



RAISING THE FLOOR FOR  
**GIG WORKERS &  
INDEPENDENT CONTRACTORS**

*a plan by*

**BRADLANDER**  
for NYC Comptroller



# RAISING THE FLOOR FOR GIG WORKERS & INDEPENDENT CONTRACTORS

New York City is full of gig workers, independent contractors, freelancers, and others in the contingent workforce: workers who have long helped power our economy and who must be an integral part of the city's short- and long-term economic recovery going forward. These workers include Uber and Lyft drivers, GrubHub delivery workers, nail salon technicians, home-health aides, domestic workers, artists, writers, and many more. Some have chosen independent contracting and freelancing for the benefits of flexible hours, autonomy of decision-making, and ownership over intellectual property; benefits that should be supported and strengthened. But, countless others have been forced into precarious, low-paying, and exploitative work by virtue of an unstable, unequal economy characterized by stagnant wages and corporate greed.

The United States Department of Labor considers worker misclassification "one of the most serious problems facing affected workers, employers, and the entire economy." Historically, big companies and bad actors have taken advantage of New York State's employee classification laws, arguing that workers who look and act a lot like traditional employees are in, fact, independent contractors and are therefore not entitled to the vast benefits offered to employees, like employer-sponsored health care, a minimum wage, unemployment insurance, and paid time off. Since the provision of benefits in the United States is overwhelmingly tied to employment, those without a traditional employer-employee relationship are left without access to crucial, sometimes life-saving benefits and other forms of social insurance. It is not only important that New York State corrects this wrong and reclassifies hundreds of thousands of workers as employees, but that creative solutions are developed to lift the floor for those who remain independent contractors.

COVID-19 has laid bare the challenges that independent contractors face when they are not guaranteed unemployment insurance and have no consistent access to employer-sponsored health care. This is especially true for the City's food delivery workers, for-hire vehicle drivers, home-health aides,

and others working in the gig economy have been particularly vulnerable to the economic and health impacts of the COVID-19 crisis. Unlike most office workers, the jobs of many independent contractors working in the service sector require near-constant interaction with people in public spaces, putting them at greater risk for exposure to COVID-19 and other illnesses. Thousands of these workers have labored throughout the crisis, delivering New Yorkers food, caring for their sick, and driving them safely around the city. But many others have been unable to work altogether, either because of state-mandated closures or a lack of incoming projects. In April 2020, Brad put a survey in the field to better understand how the COVID crisis was impacting the work of freelancers and independent contractors. 74% of respondents had lost 75-100% of their income, 82% planned to apply for unemployment benefits, and 80% were worried about making rent. While some companies have stepped up during the pandemic to expand health and safety protections to their contingent workers and the federal government implemented the pandemic unemployment assistance (PUA) program which extended unemployment insurance to independent contractors, these workers need universal, comprehensive, and permanent protections that will last long after the COVID crisis passes.

A focus on the contingent economy, and the workers that power it, is not new for Brad. As Council Member, Brad has worked in close partnership with gig workers, freelancers, and labor advocates to introduce and pass a number of laws that establish and expand workplace protections for hundreds of thousands of independent contractors. Some of those efforts include:

- Brad won the first law in the country to guarantee a living wage for Uber, Lyft and other for-hire drivers. Organizing together with the New York Taxi Workers Alliance and the Independent Drivers Guild, he raised driver pay by an average of \$5,000 per year, putting more than \$500 million in the pockets of drivers rather than Uber and Lyft's bank accounts.

- In partnership with the Freelancers Union, Brad created the “Freelance Isn’t Free Act” to give groundbreaking protections to freelancers/independent contractors to ensure they are paid on time and in full. Hundreds of freelancers have recovered millions of dollars they were owed.
- In partnership with the Freelancers Union, Model Alliance, and other organizations, Brad passed a law that extends the benefits of New York City’s Human Rights Law to freelancers and independent contractors, ensuring that all workers are protected from discrimination and harassment in the workplace.
- At the height of the COVID-19 crisis, Brad introduced a bill that would permanently extend New York City’s Paid Sick and Leave Law to certain misclassified workers, including Uber and Lyft drivers, delivery workers, and others. No one should have to choose between their livelihood and their life. When this bill passes, hundreds of thousands of independent contractors would immediately have access to paid sick days to care for themselves or for a family member.

New York City has long been home to a strong, creative sector that has helped drive our economy and made it an exciting and attractive place to live. The growth and vibrancy of the creative sector will be an incredibly important aspect of the city’s short- and long-term economic recovery and the importance of providing job protections and stability to workers in that field cannot be overstated. Jobs on Broadway and in the hotel sector, unique in the strength of their respective unions, have brought countless workers to New York City who have powered industries that have brought tens of billions of dollars to the city each year. In the short-term, Brad will keep fighting to ensure that gig workers are not left out of federal aid packages, from stimulus checks to unemployment, and will keep building on the [COVID relief and resources](#) his office has assembled to help independent contractors navigate these uncertain times.

