closely on the industries with the largest numbers of independent contractors, as well as those industries where the number of independent contractors has grown most rapidly over the past decade, we find that the demographic composition of the overall low-paid independent contractor workforce in New York has become older, less white, and more female.

Figure 5. Demographic comparison, all New York workers and payroll employees, independent contractors, and small business owners in low-paying industries

Number of workers	All NYS workers 9,660,842	*payroll employees* in low-paying industries 5,256,039	*independent contractors* in low-paying industries 381,678	*small business owners* in low-paying industries 211,096
	percent distribution	*percent distribution*	*percent distribution*	*percent distribution*
Gender				
Male	52%	53%	59%	71%
Female	48%	47%	41%	29%
Age				
18-24	10%	14%	4%	2%
25-54	67%	65%	64%	64%
55+	23%	21%	32%	35%
Race/Ethnicity				
White, non-Hispanic	58%	55%	56%	65%
Black, non-Hispanic	13%	14%	10%	6%
Hispanic	18%	21%	23%	15%
Asian/other	11%	10%	11%	14%
Educational Attainment				
Less than HS	7%	9%	14%	9%
High School	29%	35%	38%	37%
Some College	22%	23%	20%	22%
BA & Higher	42%	33%	27%	32%
Nativity				
Native-born	70%	68%	57%	62%
Foreign-born	30%	32%	43%	38%

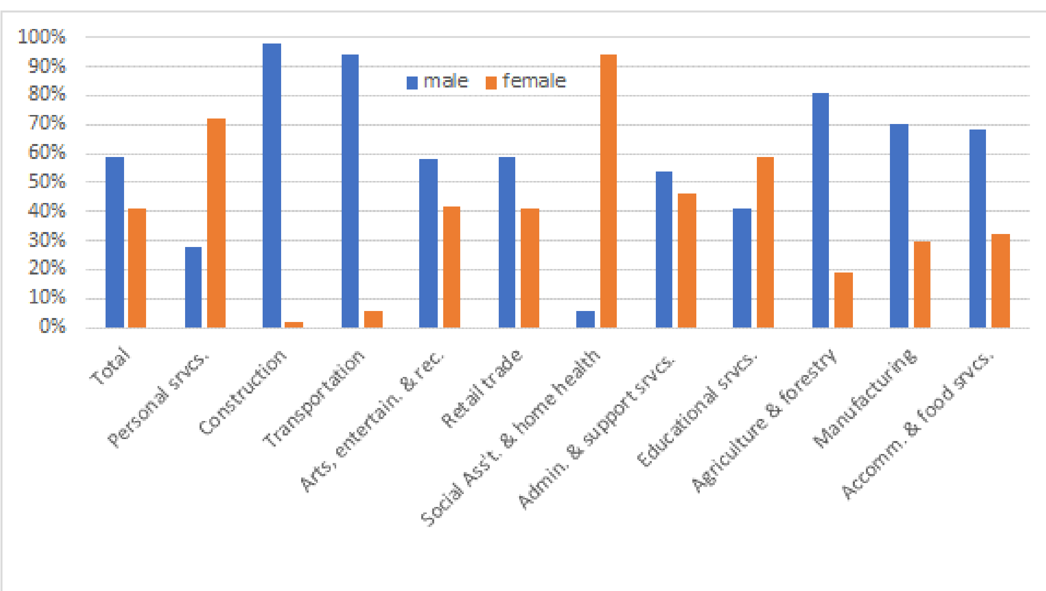
Note: percents may not add to 100% due to rounding.

Source: ACS-IPUMS, persons working in New York State, three-year sample, 2015-17.

The ACS data reveal that independent contractors who work in low-paying industries as their primary job tend to be of prime working age 25-54 (64 percent) with a disproportionate (32 percent) share (relative to all New York State workers of older workers age 55+ (see Figure 5). Very few independent contractors are young workers, ages 18-24 (four percent). Even compared to their payroll counterparts in the same industries, independent contractors are disproportionately older. They are also less likely to have a college degree than their payroll employee counterparts in the same low-paying industries (27 percent to 33 percent). While slightly over half of all low-paid independent contractors have a high school education or less (52 percent vs. 36 percent for all workers), 27 percent have a four-year college degree or better (vs. 42 percent for all workers). For New York State overall, the majority of low-paid independent contractors are white (56 percent), though this majority has decreased over the past decade (white workers engaged as low-paid independent contractors decreased 11 percent over the past 10 years, while the number of persons of color grew 18 percent). For low-paid independent contractors working across New York City's five boroughs, persons of color make up two-thirds of the low-paid independent contractor workforce.

