

Reimagining Workplace Protections for Independent Contractors

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The current system of workplace protections in the US leaves behind millions of independent contractors. These workers face high risks of discrimination, wage theft, and economic insecurity, yet have few legal protections to mediate these risks. Questions around independent contractors' needs and rights are intrinsically tied to questions of classification. Businesses can shed an estimated 30 percent of payroll and other taxes by classifying workers as independent contractors rather than employees, which incentivizes misclassification.¹ Addressing misclassification can help meet millions of workers' urgent needs for better protections. Yet tackling misclassification will not offer solutions for true independent contractors, who equally deserve core workplace rights and protections.²

This fact sheet, extracted from the report *Reimagining Workplace Protections: A Policy Agenda to Meet Independent Contractors' and Temporary Workers' Needs*, highlights key challenges independent contractors face and offers actionable policy solutions.

TABLE 1

Challenges to Independent Contractors' Rights and Protections and Possible Solutions

Challenge	Solutions
Companies misclassify workers as independent contractors to avoid employment costs.	<ul style="list-style-type: none"> Clearly define worker classification, with adequate enforcement for violations, to ensure workers' classification aligns with the work they perform.
Many independent contractors (as well as many misclassified workers) face discrimination and harassment in their work, in the form of denied opportunities and differential treatment while working.	<ul style="list-style-type: none"> Create protections specifically for independent contractors. Extend existing employee protections to independent contractors.
Getting paid promptly (or at all) is an ongoing challenge for many independent contractors.	<ul style="list-style-type: none"> Require and set standards for contracts that provide key worker protections. Create an accessible administrative complaint process for workers. Establish industry-specific pay guidelines to address wage theft.
Independent contractors are typically ineligible for any paid sick time or other paid time off.	<ul style="list-style-type: none"> Adjust pay guidelines to reflect workers' costs of taking time off. Implement tax credits to reimburse independent contractors for the expense of time off. Include independent contractors in broader social insurance systems, including paid family and medical leave programs. Create sector-specific paid time off programs.

Promising Solutions

- Several states have adopted laws to protect independent contractors against discrimination or harassment, whether by expanding existing laws for employees or enacting targeted new rights.³

- New York City's Freelance Isn't Free Act⁴ provides freelance workers with a range of protections to ensure payment from hiring entities, including requiring a written contract,⁵ a requirement of full payment within a specified time frame,⁶ and protection against retaliation.⁷
- The federal Families First Coronavirus Response Act (FFCRA) provides emergency paid leave benefits in relation to the COVID-19 crisis through refundable tax credits to self-employed workers.⁸ Some states with paid family and medical leave social insurance programs allow self-employed workers to opt in to coverage, giving them access to key wage replacement benefits.⁹

Any measure intended to improve working conditions for one type of work arrangement must consider possible unintended consequences, including companies' increased reliance on subcontracted firms as a result of stronger enforcement against worker misclassification. A comprehensive agenda strengthening protections across nonstandard arrangements can ensure standards are raised for all, promoting equity for workers and fair competition between businesses.

How Many Independent Contractors Are There?

Almost 10 percent of the workforce—15 million people—rely on self-employment as their primary income source. Less than half of these workers—about 40 percent—have incorporated as a business. The remainder, about 6 percent of the workforce—are unincorporated independent contractors.

On surveys, independent contractors are disproportionately white and have higher incomes than the overall workforce, but these measures often miss workers who are likely to be misclassified. Although data on the demographics of misclassified workers are unavailable, misclassification is more common in industries where Black and Latinx workers are overrepresented.

Notes

¹ "Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries" (New York: National Employment Law Project, 2020), <https://www.nelp.org/publication/independent-contractor-misclassification-imposes-huge-costs-workers-federal-state-treasuries-update-october-2020/>.

² Tanya Goldman and David Weil have developed a useful framework for thinking about expanding workers' rights, called the Concentric Circle framework. In this framework, all workers are assured core essential rights, regardless of work arrangement, including minimum pay and a safe workplace free from discrimination. A secondary circle includes a presumption of employment for those rights tied to classification, and a tertiary circle includes mechanisms to ensure access to key workplace benefits. See "Who's Responsible Here? Establishing Legal Responsibility in the Fissured Workplace," *Berkeley Journal of Employment and Labor Law* 42 (forthcoming 2021).

³ See, for example, Md. Code Ann., State Govt § 20-601(c) (West 2019) (including independent contractors in antidiscrimination protections for employees); NY LEGIS 160 (2019), 2019 Sess. Law News of N.Y. Ch. 160 (A. 8421), Section 1 (McKINNEY'S), codified at NY Exec. Law § 296-D (prohibiting discrimination and harassment against nonemployees).

⁴ City of New York Local Law 140 of 2016, codified at N.Y.C. Admin. Code § 20-927 et seq.

⁵ N.Y.C. Admin. Code § 20-928.

⁶ N.Y.C. Admin. Code § 20-929.

⁷ N.Y.C. Admin. Code § 20-930.

⁸ See Julie Kashen et al., *Collective Responses for Independent Contractors during COVID-19* (New York: The Century Foundation, April 2020), <https://tcf.org/content/report/collective-responses-for-independent-contractors-during-covid-19/?session=1>.

⁹ "Comparative Chart of Paid Family and Medical Leave Laws in the United States," A Better Balance, November 12, 2020, <https://www.abetterbalance.org/resources/paid-family-leave-laws-chart/>.