

**UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF TEXAS**

COALITION FOR WORKFORCE  
INNOVATION, et al.,

Plaintiffs,

V.

JULIE A. SU, et al.,

Defendants.

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) Civil Action No. 1:21-CV-130  
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## BRIEF OF *AMICUS CURIAE*

**FILED BY THE SOCIETY FOR HUMAN RESOURCE MANAGEMENT  
AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS MOTION FOR SUMMARY  
JUDGMENT**

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**AMICUS CURIAE SOCIETY FOR HUMAN RESOURCE MANAGEMENT’S BRIEF IN  
SUPPORT OF PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

The Society for Human Resources Management (“SHRM”) files this brief as *Amicus Curiae* in support of the Plaintiffs’ motion for summary judgment.

**I.**

**INTRODUCTION: IDENTITY AND INTEREST OF AMICUS CURIAE**

As the trusted authority on all things work, SHRM is the foremost expert, researcher, advocate, and thought leader on issues and innovations impacting today’s evolving workplaces. With nearly 340,000 members in 180 countries, SHRM touches the lives of more than 362 million workers and their families globally. Our members understand that to recruit and retain top talent, organizations must offer myriad options that provide modern workers the autonomy they desire. To compete in the modern global work environment, providing independent work opportunities is not only valuable but also necessary.

To these ends, SHRM opposes the U.S. Department of Labor’s (“DOL” or “Department”) 2024 regulation entitled “Employee or Independent Contractor Classification Under the Fair Labor Standards Act,” which makes it more difficult to classify individuals as independent workers bY tipping the scale to such a degree so that all workers, regardless of whether traditionally viewed as employees or not, are now classified as employees. This hinders economic participation and growth.

Given its unique workplace knowledge and its economic posture, SHRM has a significant and immediate interest in this litigation. SHRM represents professionals attuned to the “on-the-ground” implications of agency rulemaking. More specifically, SHRM represents HR professionals who must engage with the contours — or lack thereof — of the new Rule to ultimately render impactful and complicated classification decisions. These decisions can lead to high-stakes litigation, so SHRM’s members — and indeed all economic stakeholders — benefit from a clear standard governing the classification of workers, such as that provided in the 2021

Rule; the unclear nature of the 2024 Rule, conversely, is detrimental to SHRM members simply doing their jobs.

Not only does *Amicus* provide a unique point of view as an advocate for HR professionals, but the 2024 Rule also affects SHRM as an employer in its own right, as SHRM often uses the excellent work of independent contractors. Therefore, SHRM — uniquely — both *represents* and *is part of* the regulated community.

## II.

### **SUMMARY OF AMICUS**

Through this brief, SHRM will detail why the diverse organizations and companies SHRM represents agree this Court should grant the Coalition for Workforce Innovation (CWI's) motion for summary judgment to reinstate the 2021 Rule. HR professionals are charged with numerous indispensable responsibilities, including — and most pertinent here — deciding whether a worker will be classified as an independent contractor or employee. In rendering such difficult decisions, the premium HR professionals place on the clarity and certainty of the rules governing these difficult decisions — as well as the import of the impacts that flow from these classification determinations — cannot be overstated.

SHRM supported the DOL's previous regulation of Independent Contractor Status under the Fair Labor Standards Act ("FLSA"), published on January 7, 2021, because it drew clear corners to evaluate worker classification. By instructing courts on which predominant factors to focus, the previous rule provided clarity, certainty, and consistency. The 2024 Rule, unfortunately, does not provide the same certainty or clarity, but rather accomplishes the opposite: the balancing test established by the 2024 Rule is not only less certain than the 2021 Rule, but it is also less certain than the DOL Rule in place prior to the promulgation of the 2021 Rule.

SHRM's concerns with the 2024 Rule stem from the regulation's failure to account for the increasingly complex, modern economy that necessitates independent work. Members of every generation are choosing independent work: nearly 50 percent of Generation Z and 44 percent of

Millennials engage in some form of independent work; yet, as described in more detail below, the 2024 Rule favors an employee classification, even if the worker prefers independent work.

SHRM's apprehension stems from a concern that businesses will forgo providing independent workers with beneficial safety or anti-harassment training due to the risk of being deemed to have exerted too much control over these workers. In other words, the 2024 Rule disincentivizes employers from providing certain benefits and training out of fear of, e.g., class-action lawsuits alleging misclassification of workers and the severe penalties that can accumulate from allegedly incorrect classifications.

HR professionals used an abundance of resources to prepare to execute classification decisions under the 2021 Rule. Then, the DOL improperly withdrew the Rule before HR Professionals had the chance to engage with it and before the DOL could evaluate the Rule's success. SHRM agrees with the Court's earlier conclusion that the Rule's withdrawal and replacement was arbitrary and capricious.