Compared to all New York State workers, independent contractors are more likely to be male (59 percent vs. 52 percent), likely because of the concentration of contract work in the transportation (94 percent male) and construction (98 percent male) industries. If the heavily male construction and transportation industries are removed, the female share of the remaining low-paying industries is 57 percent. Some industries have independent contractor workforces that are heavily female, including personal care services (72 percent – this industry includes nail salon workers and maids) and building services (70 percent, which includes janitors and building cleaners). In addition, several of the largest and fastest-growing industries with low-paid independent contractors are majority women. Educational services, one of the industries with the fastest-growing numbers of independent contractors (+30 percent over the past decade), is 59 percent women. Therefore, while the workforce overall remains majority men today, because of the decline of independent contractors in construction and the rapid growth of some industries that skew towards women, the gender distribution is changing.

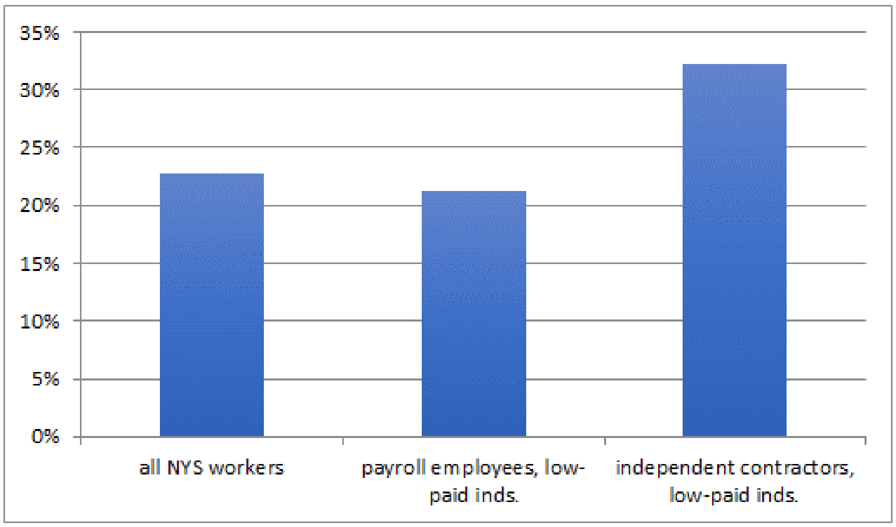
Figure 6. Gender distribution, New York independent contractors in low-paid industries



Source: ACS-IPUMS, persons working in New York State, three-year sample, 2015-17.

Many companies hiring workers as independent contractors have sought to characterize them as small business owners. However, Census data not only separate small business owners (self-employed incorporated) from independent contractors, but the two categories constitute very different demographic groups, as the data presented in Figure 5 revealed. Small business owners tend to be male (71 percent) compared to independent contractors (59 percent), they are more highly educated than their independent contractor counterparts in low-paid industries (32 percent vs. 27 percent have a BA degree or better), and small business owners are more likely to be white (65 percent vs. 56 percent). Moreover, reported earnings by small business owners in low-paying industries are more than twice that for independent contractors (median yearly earnings of $42,300 vs. $20,000). However, small business owners have also seen a steep decrease in earnings over the past decade.

Figure 7. New York workers ages 55+ as share of the workforce, all workers, and payroll employees in low-paid industries



Source: ACS-IPUMS, persons working in New York State, 3-year sample, 2015-17.