But to build a durable economic recovery in the longer-term, we must invest in a future-forward workforce and economic development strategies that foster innovation and inclusive, shared growth. That means encouraging entrepreneurial innovation, creating new high-quality, high-paying jobs, and putting workers first, including independent

contractors and gig workers. While it remains to be seen just how New York City will recover from the effects of COVID-crisis, it seems highly plausible that gig work, with its temporary, flexible, and remote nature, will become an even more commonplace part of our economy. To ensure shared economic prosperity, we must ensure that independent contractors, an increasingly large share of our city’s workforce, have sufficient labor protections and choice, control, and power in their workplaces. To that end, Brad proposes:

## RECLASSIFYING CERTAIN INDEPENDENT CONTRACTORS AS EMPLOYEES

Under federal and state law, employees are afforded a number of benefits that are not extended to independent contractors. As such, bad-acting companies have an incentive to misclassify workers as independent contractors, even as their workers function as traditional employees. Misclassification not only hurts individual workers, but also has larger macroeconomic effects: employers must withhold and pay payroll taxes for their employees but do not have to for independent contractors. Uber, Lyft, and other rideshare companies have received the most public attention for misclassifying their workers as independent contractors (and for fighting state efforts to reclassify them) but misclassification is rampant in a number of industries, including those that are not regularly thought of as part of the “gig” economy: personal and health services, construction, teaching and social service, and retail, among others.

Brad is supportive of the work of the DIRECT Coalition who is fighting for broad and thoughtful reclassification legislation in the New York State Legislature. Instead of an overly complicated test that gives companies countless opportunities to skirt responsibilities, New York State should adopt a version of the three-pronged ABC test, used by 33 states in some part of their employment law, and with thoughtful carve-outs for folks working in professional services who prefer their status as true independent contractors. To ensure that New York State’s reclassification legislation is tailored to address the needs of the workers who need it most (and not have unintended negative consequences on others), the DIRECT Coalition is working with a number of freelancer groups to create a version of the ABC test that takes into account the realities of freelance work.

Once passed, reclassified workers across New York State will then be entitled to paid sick leave, employer-sponsored health insurance, a minimum wage, and numerous other benefits currently tied to traditional employment.

## **INSTITUTING A FREELANCER & INDEPENDENT CONTRACTOR MINIMUM PAY STANDARD, STARTING WITH NYC'S DELIVERY WORKERS**

While reclassifying hundreds of thousands of workers in New York would mark a decisive step forward in the advancement of labor protections, there will still remain many independent contractors in need of expanded benefits. One of those benefits (and perhaps the most important) is a minimum wage protection. Currently, independent contractors and freelancers enter into a wide range of contracting relationships with hiring entities: some have high-paying contracts, others receive sub-minimum wages once the full project cost is divided by hours worked, and others have no contract at all.

Just like Brad implemented a minimum pay standard for Uber and Lyft drivers, so should New York City implement one for all freelancers and independent contractors, starting with low-wage workers in a sector directly supporting the City's recovery from COVID-19: delivery workers. This workforce — largely made up of BIPOC and immigrant New Yorkers — endures grueling work hours and dismal treatment as they risk their lives every day, exposing themselves and their families to coronavirus, with minimal workplace protections as the result of their independent contractor status. This workforce has grown exponentially since the pandemic hit. Advocates estimate that there were over [50,000 delivery workers](#) before COVID-19. Uber Eats alone reports that the company has added 30,000 couriers to its workforce since last March.

These workers are now organizing to demand the fair treatment they deserve, including shelter from the cold and bathroom access in addition to minimum wage protections. A [recent analysis](#) of Brad's minimum pay standard for Uber and Lyft drivers found that it increased driver pay by over 9% with an aggregate pay increase of \$340 million to drivers in 2019. It also found that demand is relatively inelastic in response to higher costs — in other words, New Yorkers are willing to pay a little extra for services so that workers can make a living wage. We are confident the same will be true for delivery workers.

The minimum pay standard for delivery workers should start with New York State's legal minimum wage of \$15 plus a percentage for paid time off and payroll taxes. Raising the floor for these independent contractors by ensuring they are all paid at least a minimum wage is not only good for workers who will be better able to provide for their families but is also good for our city's economy at a time when we are in desperate need for stimulus. A minimum pay standard for delivery workers can also lay the groundwork for the expansion of these critical protections to all independent contractors down the road. No independent contractors should be paid less than the equivalent of minimum wage. For independent contractors who are paid on a project basis, these protections can prevent hiring parties from exploiting workers by requiring all hiring entities to detail the estimated number of hours for project completion and ensuring that the total project cost divided by total project hours is above the legal minimum pay standard.