Finally, in its press release announcing the effective date of the new rule, the DOL noted that it will "help employers and workers better understand when a worker qualifies as an employee" and "provides guidance on proper classification" by allegedly "restor[ing] the multifactor analysis used by courts for decades." But that is simply not what the 2024 Rule accomplishes; in fact, it accomplishes the opposite.

In light of its representation of professionals who make classification decisions that bear serious legal implications, SHRM focuses its comments, for the most part, on the practical implications of the new rule, rather than the legal arguments addressed in other briefing, e.g., CWT's.

In addition to its representation of HR Professionals, SHRM also submits this *amicus* brief from its perspective as a member of the regulated community. Indeed, Like many organizations, SHRM leverages independent workers to obtain specific skills, talent and knowledge, that are not related to the day-to-day operations/functions of the organization but are an essential part of the success of the organization. The 2024 Rule threatens SHRM's utilization of such specialized work.

### III.

#### **BACKGROUND ON IMPORTANCE OF INDEPENDENT WORK**

##### **A. Independent Work Is Here To Stay And Employers Need Consistent Rules**

From October 18, 2022, to November 1, 2022, SHRM conducted an electronic survey of 956 randomly-sampled HR professionals from active SHRM members and 1,018 independent workers from a third-party online panel. *See* DOL Independent Contractor Ruling Survey Results (2022 Survey), attached as Exhibit (Ex.) A at pp. 1-2. SHRM specifically geared the 2022 Survey's questions toward the DOL's then-proposed, now-final "totality of circumstances" standard for classifying independent workers. The 2022 Survey found that nearly 75 percent of respondents' organizations utilize independent workers. *Id.* Further, independent workers are most satisfied with the *flexibility* independent work offers, such as (a) the location(s) they can work, (b) their working schedules, (c) control in setting their schedules, and (d) choosing the type of work they perform.

Additionally, SHRM conducted a survey of independent contractors, employees, managers, and HR professionals in April 2019 in collaboration with SAP Success Factors (2019 White Paper) about independent contractor classification and the benefits of independent work for businesses and workers. Specifically, the research surveyed 940 independent contractors (external workers), 350 employees (internal workers), 424 managers who work with external workers, and 1,175 HR professionals in a broad variety of sectors, industries, organizational sizes, and geographic areas in the United States.<sup>1</sup> *See* 2019 White Paper, attached as Exhibit B at pp. 6, 10-12. The Paper found independent workers have a variety of reasons for engaging in external work. The most cited reasons for becoming an independent worker were "being able to set my own schedule" (49%), "choosing how many hours I work" (40%), and "choosing my work location" (33%). *See id.* at p. 18; *see also* Ex. A at pp. 10-11. In other words, workers choose independence because of its *flexibility*.

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<sup>1</sup>Independent contractors, employees, and managers were sourced from National Opinion Research Center's national representative AmeriSpeak® Panel.

The primary concern voiced by HR professionals is the **need for clarity and specificity** around independent contractor classification. In 2019, nearly three-quarters of HR professionals reported they were somewhat concerned, concerned, or very concerned about the legal landscape of external work, with 11 percent reporting that they were very concerned. *See* Exhibit B at p. 39.<sup>2</sup> When asked to identify the biggest issue or challenge they would like to see resolved related to external workers, many HR professionals cited **legal ambiguity** regarding the use and management of external workers as their greatest concern; the 2024 Rule embodies the same legal ambiguity our members are most concerned over.

The 2021 Rule alleviated ambiguity concerns by restricting the classification test to focus initially on two core factors. However, the 2024 Rule offers a return to legal limbo for HR professionals. It is SHRM members, i.e., these HR professionals, who must render these decisions, and the 2024 Rule will, in most scenarios, require these decision-makers to have difficult conversations with workers who prefer independence that they must be categorized as employees.

#### **B. The Rule Dissuades Employers From Offering Training Or Benefits**

SHRM is concerned with an organization's ability to assist not only employees of a given member company, but also any workers properly classified as independent contractors. Doing so ensures the success and well-being of all workers, employees, independent workers, and our nation's economy as a whole. While many independent workers do not want the "employee" designation, and the lack of flexibility that classification entails, those same workers undoubtedly benefit from certain training and select benefits; however, the 2024 Rule hinders such progressive training and benefits.

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<sup>2</sup>SHRM research has also found that businesses are spending nearly 44% of all workforce spending on external workers, that 65% of businesses "say the external workforce is important or very important to operating at full capacity to meet market demands," and that 68% of businesses "say the external workforce is important or very important to developing or improving products and services." (Ex. C at p. 4.) Likewise, Gallup found in a 2018 study that 36% of all U.S. workers participate in the so-called "gig economy" in some capacity, while finding that 29% of all U.S. workers have some sort of alternative work arrangement as their primary job, including a quarter of all full-time workers and roughly half of all part-time workers. (Ex. D at p. 2.) In fall 2022, Morning Consult conducted a survey of 1251 app-based workers to test their preferences as it relates to in-house work — the survey found that 77% of app-based drivers preferred maintaining the current model for classifying app-based workers. (Ex. E at p. 3.)