Earnings trends

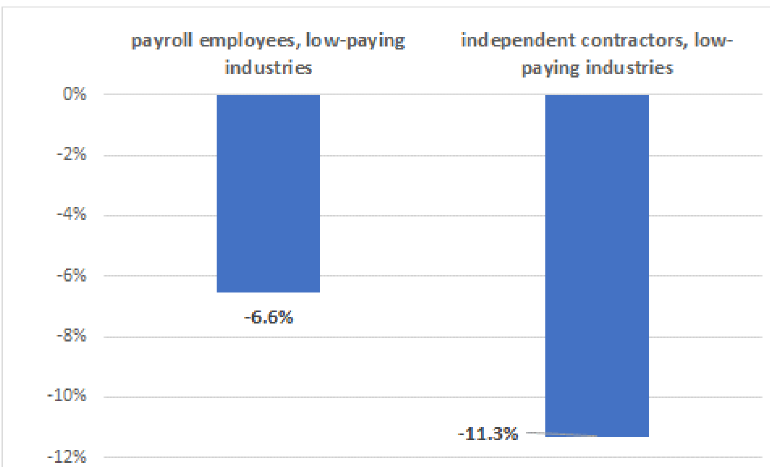
Low-paid independent contractors report much lower earnings than payroll employees in the same industries. However, determining accurate estimates of independent contractor earnings remains difficult because independent contractors tend to under-report their earnings more than payroll workers.[23] Still, even with this reporting limitation, it is useful to compare trends in earnings over time between independent contractors and payroll workers, since the reporting

[23] Annette Bernhardt and Sarah Thomason, *What Do We Know About Gig Work in California? An Analysis of Independent Contracting*, University of California, Berkeley Center for Labor Research and Education, June 2017, http://laborcenter.berkeley.edu/what-do-we-know-about-gig-work-in-california/

issues likely remain the same over time. Median inflation-adjusted earnings fell more for independent contractors in low-paid industries than for their standard payroll counterparts over the past decade, falling 11 percent compared to seven percent respectively (see Figure 8).

With the single exception of social assistance, every low-paying industry has shown a decrease in yearly median earnings over the past decade (Figure 9). Though social assistance is an outlier industry in terms of earnings gains, even after a 20 percent increase, this industry, which includes childcare workers and home health aides, had median yearly earnings of just over $15,000. Such earnings fall well short of what it is needed to meet minimal family budget needs. For example, according to the Economic Policy Institute's Family Budget Calculator, an adult with one child

Figure 8. Percent change in inflation-adjusted median earnings for New York independent contractors and standard payroll employees in low-paid industries, 2006-2008 to 2015-2017



Source: ACS-IPUMS, persons working in New York State, 3-year samples, 2006-08 & 2015-17. $2017.

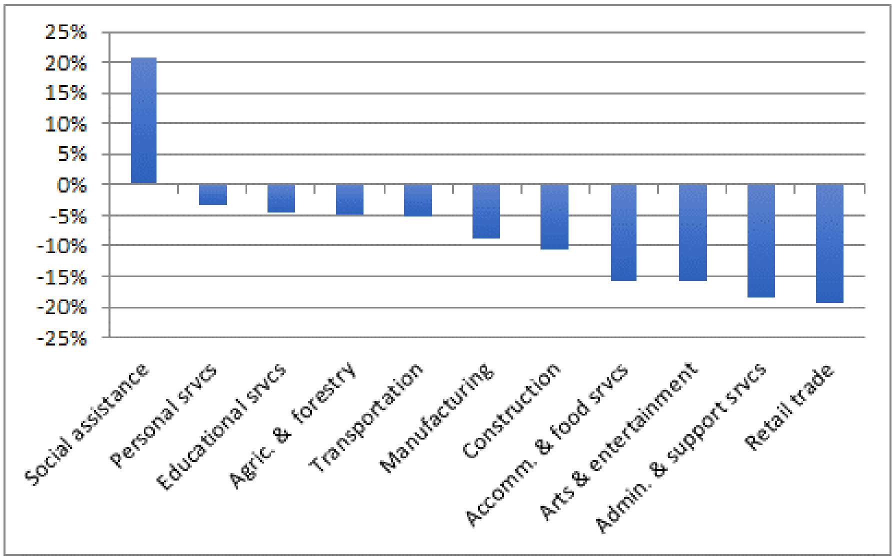
in the Rochester metro area would need an income of over $59,000 annually to meet basic food, childcare, medical, housing and transportation requirements. In the New York City metro area, an adult with one child needs approximately $82,000 a year.[24]

While precise estimates of yearly earnings for independent contractors are elusive due to under-reporting by survey respondents, the ACS provides no information on work-related expenses for independent contractors.[25] However, health insurance coverage and reliance on Medicaid stand

[24] Economic Policy Institute, Family Budget Calculator: https://www.epi.org/resources/budget/

[25] Business expenses are reported in the IRS data—see Collins et.al. for discussion.

