



Current Legal Protections and Opportunities to Support American Workers

To explore how Governors and state leaders may better understand and support the on-demand workforce, in 2018 the National Governors Association Center for Best Practices and the Institute for Work & the Economy, with support from the **Annie E. Casey Foundation** and **Walmart**, accepted a bipartisan cohort of states into the **State Collaborative Consortium to Understand and Support the On-Demand Workforce** (the Consortium): Alabama, Colorado, Connecticut, Hawaii, Illinois, Maryland, New Jersey, Pennsylvania and Virginia.

In the context of emerging technologies, increasing automation, and rapid globalization, national and state policymakers often focus on skills, education and training when considering how to best prepare for the 'future of work.' It is, however, equally important to understand how policy, legal frameworks and corporate structures can affect or incentivize specific work arrangements and how those work arrangements impact workers – particularly in light of the increasing shift toward on-demand work. By focusing on these issues as part of their broader economic and workforce development strategies, Governors can enhance their state's economic competitiveness and increase access to economic opportunity and financial stability for all workers in their state, including those engaged in on-demand work.

On-Demand Worker

Any worker who does not receive a W-2 tax form for some or all of their compensated work, such as entrepreneurs and the self-employed, as well as workers whose income is reported on a W-2 form but whose schedules and places of work are unpredictable and episodic.

The **Current Legal Protections and Opportunities to Support American Workers** framework presented below describes existing legal protections and opportunities for states to shape policy to benefit all workers, including on-demand workers. The framework is based on the Consortium's work over the past two years, including the

development of an [ontology of characteristics and classifications](#) of the on-demand workforce as well as recommendations for [understanding and supporting](#) the on-demand workforce, and is organized around four key categories of worker-employer relationships, each with their own legal protections:




Traditional Employee – Full-time, salaried workers who receive a paycheck and whose income is reported on a W-2 form.

Shift/Temporary/Seasonal Employee – Workers who receive a paycheck and whose income is reported on a W-2 form but whose scheduling, terms and conditions of short-term or temporary employment, are episodic and determined by the entity that pays them.

Dependent Non-Employee – Workers who whose income is not reported on a W-2 form and whose scheduling, terms and conditions of short-term or temporary employment, are episodic and determined by the entity that pays them.

Incorporated Entrepreneur – Workers who have established a legally incorporated businesses and who have a primary goal of growing the business into an ongoing enterprise.

Key

	Workers in this category benefit from this type of protection or support under the law.
	Some workers in this category benefit from this type of protection or support under the law.
	Workers in this category do not benefit from this type of protection or support under the law.

Protections To On-Demand Workers

Most workplace benefits are tied to formal and (often) full-time employment, leaving many on-demand workers without the types of protection that workers with formal employment agreements enjoy. Workers in formal employer-employee relationships are guaranteed certain protections, stability and working conditions under federal regulations, including the Civil Rights Act of 1964, the Fair Labor Standards Act of 1938, the Age Discrimination in Employment Act of 1967 and the Occupational Safety and Health Act of 1970. However, those protections do not extend to those who are not classified as employees. In some cases, they do not cover part-time or temporary employees, either. This absence of protections and benefits may leave independent, part time and temporary workers in precarious financial, safety and legal circumstances. States can explore how they can provide on-demand workers with opportunities to achieve stability and security and create a more level playing field so that employers can benefit from the flexibility of on-demand work.

Legal Protection or Institutionalized Support	Traditional	Shift/Temporary/ Seasonal Employee	Dependent Non-Employee	Incorporated Entrepreneur
Hourly minimum wage protections	✓ (1)	✓ (1)	✗	✗
Consistent and predictable work schedules	✓ (2)	✗	✗	✗
Workers compensation	✓ (3)	✓ (3)	✗	✗
Unemployment Insurance	✓ (4)	✓ (4)	✗	✗
Employer sponsored healthcare, retirement and paid leave	✓ (5)	✓ (6)	✗	✗
Recourse for legal challenges	✓ (7)	✓ (7)	✗	✗

- 1) The [Fair Labor Standards Act](#) requires that all employees are paid at least the federal minimum wage.
- 2) Full-time employees generally work consistent schedules and receive consistent compensation. Non-exempt employees are [guaranteed](#) over-time pay under the [Fair Labor Standards Act](#).
- 3) Employees are protected by the [Occupational Safety and Health Administration](#) workplace safety requirements and can file to receive workers compensation benefits through their [state office](#) in case of a job related illness or injury.
- 4) Employees who meet their state's work and wage requirements are eligible to receive [unemployment insurance](#) if their employment is terminated through no fault of their own.
- 5) The Affordable Care Act requires that most employers provide health insurance for full-time employees.
- 6) The [Affordable Care Act](#) requires that employers provide health insurance for some employees, including some who work on a part-time or shift basis. Some employers also offer other benefits like retirement and paid leave to employees.
- 7) The US [Equal Employment Opportunity Commission](#) enforces federal laws that make it illegal for most employers to discriminate against employees based on race, color, religion, sex, national origin, age, disability or genetic information.