While more workers choose independence, the fear of misclassification may reduce<sup>3</sup> their opportunity to receive helpful workplace training or benefits like paid sick leave or safety training. Only 17 percent of those workers surveyed in 2022 said they would *not* be interested in additional benefits, while 65 percent said they would. In fact, nearly two-thirds of independent workers indicated a slight interest in additional benefits, even if meant accepting a lower pay rate. SHRM suggests that the 2024 Rule should have clarified that businesses can offer training and benefits without disrupting the independent worker's classification.

**C. The Rule Is Detrimental to SHRM as a Member of the Regulated Community**

As noted above, in order for SHRM to accomplish its purposes of representing HR Professionals and supporting all workers, regardless of classification, it must utilize independent work that is not necessarily in direct relation to the day-to-day operations of the organization, but the 2024 Rule could render these workers employees. Examples of such necessary functions include, but are not limited to:

- **Media/Audio-visual skills** – SHRM has increased its public-facing profile, which requires more advanced media/audiovisual skills for webcasts, video messaging, and televised commercials.
- **Academic professions** – As the trusted authority on all things work, SHRM leverages expertise from thought leaders on issues and innovations impacting today's evolving workplaces, which includes academic professionals from the world's leading institutions.
- **Events management expertise** – as a global organization with nearly 340,000 members in 180 countries, SHRM connects and educates its members through live and virtual conferences all over the United States and the world, e.g., this year SHRM's Annual Conference & Expo will be held in Chicago; SHRM's Tech24 Conference & Expo will be held in Hyderabad, India in May; and SHRM's GGC HR Summit will be held in Dubai in June. Due to the geographic location of these conferences, SHRM leverages local skills and event management talent in an event's specific location to ensure a successful and culturally-aligned conference.

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<sup>3</sup>See Pophal-Grensing, Lin, *When Gig Workers Want Benefits, Should You Offer Them?* July 25, 2019, available at <https://www.shrm.org/topics-tools/news/benefits-compensation/gig-workers-want-benefits-offer>.

The 2024 Rule upends SHRM's classification of the 100 independent workers it currently utilizes.

#### IV.

#### ARGUMENT

##### A. **SHRM Supported The 2021 Rule's Stable Interpretation**

The 2021 Rule recognized the longstanding significance of the economic realities test and that its elements date back to the United States Supreme Court's decision in *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 728 (1947) and the subsequent decision in *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 324-326 (1992), which together provided that the scope of employment under the FLSA is determined by the economic reality of the relationship at issue. The 2021 Rule addressed Judge Frank H. Easterbrook's criticism that the economic realities test "is unsatisfactory both because it offers **little guidance for future cases** and because any balancing test begs questions about which aspects of 'economic reality' matter and why." *Sec. of Labor v. Lauritzen*, 835 F.2d 1529, 1539 (7th Cir. 1988) (Easterbrook, J. concurring) (emphasis added).

By designating core factors for consideration, the 2021 Rule provided clear direction, permitting HR professionals to prioritize certain factors — the nature and degree of control over the work and the worker's opportunity for profit or loss — when analyzing worker classifications. Indeed, the majority of HR professionals polled by SHRM in 2022 (61%) identified "[t]he nature and degree of control the worker has over the terms and conditions of their employment" as the most important factor in the classification analysis. This aligns with the 2021 Rule's focus on control as a core factor. Ex. A at p. 3. The 2021 rule was simply a better reflection of the kinds of guidance that HR professionals rendering these classification decisions need to perform their tasks with consistency.

The 2024 Rule provides none of the same certainty. Comprehensive consideration of the various factors set forth in the 2024 Rule requires HR professionals to speculate on how the DOL or a court may interpret each individual criterion *ad hoc*. This will inevitably result in inconsistencies in its application. The resulting confusion will lead to continued uncertainty for employers and workers.

Instead of promulgating a new and confusing rule, the DOL would have better served the economic stakeholders — including workers — by providing additional guidance on the 2021 Rule and by allowing HR professionals the time to analyze and engage with the 2021 Rule to determine whether a worker is or is not an employee. The withdrawal and replacement of the rule prior to permitting businesses to engage with the 2021 Rule and DOL to analyze the framework’s effectiveness was arbitrary and capricious.

### **B. Withdrawal Of The 2021 Rule Was Arbitrary And Capricious**

The premature withdrawal of the 2021 Rule, which a Federal District Court in this district<sup>4</sup> found violated the APA, extinguished DOL’s ability to evaluate the Rule’s impact on worker classification. The repeal of the 2021 Rule should be viewed as arbitrary and capricious because its prompt withdrawal precluded the DOL from developing any evidentiary support demonstrating alleged detrimental effects.

Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

*Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S. Ct. 2856, 2867 (1983). There is **no** “evidence before the agency” on whether the 2021 Rule could succeed, so SHRM would be remiss if it did not mention that the rule’s withdrawal constitutes arbitrary and capricious agency action. *Id.*

### **C. Reality Should Supersede Theory**

The realities of independent work should supersede any theoretical construction of a rule governing worker classification. While basing its multi-factor test on the idea that it encompasses the totality of the circumstance, the on-the-ground realities of independent work are not captured

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<sup>4</sup>See *Coal. for Workforce Innovation v. Walsh (CWI)*, No. 1:21-CV-130, 2022 WL 1073346, at \*19 (E.D. Tex. Mar. 14, 2022)(citation omitted), *vacated as moot on other grounds*, 22-40316 (5th Cir. Feb. 21, 2024).



by the 2024 Rule’s formulation. For example, the 2024 Rule implies that unexecuted contractual rights may be more important than real-world practices, so even a theoretical job duty existing only on paper can lead to alleged misclassification.

Consideration of the various factors in the 2024 Rule will require HR professionals to speculate on how the DOL or a court may interpret each individual criterion. Courts may be well situated to engage with numerous factors in a *post hoc* analysis of the matters before them, but the same is not true of our members, who must make daily and frequent forward-facing decisions on how to classify their workers. The 2024 Rule will result in HR professionals and business executives spending increased time and resources to classify workers while also resulting in potentially more worker misclassification of workers — a setback to inefficiency.

**D. The DOL’s Discussion Of, Or “Guidance” On, The Various Factors  
Inappropriately Tilts the Analysis Toward Employee Classification.**

An objective reading of the 2024 Rule demonstrates that its purpose is to push more workers into the “employee” classification, even when that is not what workers want. The 2024 Rule limits workers’ right to contract as they choose, even when there is evidentiary support to demonstrate that most independent contractors purposefully decide to engage in these relationships. *See, e.g.*, Bureau of Labor Statistics, Contingent and Alternative Employment Arrangements News Release (May 2017) (“79 percent of independent contractors preferred their arrangement over a traditional job.”).

*1. Opportunity for Profit or Loss Depending on Managerial Skill*

The first factor in the 2024 Rule directs courts to consider the opportunity for profit or loss depending on managerial skill, which is to be considered *equally* alongside the other stated factors. The 2021 Rule appropriately designated this as one of two core factors. The prior formulation reflected the modern economy, in which many independent contractors perform knowledge-based jobs that require little investment in materials or equipment.

DOL lists “facts” that “can be relevant” when considering this factor; these “facts” push toward classifying workers as employees and further confuse the classification analysis. The Agency identifies one such fact as “whether the worker makes decisions to hire others, purchase materials and equipment, and/or rent space.” 29 CFR 795.110(b)(1). Evaluating material purchases and the need for brick-and-mortar space does not account for the realities of the modern economy when workers can engage from anywhere across the globe with only a phone, tablet, or laptop.

Another fact DOL identifies is “whether the worker accepts or declines jobs or chooses the order and/or time in which the jobs are performed.” *Id.* The ability to determine whether, when, and where to work implies independence and should indicate a contractor relationship. The 2024 Rule confusingly suggests “[s]ome decisions by a worker that can affect the amount of pay that a worker receives, such as the decision to work more hours or take more jobs, generally do not reflect the exercise of managerial skill indicating independent contractor status under this factor.” *Id.* Managing the amount of work performed by determining the projects accepted and the time allotted to maximize profit inherently relates to the opportunity for profit and should warrant an independent contractor classification. Requiring our members to make classification decisions based on such vague and confusing factors is arbitrary and capricious.

The economic reality is that a worker who can profit by taking other jobs is more independent —and therefore less economically dependent on the employer— than an employee who cannot. The ability to make that choice should point to an independent relationship. However, the Department’s analysis under the 2024 Rule considers this fact to tip the scale toward classifying workers as employees.

## 2. *Investments by the Worker and the Employer*

Investments were a sub-criterion of the opportunity for profit or loss factor under the 2021 Rule. With this factor now considered separately, and on an equal analytical footing with other factors, DOL suggests that the tools necessary for workers to perform their jobs, including an owned or leased vehicle, do not constitute the kind of “capital or entrepreneurial” investments that “indicate independent contractor status.” 2024 Rule at 1676.

Further, the 2024 Rule explains “the worker’s investments should be considered on a relative basis with the employer’s investments in its overall business.” 29 CFR 795.110(b)(2). This interpretation is inconsistent with the Supreme Court’s interpretation of the investment factor in *United States v. Silk*, 331 U.S. 704, 716 (1947). When the Supreme Court first addressed the investment factor in *United States v. Silk*, it did so only by reference to the *worker’s* investment.<sup>331</sup> U.S. at 716. Indeed, the Court addressed only the fact that workers “own[ed] their trucks” in its analysis, and it engaged in no inquiry as to the investments that the putative employer made in its own business. *Id.* That, of course, makes sense, as a worker investing in his own equipment is, and should be, a sign of his economic independence.