Figure 9. Percent change in inflation-adjusted median earnings for New York independent contractors in low-paid industries, 2006-2008 to 2015-2017



Source: ACS-IPUMS, persons working in New York State, 3-year samples, 2006-2008, and 2015-2017. $2017.

in as a telling proxy for the financial precariousness of low-paid independent contractors. Nearly half of independent contractors (47 percent) are either uninsured or rely on Medicaid, more than twice the 22 percent for all New York State workers, and much higher than the 27 percent for standard payroll employees in low-paid industries (see Figure 10).

Figure 10. Health insurance for all New York workers, and for standard payroll employees and independent contractors in low-paid industries

		Low-paid industries	
	All workers	Standard payroll employees	Independent contractors
Employer provided	70%	67%	33%
Purchased own	11%	9%	20%
Medicaid	14%	17%	27%
Medicare	5%	5%	10%
Total insured	92%	90%	80%
Uninsured	8%	10%	20%

Note: employer provided insurance can be through a spouse

Source: ACS-IPUMS, persons working in New York State, three-year sample, 2015-17.

Reliance on Medicaid is particularly high among independent contractors in the transportation industry: 46 percent have Medicaid coverage and another 19 percent do not have any health insurance coverage. This industry has been the fastest-growing source of platform workers (see Figure 11).

The relatively high share of New York's independent contractors without any health insurance is particularly a concern considering that they typically are not covered by workers' compensation. U.S. Labor Department data indicate that for 2015-18, an average of 64 self-employed workers in the state suffered fatal occupational injuries each year. The occupational fatality rate for self-employed workers is over three times as great as for private payroll employees, 6.9 vs. 2.2 per 100,000 workers. The industries where large numbers of low-paid independent contractors are concentrated are also the industries with the highest fatality rates, including construction, transportation, administrative and support services, agriculture, and personal services.[26]

Figure 11. New York independent contractors in low-paying industries relying on Medicaid or without health insurance

	Medicaid		Uninsured	
	Number	Percent within ind.	Number	Percent within ind.
All independent contractors in low-paying industries	**100,600**	**27%**	**75,700**	**20%**
Construction	14,600	22%	20,300	30%
Transportation	19,400	46%	8,200	19%
Social Assistance	12,800	38%	4,600	14%
Personal Services	23,200	29%	19,300	24%

Source: ACS-IPUMS, persons working in New York State, three-year sample, 2015-17.

6. Largest and fastest-growing low-paid industries

Aside from arts, entertainment, and recreation, the three New York low-paying industries with the largest number of independent contractors in both the ACS and NES data are personal services, construction, and transportation. These three industries tell different stories about the kinds of workers engaged in independent contracting and the changes in demographic and earnings trends over the past 10 years. As previously noted, construction has seen its non-standard workforce decline, largely as a result of the enactment of the Construction Industry Fair Play Act that established an ABC test for independent contractor status in 2010. This section discusses further the growth in personal services and transportation, along with education

[26] U.S. Dept. of Labor, Bureau of Labor Statistics, *Census of Fatal Occupational Injuries*, annual data, 2015-2018.

services, where the number of independent contractors is not as large as in either personal services or transportation, but where the number has nevertheless grown by 30 percent in the ACS data and by 20 percent in the NES data.

Personal services

Personal services is a broad category of personal care and service workers that grew over the past decade by 16.5 percent in the ACS data (to 81,300), and by 3.3 percent in the NES data (to 193,900). Occupations represented in the personal services industry include maids and housekeepers, hairdressers and barbers, childcare workers, mechanics, massage therapists, tailors, and personal care workers. This broad category of personal care and service workers is predominately women (72 percent). Additionally, personal services has a higher concentration of women among the independent contractors in the industry than are represented among all workers *employed* in the industry (72 percent compared to 56 percent of all New York State employees in personal services). Personal service workers also tend to be persons of color (52 percent in New York State and 74 percent in New York City), and most lack a four-year college degree (84 percent). In addition, personal services has seen remarkable growth among workers ages 55 and older (+57 percent).