Opportunity to Expand Protection or Support

(Hourly minimum wage protections)

Expand existing minimum wage requirements or equivalent to more workers.

- **The New Mexico Legislature [passed](#) a bill that expanded the state minimum wage and overtime laws to domestic workers, who had previously been exempt.**

Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur

- **The New York City Taxi and Limousine Commission [set](#) the net minimum hourly wage for these drivers at \$17.22. This net wage is required to take into account the cost of operating and maintaining their vehicle; it is set higher than the local minimum wage of \$15 to account for the additional tax burden that on-demand workers face**

Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur

- **Require all firms to pay all of their workers a minimum hourly wage.**

Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur

(Consistent and predictable work schedules)

Require that workers be given adequate notice of their schedule.

- **The Oregon Legislature [passed](#) the Fair Workweek Law, which requires certain employers to give their employees an estimate of how many hours they will work each week throughout their employment and at least two weeks of notice in their work schedule.**

Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur

- **Require that all firms give adequate notice to workers of when they are required to be at work.**

Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur

(Workers compensation)

Create a workers' compensation equivalent for on-demand workers.

- **The New York State Workers' Compensation Board (WCB) [launched](#) a new Virtual Hearing Center (VHC), a digital adjudication platform that allows participants in a workers' compensation hearing to attend the hearing remotely.**

Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur

- **Create a workers compensation system that all workers can opt into.**

Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur

(Unemployment Insurance)

Expand access to unemployment insurance to on-demand workers.

- **The Oregon Legislature [passed](#) the Fair Workweek Law, which requires certain employers to give their employees an estimate of how many hours they will work each week throughout their employment and at least two weeks of notice in their work schedule.**

Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur

- **Require that all firms give adequate notice to workers of when they are required to be at work.**

Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur

(Employer sponsored healthcare, retirement and paid leave)

Expand access to benefits to on-demand workers.

- **Washington recently [launched](#) a new public Long-Term Care Insurance Program to help workers offset the costs of long-term care. The program is funded through a payroll tax but self-employed workers are able to opt-in by paying the full premium.**

Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur

- **Establish non-employer based, portable healthcare, retirement and paid-leave benefits systems that all workers can opt into.**

Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur

(Recourse for legal challenges)

Establish an entity to which on-demand workers can report questionable activity and receive legal counsel.

- **States could set clear guidelines for what constitutes discrimination and retaliation for on-demand workers. Then, they can provide services that advise on-demand workers about options for recourse when such events occur.**

Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur

Legal And Administrative Clarity For On-Demand Workers

Persistent lack of clear rules, regulations and oversight for the on-demand economy makes enforcement of and compliance with existing laws more difficult. Certain actors may benefit from this lack of clarity, to the detriment of on-demand workers. As result, states may look to fairly and clearly enforce existing laws as well as provide new guidance to make clear the definition of “employee” for purposes of determining whether workers are entitled to the benefits and protections of formal employees.

Legal Protection or Institutionalized Support	Traditional	Shift/Temporary/ Seasonal Employee	Dependent Non-Employee	Incorporated Entrepreneur
Consistent enforcement of worker classification	✓ (1)	✓ (1)	✗	✓ (2)
Clear expectations and documentation of tax obligations	✓ (3)	✓ (3)	✗	✗
Fair and unbiased hiring and work scheduling	✗	✗	✗	✗

- 1) Workers that are classified as employees benefit from a variety of protections and supports under the [Fair Labor Standards Act](#), [Occupational Safety and Health Act](#) and other federal statute.
- 2) Incorporated entrepreneurs choose to pursue legal classification as a limited liability company (LLC).
- 3) All employees receive a W-2 form from the [IRS](#) that specifies their tax obligations.

Opportunity to Expand Protection or Support

(Consistent enforcement of worker classification Hourly minimum wage protections)

Audit state processes for enforcing worker classification and develop clear guidelines for determining classification.