The 2024 Rule acknowledges that a worker’s investment need not be (and rarely ever is) of the same magnitude and scope as the employer’s investment. 2024 Rule at 1676-1677. This indicates — again — the rule’s predilection for finding an employer-employee relationship. If “worker’s investment[s are] . . . rarely of the same magnitude and scope as the employer’s,” *id.*, then this factor skews toward employment during an analysis of worker classification.<sup>5</sup>

### 3. *Degree of Permanence of the Work Relationship*

DOL’s current interpretation of the permanence of the work relationship factor does not speak to the independence or voluntariness of the business-worker relationship in any meaningful way. The 2024 Rule instead promotes instability in contracting.

A term of specific duration, whether or not it is continuous with other specific terms, is evidence of independence. A relationship of indefinite duration, however, does not exist simply because parties have continued to contract with each other over a series of defined terms.

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<sup>5</sup>SHRM notes that, based on the comments to the NRPM, the DOL “modified the last sentence of the proposed regulatory text for the investments factor to be two sentences, reading: ‘The worker’s investments need not be equal to the potential employer’s investments and should not be compared only in terms of the dollar values of investments or the sizes of the worker and the potential employer. Instead, the focus should be on comparing the investments to determine whether the worker is making similar types of investments as the potential employer (even if on a smaller scale) to suggest that the worker is operating independently, which would indicate independent contractor status.’” The DOL claims this “modification should address commenters’ concerns that the size of and/or dollar investments of the employer will determine the outcome when comparing the investments.” But the 2024 Rule still directs HR Professionals to consult the value of an employee’s investment versus the alleged employer, which will almost always point to an employee classification, once again demonstrating the Rule’s predilection for employee classifications.

Indefiniteness is determined by the absence of any term whatsoever. To this end, the 2024 Rule capriciously focuses on the length of the relationship in the discussion of the permanence factor.

The 2024 Rule is also unclear on how courts should resolve the “permanence” issue when a worker and business have a seemingly continuous relationship but the work within that relationship is sporadic. Flexible work within a lengthy relationship is a sign of independence rather than dependence, but the 2024 Rule arbitrarily provides for the converse. The 2024 Rule’s focus on permanence undermines the public policy benefits of independent work.

#### 4. *Nature and Degree of Control*

The 2024 Rule demotes the nature and degree of control exercised by the hiring entity – perhaps the most telling factor in evaluating worker classification – from a core consideration of the 2021 Rule to equal footing with other previously subordinate factors. This is certain to lead to confusion.

The 2024 Rule adopts an antiquated view of economic independence in its consideration of a worker’s ability to work for others under the control factor. The 2024 Rule suggests that a worker who “holds multiple lower-paying jobs for which they are dependent on each employer for work to earn a living” resembles an employee, whereas a worker who works multiple jobs “due to their business acumen and entrepreneurial skills” is more akin to an independent contractor. 2024 Rule at 1704.

However, low-wage earners may, in fact, *gain* independence by maintaining the flexibility to work with multiple hiring entities. Indeed, contract work may provide these workers with control over their schedules, offering the ability to maximize their earnings and better attend to their personal obligations. The 2024 Rule hinders that contractual freedom.

The 2024 Rule improperly repudiates the 2021 Rule’s de-emphasis on whether a company requires a service provider to comply with legal and safety standards, to carry insurance, or to meet contractually agreed-upon deadlines or quality control standards. 2024 Rule at 1694 (“[A] potential employer’s control over compliance methods, safety, quality control, or contractual or customer service standards that goes beyond what is required by specific, applicable Federal, State,

Tribal, or local law or regulation may in some – but not all – cases be relevant to the analysis of a potential employer’s control if it is probative of a worker’s economic dependence.”). It makes little sense that a company paying for a specific service could not communicate its expectations to a service provider without running the risk of a misclassification finding. Moreover, requiring service providers to comply with legal and safety obligations, as well as to maintain insurance, is not a manifestation of control.

Companies are obligated, legally as well as ethically, to maintain a safe working environment that ensures the health of their employees, their partners, and their customers. The 2024 Rule will deter some companies from meeting their obligations in this respect by holding the specter of misclassification over their heads for simply trying to do right by the independent workers who make their businesses viable. While this consequence may have been unintended or unanticipated, it will impact businesses and workers in reality.

#### 5. *Integral Part of the Employer’s Business*

Employers and HR professionals were surprised by the inclusion of this factor in the 2022 NPRM. The extent to which the work performed is an integral part of the hiring entity’s business is, for all intents and purposes, Prong B of the ABC test, which relevant DOL leaders<sup>6</sup> have noted cannot be mandated without congressional action.