Transportation

The number of independent contractors who work in the transportation industry has grown rapidly over the past decade, by 43 percent to 42,000 in the ACS data, and by 104 percent to 178,000 in the NES data. The nearly 91,000 net growth in transportation independent contractors accounted for 90 percent of the total net growth in the NES data over the decade. This growth was largely because of the growth in the number of Uber and Lyft drivers. There was also moderate growth among couriers and messengers (delivery workers fall in this category). There has been only slight growth in trucking independent contractors, partly as a result of the New York State Commercial Goods Transportation Industry Fair Play Act that was signed into law in January 2014. Similar to the Construction Industry Fair Play Act, the Commercial Goods Transportation Industry Fair Play Act has a presumption of employee status unless an independent contractor is a separate business entity meeting an ABC test.[27]

However, as noted above, almost half of all transportation independent contractors are covered by Medicaid (46 percent). Most are prime-age workers (68 percent), and the majority are persons of color (77 percent in New York State, 87 percent in New York City), without a college degree (81 percent in both the state and the city), and largely foreign-born (80 percent New York State, 90 percent New York City).

[27] New York State Department of Labor, *New York State Commercial Goods Transportation Fair Play Act*, Fact Sheet. https://www.labor.ny.gov/legal/commercial-goods-transportation-industry-fair-play-act.shtm

App-based drivers constitute the largest and most rapidly growing sector of the online platform workforce and the broader nonemployer workforce.[28] In addition to the rapid growth in the for-hire vehicle sector, the past decade has seen the rise of the food delivery sector, with an increasing number of low-paid delivery persons engaged as app-based independent contractors.

Educational services

As noted above, the number of independent contractors in educational services grew over the past decade by more than 30 percent according to the ACS data, and by 20 percent in the NES data. Two-thirds, or slightly more, of these independent contractors are women (67 percent), white (69 percent), or have a four-year college degree (68 percent). Though the majority of the independent contractor workforce is non-Hispanic white, there has been a 64 percent increase over the past decade in the number of Hispanic workers who work as independent contractors. The majority of independent contractors in educational services are prime-age workers (64 percent), and more than a quarter of the workforce are 55 or older (26 percent). Over the past decade, this industry has seen faster growth in independent contractors among young workers, ages 18-24, and among older workers compared to prime-age workers.

7. Flexibility and independent contractors missing out on minimum wage increases

Online platform companies often claim that their workers choose to work through their apps because of the flexibility the arrangement provides to the worker, and that it would therefore infringe on worker choice to require employment status that would somehow limit such flexibility. Two factors should be considered in this regard. First, employment status in no way necessarily limits flexible working arrangements. There are many instances of employers granting their employees flexible work arrangements.[29] Second, implicit in the argument that workers highly value flexibility is that they are foregoing higher earnings as an employee in order to gain the flexibility of platform work. Even in the relatively low-unemployment economy of recent years, many workers face limited good employment options. For example, for foreign-born, prime working-age males, the 25th percentile wage for standard employees in the overall New York State economy was only $20,200 for the 2015-17 period, and median wage earnings were only $30,100.[30] This suggests that this cohort of workers may be choosing platform work, either as a primary or a supplemental job, because the prospects are not great for receiving much better pay through standard payroll employment jobs.

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[28] Katherine G. Abraham, John C. Haltiwanger, Kristin Sandusky, and James R. Spletzer, *Driving the Gig Economy*, July 9, 2018, p. 2

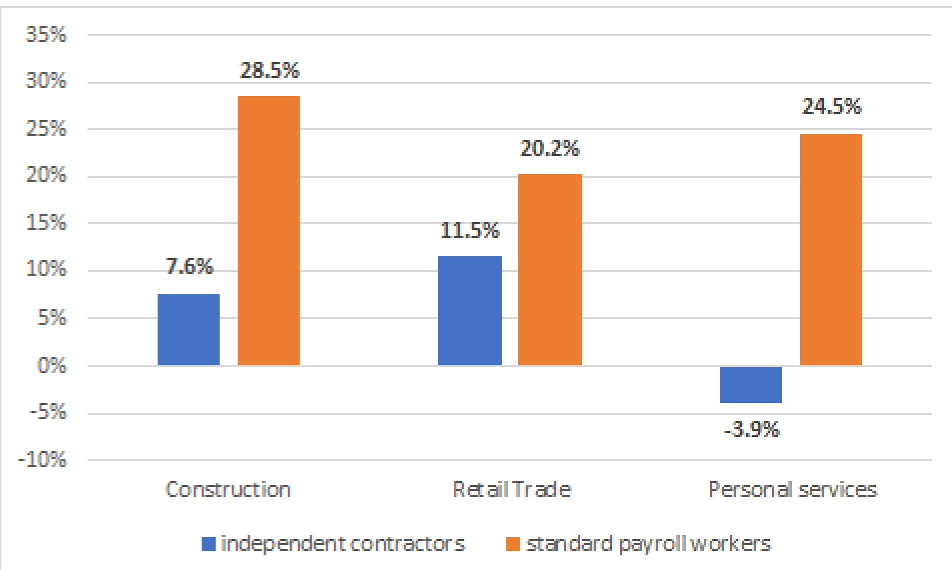
[29] New Jersey Labor Commissioner Robert Asaro-Angelo stated: "For those who say properly enforcing our unemployment laws [regarding employee misclassification] will stifle worker flexibility, let's be clear: there is no reason temporary, or on-demand workers can't be treated like other employees who work flexible hours for short durations."

