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Alternative Employment Arrangements

As of June 2024, roughly 168 million Americans were employed.¹ The conventional model of employment arrangement predominantly involves an employer-employee relationship, governed by federal laws and regulations such as the Fair Labor Standards Act. However, as employment arrangements are increasingly complex and evolving, there are alternative employment arrangements; and the Bureau of Labor Statistics (“BLS”) has been monitoring these arrangements since 1995 using the Contingent Work Survey (“CWS”).²

The latest round of CWS, released in 2018, identified independent contractors, defined as “workers who are identified as independent contractors, independent consultants, or freelance workers, regardless of whether they are self-employed or wage and salary workers,” as the largest category of alternative employment arrangements.³ In May 2017, the agency estimated that there were 10.6 million independent contractors, representing 6.9 percent of total employment in the U.S.⁴ As shown in **Table 1**, independent contractors are the most common in the service industries, such as professional & business services and construction.

Table 1: *Distribution of Independent Contractors by Industry*⁵

Industry	Percentage of Total
Professional & business services	25.1
Construction	19.3
Financial activities	9.6
Education & health services	9.6
Retail trade	6.4
Leisure and hospitality	6.2
Transportation & utilities	5.7
Manufacturing	2.2

¹ “Labor Force Statistics from the Current Population Survey.” *U.S. Bureau of Labor Statistics*. <<https://www.bls.gov/web/empsit/cpseea03.htm>> (accessed July 15, 2024).

² Abraham, Katharine G. and Susan N. Houseman. “Contingent and alternative employment: Lessons from the contingent worker supplement, 1995–2017.” *U.S. Department of Labor* (2022). <https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_Contingent_Worker_Supplement_Report_Feb2021.pdf> (accessed July 15, 2024).

³ “Contingent and Alternative Employment Arrangements Summary.” *U.S. Bureau of Labor Statistics* (June 7, 2018). <<https://www.bls.gov/news.release/conemp.nr0.htm>> (accessed July 15, 2024).

⁴ *Id.*

⁵ “Table 8. Employed Workers with Alternative and Traditional Work Arrangements by Occupation and Industry, May 2017.” *U.S. Bureau of Labor Statistics*. <<https://www.bls.gov/news.release/conemp.t08.htm>> (accessed July 15, 2024).

In recent years, “gig works” such as rideshare drivers, represented a particularly interesting type of emerging employment arrangement. These types of work, termed “electronically mediated work” by the BLS, consist of “short jobs or tasks that workers find through website or mobile apps that connect them with customers as well as arrange payment for the tasks.”⁶ The BLS found that roughly 1.6 million people were engaged in electronically mediated work, as of May 2017. Among these workers, 37 percent were classified as independent contractors, more than five times the economy-wide percentage of 6.9 percent.⁷

Interestingly, more than half of those engaged in “electronically mediated work” were classified as “workers with traditional arrangements,” that is, employer-employee relationships.⁸ Behind the scenes, there has been ongoing legal debate on the proper classification of gig-workers, most notably in the State of California. In 2019, the state passed a landmark law (known as Assembly Bill 5, or AB-5) that requires companies like Uber and Lyft to hire workers as employees, not independent contractors.⁹ A year later, California voters approved a ballot measure (Proposition 22) to exempt these companies from having to classify their gig-workers as employees.¹⁰ While a California judge ruled Proposition 22 unconstitutional in 2021, the decision was later overturned in an appeals court.¹¹ The case is heading to the California Supreme Court and the decision could have ramifications beyond the Golden State.

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⁶ “Frequently Asked Questions About Data on Electronically Mediated Employment.” *U.S. Bureau of Labor Statistics*. <<https://www.bls.gov/cps/electronically-mediated-employment-faqs.htm>> (accessed July 15, 2024).

⁷ “Electronically Mediated Work: New Questions in the Contingent Worker Supplement.” *U.S. Bureau of Labor Statistics* (Sept. 2018). <<https://www.bls.gov/opub/mlr/2018/article/electronically-mediated-work-new-questions-in-the-contingent-worker-supplement.htm>> (accessed July 15, 2024).

⁸ *Id.*

⁹ Campbell, Alexia Fernández. “California just passed a landmark law to regulate Uber and Lyft.” *VOX* (Sept. 18, 2019). <<https://www.vox.com/2019/9/11/20850878/california-passes-ab5-bill-uber-lyft>> (accessed July 15, 2024).

¹⁰ Goswami, Rohan. “Uber and Lyft Shares Rise After California Court Victory Lets Them Classify Drivers as Contractors.” *CNBC* (Mar. 13, 2023). <<https://www.cnbc.com/2023/03/13/uber-lyft-shares-rise-after-california-court-upholds-prop-22.html>> (accessed July 15, 2024).

¹¹ *Id.*