The analysis accompanying the 2021 Rule deemed whether the work performed is integral to the hiring entity’s business to be a superfluous factor. 2024 Rule at 62253 n.432 (quoting *Sec’y of Labor, U.S. Dep’t of Labor v. Lauritzen*, 835 F.2d 1529 (7th Cir. 1987) (Easterbrook, J. concurring) (“[e]verything the employer does is ‘integral’ to its business – why else do it?”). The reason for this is plain. As a general rule, companies hesitate to engage workers to provide services that are *not* “critical, necessary, or central” to their businesses. The fact that a company has decided

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<sup>6</sup>At her appearance before the House Education and the Workforce Committee on May 31, 2023, acting Secretary of Labor Julie Su stated that “AB 5 is not federal law. It would only be federal law if Congress decides that it should be.” President Biden’s then nominee for administrator of the U.S. Department of Labor’s Wage and Hour Division, Jessica Looman, at a hearing before the Committee on Health, Education, Labor and Pension stated that “[t]he Wage and Hour Division and the Department of Labor do not have the authority to adopt by regulation the ABC test, unless it’s changed by Congress.”

to allocate resources to pay for a worker's services confirms the value of the worker's services to the company. That is not necessarily indicative of employment status, however.

Here, the 2024 Rule departs from years of precedent by shifting the focus of the classification determination from the extent to which a worker is actually *integrated* into a company's business to the nature of the services performed by the worker.

The U.S. Supreme Court's decision in *Rutherford* is instructive. There, the Court held that meat boners at a meat processing plant were employees based not on the fact that their work was closely related to the company's primary business, but rather because of "the circumstances of the whole activity." *Rutherford*, 331 U.S. at 730-731. The evidence showed that the company closely supervised the boners, that the boners performed tasks in concert with the company's employees, and that the boners utilized the company's premises and equipment to perform their work. *Id.* In other words, the boners were so integrated into the company's operations as to nullify their contractor designation. *See id.* The *Rutherford* Court focused on the fact that the boners' services were intertwined with the company's operations, not on the degree to which their services were related to the company's ultimate profit-generating activities.

HR professionals are well-equipped to assess the extent to which a worker is integrated into a company's operations based on the common-sense framework set forth in *Rutherford* and its progeny, to which the 2021 Rule adhered. On the other hand, the 2024 Rule will require HR professionals to speculate as to whether a worker's services are "critical, necessary, or central" to the business, regardless of the circumstances of the work being performed. It is not difficult to foresee that HR professionals, particularly those in large, multi-faceted organizations, will be bogged down in this assessment if the 2024 Rule remains law.

#### 6. *Skill and Initiative*

The 2024 Rule purports to convert a standard consideration utilized by myriad independent contractor classification tests – the degree of skill required by the work – into an assessment of a worker's business acumen. This is not only a drastic departure from a well-settled standard, but it

also negates the 2024 Rule’s decree that a worker’s *opportunity* for profit or loss based on their managerial skill is relevant to their classification as an employee or an independent contractor.

#### 7. *Additional Factors*

The 2024 Rule puts unknown “additional factors” on equal analytical footing as the other, more well-established factors – such as control. The inclusion of a catchall confirms the serious lack of clarity inherent to the 2024 Rule. *See* 2024 Rule at 1717 (“[T]o assign a predetermined and immutable weight to certain factors ignores the totality-of-the-circumstances, fact-specific nature of the inquiry that is intended to reach a multitude of employment relationships across occupations and industries and over time”). Providing such vague, ill- or un-defined “additional factors” equal weight as the more established criteria creates a greater risk of inconsistency in how the rule will be interpreted by SHRM’s members, other employers, enforcement agencies, and the courts.

#### **E. The 2024 Rule Is Less Certain Than The Pre-2021 Rule**

The 2024 Rule’s framework imposes an unweighted, vague, multi-factor balancing test that depends on the unlimited minutiae of individual circumstances, as well as the various interpretations of stakeholders from workers to businesses and from the DOL and to the courts. Even the standard effective prior to 2021 provided those tasked with rendering these decisions with better guidance and some clarity concerning the weight to be afforded each factor.

Specifically, the 2024 Rule’s “totality of the circumstances” framework is even more uncertain than the “economic realities” framework of the rule prior to 2021. The 2024 Rule permits — even requires — broad consideration of multiple facts across indistinct factors without guidance on how that analysis should occur to appropriately identify and weigh each criterion in the final analysis.

Prior to 2021, numerous courts provided guidance that certain economic realities factors are entitled to greater weight than others, including, specifically, the general right of control factor and the opportunity for profit or loss factor. *See, e.g., Walsh v. Med. Staffing of Am., LLC*, 580 F. Supp. 3d 216, 229 (E.D. Va. 2022) (“The degree of control a putative employer has over the way an alleged employee’s work is performed is the ‘most important factor’ in making this

determination.” (quoting *Smith v. CSRA*, 12 F.4th 396, 413 (4th Cir. 2021)); *Brown v. BCG Attorney Search*, No. 12 C 9596, 2013 WL 6096932, at \*1 (N.D. Ill. Nov. 20, 2013) (“Although several factors are considered in determining whether an individual is an employee or an independent contractor, the employer’s right to control is the most important in making the distinction.”); *Bureerong v. Uvawas*, 922 F. Supp. 1450, 1469 (C.D. Cal. 1996) (“Ultimately Plaintiffs’ most important allegation is that Defendants ‘directly employed plaintiffs . . . and exercised meaningful control over the work performed.’”). Under the 2024 Rule, conversely, every factor must be given equal weight, including the un-defined “additional factors.”