[30] Analysis of ACS, 2015-17 microdata.

One of the important labor protections enjoyed by standard payroll workers that is not available to independent contractors is coverage by the State minimum wage. At the end of 2013, New York started increasing its minimum wage above the $7.25/hour federal level, and it has increased considerably since then, reaching $13 an hour for large New York City employers at the end of 2017, $11.00 an hour for employers in Westchester County and on Long Island, and to $10.40 for employers in the 54 upstate counties.

As Figure 12 indicates, independent contractors have missed out on the benefits of New York's historic recent minimum wage increases that have raised the inflation-adjusted annual earnings of standard payroll workers by 20 percent or more from 2013 to 2018 for three large low-paid industries. For independent contract workers in the personal services industry, annual earnings fell by 3.9 percent while earnings rose by 24.5 percent for those employed in the personal services industry.

Figure 12 Inflation-adjusted earnings change, 2013-18, 25th percentile, independent contractors compared to standard payroll workers



Source: ACS, 2013 and 2018.

8. Conclusion

While the number of app-based independent contractors has grown significantly in recent years, the estimated 150,000 such workers represents only 1.6 percent of the state's overall workforce and constitute at most 17.5 percent of all low-paid independent contractors in New York. Based on the best available government data, we estimate there are 858,000 independent contractors in New York working either in this capacity as a primary job or for supplemental pay.

These independent contractors work in low-paying industries with median annual earnings reported as $20,000 on a largely full-time basis. The largest of these industries (personal services, construction, transportation, retail, and building services) are those identified by the State's Joint Task Force on Worker Exploitation and Employee Misclassification as "industries with the highest rates of employer noncompliance and where workers are least likely to come forward, for fear of retaliation." There is ample reason to suggest that such workers who are not on a company's books as payroll employees are, in fact, misclassified independent contractors.

The demographic profile for independent contractors working in low-paying industries is similar to that of standard payroll employees who work in the same low-paying industries, but with slightly higher shares of male, older, and foreign-born workers. Other than construction and transportation, a fairly high proportion of independent contractors in these industries are female. In New York City, two-thirds of low-paid independent contractors are persons of color, with particularly high concentrations in the personal services and transportation industries.

Independent contractors have missed out on the benefits of New York's historic recent minimum wage increases that raised the inflation-adjusted annual earnings of standard payroll workers by 20 percent or more from 2013 to 2018. Earnings are so low for self-employed unincorporated independent contractors that over a quarter (27 percent) are covered by Medicaid while 20 percent do not have any health insurance coverage. The occupational fatality rate for self-employed workers is over three times as great as it is for private payroll employees.

Thus, app-based independent contractors are part of a much broader group of low-paid independent contractors in New York State whose work status warrants examination and clarification. In addition to enduring low pay, these workers receive little to no benefits and are not covered by labor protections such as the minimum wage, unemployment insurance, or workers' compensation (with the exception of FHV drivers).

Appendix

Appendix Figure 1. Low-paying and high-paying private industries, ranked by number of independent contractors, New York State

Low-paying industries	High-paying industries
Personal services	Professional, scientific & technical services
Construction	Health care (except home health care)
Transportation and warehousing	Real estate, rental & leasing
Arts, entertainment, and recreation	Information
Retail trade	Finance and insurance
Admin. support & waste mgmt. services	Wholesale trade
Social assistance & home health	
Educational services	
Accommodation & food services	
Agric., forestry, and mining	
Manufacturing	

Note: ranking based on number of independent contractors from the American Community Survey, 2015-17.