## **CREATING A FLEXIBLE PORTABLE BENEFITS FUND TO OFFER BENEFITS & SOCIAL INSURANCE**

In the United States, many social protections such as health insurance, workers' compensation, and paid time off are linked to employment. In the absence of robust state-sponsored public benefits, workers must rely on their employers (who can offer a range of benefits from very generous to pathetically scant) to provide economic and social stability. Independent contractors and gig-workers, while some of the lowest-paid and exploited workers (and, indeed, some of the most in need of workplace benefits) are left out of a system crafted in the 20th century and not meaningfully updated since.

So that independent contractors, temporary workers, and others working in the gig economy can accrue and access benefits and social insurance, New York City should pursue the creation of a portable benefits fund. While many advocate for the provision of social benefits like health insurance at the federal level, until such action is taken benefits that follow the worker rather than the employer would mark an important step forward. Portable benefits are tied to an individual, not a particular employer, and can, therefore, move with said individual from job to job or project to project without a loss of coverage. Independent contractors are widely supportive of portable benefits proposals; our survey found that

76% of respondents were interested in receiving portable benefits. And a staggering 82% stated that they were most concerned with the provision of health insurance, illustrating just what a difference Medicare for All would have on the independent contracting workforce.

Portable benefits models have been proposed in Washington State and New Jersey and can take many different forms with a wide array of blended funding mechanisms. Here in New York City, we should require companies whose workforce includes a large percentage of independent contractors to contribute to a portable benefits fund (where the worker would contribute, too) that would accrue across jobs. The New York City Department of Consumer and Worker Protection would administer the benefits.

## PROHIBITING NON-COMPETE CLAUSES IN FREELANCE CONTRACTS

Non-compete clauses are rampant in creative freelance fields where they are used to chain workers to specific, and sometimes low-paying and exploitative, jobs. Writers, journalists, and musicians are often required to sign non-compete or exclusive contracts to get gigs, restricting their freedom to write, create, and perform as they like and, more importantly, to earn what they deserve. These clauses have been found to depress wages and restrict wage growth. Moreover, the use of these clauses contributes to the unequal balance of power between contractors and their hiring entities: a balance that should be upended in favor of the worker. Brad has introduced a bill to ban the use of non-compete clauses in independent contractor and freelance contracts. 56% of our survey respondents believed the elimination of non-compete clauses would directly benefit them and their business.

## PROHIBITING FORCED ARBITRATION CLAUSES IN FREELANCE CONTRACTS

Many hiring entities require workers to sign contracts that force them into arbitration over employment-related disputes and prevent them from going to court or engaging in class-action lawsuits. Arbitration is regularly conducted by the same hiring entity from which the dispute has arisen. Similar to non-compete clauses, forced arbitration clauses offer the hiring party a great deal of power while severely restricting the

freedom of the contractor. Forced arbitration clauses, in particular, make it harder for workers to challenge wage theft, harassment, and discrimination. The #MeToo movement brought renewed attention to forced arbitration clauses and the role they play in silencing women who complain about sexual harassment. Prohibiting these clauses will help level the playing field between contract parties, particularly those who are most vulnerable to harassment and discrimination.

## ENFORCEMENT AND AWARENESS BUILDING

Expanding protections for independent contractors is critical, but we must also ensure these new laws are sufficiently enforced and build more awareness among both hiring parties and independent contractors about these protections. Using Brad's [Exploitative Employer Wall of Shame](#), the Comptroller's office will name and shame the hiring parties consistently stifling freelancers, forcing workers into predatory non-compete and forced arbitration contracts, and misclassifying their workers. Brad will use the Exploitative Employer Wall of Shame as a form of co-enforcement, in which the government, workers, worker organizations and high-road companies collaborate to help hold bad hiring parties to account.

In addition, Brad will explore ways to lift up and reward the good-actor hiring parties that go above and beyond their legal requirements to strengthen these workers' safety nets, like contributing to workers' health insurance payments, retirement savings, and unemployment insurance. Finally, Brad will fight for more education and awareness building efforts to ensure that hiring parties and independent contractors alike know their rights and obligations under the law through public awareness campaigns and organizing.

## SURVEY METHODOLOGY

In January 2020, Brad Lander, in partnership with the Freelancer’s Union, distributed an online, 18-question survey to freelancers and independent contractors living in New York City. The survey was housed on NGPVan and disseminated via targeted email, social media, and digital ads. The survey received 413 responses; 403 individuals answered affirmatively to the question: “Are you currently working as a freelancer or independent contractor?” seven answered in the negative, and three answered “I don’t know.” The survey findings are derived from the responses of the 403 self-identifying freelancers and independent contractors. All percentages are rounded to the nearest ten.

In April 2020, Brad Lander distributed another online survey to freelancers and independent contractors, this time with six questions and focusing specifically on the personal, economic impacts of the COVID-19 crisis. The survey was housed on NGPVan and disseminated via targeted email. The survey received 129 responses. The survey findings are derived from the responses of all 129 self-identifying freelancers and independent contractors. All percentages are rounded to the nearest ten.