## V.

### CONCLUSION

For the reasons set forth above, SHRM urges the Court to adopt the position advocated by CWI in the underlying litigation: That not only does the new rules violate the APA procedurally, but it is also substantively deficient. Additionally, the 2024 Rule, unlike the 2021 Rule, or even the standard prior to the promulgation of the 2021 Rule, leaves SHRM members in an analytical quagmire. Instead of offering a rope to guide the necessary worker classification decision, the 2024 Rule pushes the analysis further into uncertainty.

DATED: April 30, 2024

Respectfully submitted,

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HUMAN RESOURCE MANAGEMENT**



**CERTIFICATE OF SERVICE**

I hereby certify that on April 30, 2024, the foregoing was electronically filed with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record:

/s/ Scott P. Mallery

Scott P. Mallery

## **EXHIBIT A**

## DOL Independent Contractor Ruling Survey Results

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### Methodology

**HR Survey:** The survey was fielded electronically to a random sample of HR professionals from the active SHRM membership from October 18, 2022 to November 1, 2022. In total, 956 members participated in

the survey. Academics, students, consultants, and retired HR professionals were excluded. Respondents represented organizations of all sizes in a wide variety of industries across the United States.

*For the purposes of this report, “small” organizations refer to those with fewer than 100 employees, “medium” organizations refer to those with 100–499 employees, and “large” organizations refer to those with 500+ employees.*

**Independent Workers Survey:** A sample of 1,018 U.S. independent workers was surveyed online from October 18 to October 22, 2022. Respondents were sourced from a third-party online panel. All respondents currently worked as an independent worker, including but not limited to those who perform independent and online contract work, service delivery contract work, subcontractor work, those who identify as “gig” workers, and temporary workers.

## HR Survey Results

### Key Findings

1. **Most HR professionals don’t anticipate that the DOL’s “totality of circumstances” standard will have a large impact on their organization’s use of independent workers.**
  - Only **4%** of HR professionals anticipate that the proposed “totality of the circumstances” standard will reduce their organization’s use of independent workers by “**a lot.**” Around **1 in 4 (24%)** anticipate it will reduce their use of these workers “**somewhat.**”
2. **When determining how to classify their workers, HR professionals say their organization is more likely to rely on certain factors than others.**
  - When determining how to classify workers, the top two factors organizations consider are the nature and degree of control the worker has over the terms and conditions of their employment (**61%**) and the degree of permanence of the work relationship (**53%**).
3. **Nearly 3 in 5 (57%) organizations are sourcing independent workers through personal connections. The next most common method is to use several agencies (50%).**
  - **Over 1 in 3 (36%)** HR professionals say their organization currently uses one or more independent worker(s) who previously performed the same work for their company as employees.
4. **Nearly 2 in 3 (65%) organizations wouldn’t choose to offer benefits to their independent workers, even if offering those benefits didn’t risk these workers’ non-employee status.**

### About the HR Respondents

- **73%** of respondents said their organizations utilize independent workers
  - *Large organizations are more likely to utilize independent workers (84%) than medium organizations (73%) or small organizations (67%).*
- Among respondents whose organizations use independent workers, **48%** were unsure whether their organization operates in a state that has enacted state-specific laws and/or regulations related to independent workers (**25%** said yes; **27%** said no).

- **Nearly 4 in 5** HR professionals would describe their organization's experience working with independent works as positive (55%) or very positive (24%).
  - 18% somewhat positive
  - 3% somewhat negative
  - <1% negative
  - 0% very negative

#### What factors do organizations consider when classifying workers?

- When determining whether a worker should be classified as an employee or an independent worker, the top two factors organizations are most likely to consider are:
  - The nature and degree of control the worker has over the terms and conditions of their employment **(61%)**
  - The degree of permanence of the work relationship **(53%)**
  - Other evaluation methods used:
    - The extent to which the work performed is an integral part of their organization's business (39%)
    - The extent to which the work performed requires skill and initiative (34%)
    - The extent of relative investments by the worker and their organization (14%)
    - The worker's opportunity for profit or less dependent on their managerial skill (10%)

#### How does HR think the "totality of circumstances" standard will impact their organization's use of independent workers?