- California enacted a blanket law ([AB5](#)) that [establishes](#) a three-part “ABC” test for establishing employment. The passage of [Proposition 22](#) limited which workers this would apply to.
 Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur
- In the state of Montana, in order to be an independent contractor, workers must be free from control or direction from the hiring agent and engaged in their own independently established business, occupation, trade, or profession. The contractor may be covered under a self-elected workers’ compensation insurance or be [approved for a waiver](#) from the [Montana Department of Labor and Industry](#). This process is designed to ensure those doing work under the independent contractor classification meet all of the requirements and that workers are aware of their rights.
 Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur

(Clear expectations and documentation of tax obligations)

Provide on-demand workers with official documentation that clarifies their tax obligations.

- **To provide more documentation and clarity for on-demand workers, Vermont and Massachusetts have lowered the threshold for receiving a Form 1099-K from \$20,000 to \$600.**

Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur

- **Provide income documentation to all workers, regardless of earnings.**

Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur

(Fair and unbiased hiring and work scheduling)

Require greater transparency and independent evaluations of worker information and employment algorithms.

- **State leaders could experiment with regulations aimed at requiring independent validation of performance or customer ratings.**

Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur

Mobility And Development Of On-Demand Workers

The growth of the on-demand economy poses new challenges for traditional education and training systems. Over the past several decades, workers have faced an increasing economic burden for training and education that could exacerbate existing disparities among populations and geographies. Many barriers that all workers face in achieving career mobility and advancement are especially burdensome for on-demand workers. Addressing these barriers for all workers can support a more dynamic workforce where workers have the ability to advance and move into and out of the type of work that they prefer.

Legal Protection or Institutionalized Support	Traditional	Shift/Temporary/Seasonal Employee	Dependent Non-Employee	Incorporated Entrepreneur
Affordable opportunities for reskilling and upskilling	✗	✗	✗	✗
Regulatory system that promotes job mobility	✗	✗	✗	✗
Opportunities to enhance entrepreneurial skills	✗	✗	✗	✗

Opportunity to Expand Protection or Support

(Affordable opportunities for reskilling and upskilling)

Support and incentivize participation in lifelong learning.

- States can **incentivize** employer investment in worker training. Connecticut employers are credited 5% of all expenses incurred for worker training. Mississippi employers receive a 50% tax credit for the costs of training an employee, up to \$2,500 per employee per year.

Traditional |
 Shift/Temporary/Seasonal Employee |
 Dependent Non-Employee |
 Incorporated Entrepreneur

- **Provide tax incentives for workers to invest in their own education and training. For example, states could expand eligible uses of 529 accounts to provide tax benefits for adult workers to invest in lifelong learning opportunities.**

Traditional |
 Shift/Temporary/Seasonal Employee |
 Dependent Non-Employee |
 Incorporated Entrepreneur

(Regulatory system that promotes job mobility)

Reduce barriers to work such as occupational licenses and noncompete agreements.

- **Arizona Gov. Doug Ducey [signed](#) an executive order requiring regulatory boards to justify any license that is not required by at least 25 other states. Further, in 2019, the state [enacted](#) an occupational license reciprocity policy that allows most workers to practice their profession with their out-of-state license, with some restrictions.**
 Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur
- **Illinois Freedom to Work Act [prohibited](#) noncompete agreements for workers who earn less than \$13 an hour. Governors can evaluate which types of noncompete agreements are necessary in their state to support innovation and which types impose undue hardship on workers.**
 Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur

(Opportunities to enhance entrepreneurial skills)

Pennsylvania Gov. Tom Wolf in 2018 [launched](#) the PA Business One-Stop Shop as the sole source for guiding entrepreneurs and small businesses through all stages of development, from planning and startup to operation and expansion, consolidating what had previously been several difficult-to-navigate programs.

- **State leaders could experiment with regulations aimed at requiring independent validation of performance or customer ratings.**
 Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur
- **In West Virginia, the Governor's School of Entrepreneurship, a free summer program [created by](#) the West Virginia Department of Education and West Virginia University, is a three-week boot camp for high school students that teaches them the basics of business and enables them to participate in pitch and startup competitions.**
 Traditional | Shift/Temporary/Seasonal Employee | Dependent Non-Employee | Incorporated Entrepreneur

Related Resources

- [Understanding and Supporting the On-Demand Workforce](#)
- [Information and Guidance on Supporting On-Demand Workers Through the COVID-19 Crisis](#)
- [State Guide for Preparing the Future Workforce Now](#)