

## Opinion Letter Address Independent Contractors in a Gig Economy

The traditional brick and mortar stores are becoming a thing of the past and many companies have joined the virtual marketplace. The virtual marketplace can offer a wide variety of products or services to a wide market “on-demand” and often accessible through any smartphone. Therefore, making it enticing to everyone to want to start a business in the virtual market.

Companies no longer need long-term employees who work 9-5. They are now looking for workers who can be on standby and ready to perform any requested task; similar to musicians traveling the countryside looking for their next gig. As a result, the workforce has more independent contractors than ever.

The Gig Economy is being driven by independent contractors and freelancer workers rather than the traditional stationary full-time employees; for example, Wonolo provides insight on [50 Leading Apps to Find Work and Live the Gig Economy Lifestyle](#) and lists companies like Uber, Amazon Flex, Etsy, and Grubhub.

In an [opinion letter](#) dated April 29, 2019 the U.S. Department of Labor (USDOL) provides clarification regarding as to what is an independent contractor in the gig economy. To answer this question the USDOL refers to the Economic Realities Test that consists of six factors to help determine if an individual is classified as employee or as an independent contractor. The six factors that need to be reviewed in making this determination are as follows;

*The nature and degree of the potential employer's control;* basically, the business has “relinquished control” over the workers making the worker “less economical dependent” on a solo business. Workers of this nature should have flexibility in hours, breaks, work location all while having the freedom to work or interact with the competitors. Workers do not have a “exclusive employment agreement” and should not have restrictions making it impracticable to work elsewhere. Also, the workers performance is not monitored or reviewed by management.

*The permanency of the worker's relationship with the potential employer;* in this case there is no ongoing working relationship established between both parties for any indefinite amount of time. In addition, there is not restrictions placed on interacting with competitors during or after the working relationship has ended. Often workers are hired on a task bases and once the task has been completed, ideally that is the end of the relationship between both parties.

*The amount of the worker's investment in facilities, equipment, or helpers;* If the business makes investments towards equipment, locations or by providing help to aid the worker; that hired worker may become dependent on the provided resources of that company. Independent workers are to be self-sufficient in completing the task and not have to rely on

resources to be provided by the business. Provided resources enable workers in pursuing other opportunities therefore decreasing their independence of working at other locations.

*The amount of skill, initiative, judgment, or foresight required for the worker's services;* are not necessary a required skill nor is a specialized learned task. Independent workers have the freedom to implement their own judgment and foresight to improve their own personal profits. The opinion letter uses an example of a worker utilizing two different companies that provide transportation to leverage themselves in the market. Here the worker benefits themselves and the company only benefits in completed task "like piecework." Independent contractors ideally, have their own skills to complete the task and they were not trained by the company as a required skill.

*The worker's opportunities for profit or loss;* is in the workers control. Workers are not given regular compensation, but rather is in control of their own profits or loss. As mentioned, workers have the skills, judgment or foresight to select as little or as many jobs needed to suite their own personal needs. Workers have the means to market themselves by utilizing different job platforms; for example, a worker can toggle back and forth between Uber or Lyft and select jobs they feel are more profitable.

*The extent of integration of the worker's services into the potential employer's business;* providing the worker is not incorporated in the business plan of the company they will be viewed as independent workers and not as employees. Most of the job platforms provide a service of connecting people together and they are not in the nature of doing the services themselves. Ideally, the company provides a completed product or referral services to the worker and once information has been exchanged that worker can be connect directly to a person who is looking for a skill set the worker can provide.

As the virtual market continues to expand, businesses are going to have to become more familiar with detecting the differences between employees and independent workers by utilizing the Economic Realities Test and identifying the six factors associated with it. In the end, if the difference become blurred that worker who you thought was an independent contractor may be interpreted as an employee; putting your company at risk.