- Only **4%** of HR professionals anticipate that the "totality of the circumstances" standard in the DOL's newly proposed rule will reduce their organization's use of independent workers by "**a lot.**"
  - 24% say it will impact their organization's use of these workers "somewhat"
  - 40% say there "won't be too much" of an impact
  - 32% say it won't impact their organization's use of these workers "at all"

#### What types of independent workers do employers use most?

- **Independent contractor workers (68%)**
  - *Workers who find customers or companies either online or in person who pay them directly to fulfill a contract or provide a product or service. Examples include an independent consultant or a freelance worker.*
    - *Organizations in the professional, scientific, and technical services industry (80%) and the government and education industry (77%) are more likely to utilize independent contractor workers than organizations in other industries (66%).*
- **Temporary workers (51%)**
  - *Workers are paid by a temporary service or staffing agency that contracts time out to other organizations to perform temporary tasks and jobs. Examples of work include manual labor, administrative tasks, and other activities that can be performed with little or no advanced training.*

- *Organizations in the manufacturing industry (73%) are more likely to utilize temporary workers than organizations in other industries (48%).*
- **Subcontractor workers (43%)**
  - *Workers are paid by a company that contracts services out to other organizations. Examples of work include security, landscaping, computer programming, construction, project management, or maintenance.*
    - *Organizations in the construction industry (68%) are more likely to utilize subcontract workers than organizations in other industries (41%).*
- **On-call contract workers (13%)**
  - *Workers who are paid for doing work where they are prequalified and placed in a pool of people who can be called “on an as needed basis” to cover specific work shifts or assignments. This may vary from working a few hours to working several days or weeks in a row. Examples include substitute teachers and construction workers supplied by a union hiring hall.*
- **Service delivery contract workers (8%)**
  - *Workers who are paid for performing short in-person tasks or jobs for customers who they meet through a website or mobile app. Examples include the worker using their own car to drive people from one place to another, delivering something, or doing someone’s household tasks or errands.*
- **Online task contract workers (7%)**
  - *Workers who are paid for doing tasks done entirely online and the companies they contract with coordinate payment for the work. Examples include transcribing information, completing surveys, or completing online personal assistant activities such as booking appointments.*

#### How do organizations source their independent workers?

- The most common ways organizations source independent workers are...
  - Through personal connections with independent workers **(57%)**
  - Through the use of several agencies **(50%)**
- Other methods:
  - Utilizing web platforms that independent workers use to find work (13%)
  - Outsourcing complete functions (11%)
  - Through a single agency (10%)
- *Small organizations are more likely to source independent workers through personal connections with independent workers (74%) than medium organizations (54%) and large organizations (39%).*
- *Large organizations are more likely to source independent workers through several agencies (71%) than medium organizations (53%) and small organizations (28%).*
- *Organizations in the professional, scientific, and technical services industry (68%) are more likely to source independent workers through personal connections with independent workers than organizations in other industries (54%).*

#### Why do organizations use independent workers?

- The most common reasons why organizations use independent workers are...
  - To staff specific projects or initiatives **(65%)**
  - To address seasonal or short-term needs **(54%)**

- To access unique skill sets or experience that their employees don't have **(54%)**
  - Other reasons:
    - To assess talent prior to hiring them as employees (25%)
    - Independent workers are able to provide equipment that their organization doesn't have access to in order to perform the services (17%)
    - To save costs on talent (14%)
    - The time to engagement from the first contact is much shorter for independent workers (9%)
  - *Large organizations are more likely to use independent workers to address seasonal or short-term needs (66%) than medium (53%) and small (45%) organizations.*
  - *Small organizations are more likely to use independent workers to access unique skill sets or experience that their employees don't have (61%) than large organizations (49%).*
  - *Large organizations are more likely to use independent workers to assess talent prior to hiring them as employees (31%) than small organizations (19%).*
  - *Organizations in the administrative, support, and other services industry (81%) and government and education industry (74%) are more likely to use independent workers to staff specific projects and initiatives than organizations in other industries (64%).*
  - *Organizations in the construction industry (34%) and the government and education industry (29%) are more likely to use independent contractors because they're able to provide equipment that their organization doesn't have access to than organizations in other industries (15%).*
  - *Organizations in the manufacturing industry are more likely to use independent contractors to assess talent prior to hiring them as employees (47%) than organizations in other industries (21%).*
  - *Organizations in the professional, scientific, and technical services industry are more likely to use independent workers to access unique skill sets or experience their employees don't have (63%) than organizations in other industries (52%).*
  - *Organizations in the retail, wholesale, and transportation and warehousing industries are more likely to use independent workers to address seasonal or short-term needs (71%) than organizations in other industries (53%).*
- **35%** of the organizations surveyed have entered an independent work arrangement because the individual(s) wanted the right to accept or reject opportunities based on their own schedule.
  - Only **18%** of organizations surveyed have entered an independent work arrangement because the individual(s) wanted to be paid outside the pay and benefit structure offered to employees
  - Only **13%** of the organizations surveyed have entered an independent work arrangement because the individual(s) wouldn't accept an employment opportunity.

- **55%** of the organizations surveyed have not entered into an independent work arrangement for any of these reasons.
- **Over 1 in 3 (36%)** HR professionals say their organization currently uses one or more independent worker(s) who previously performed the same work for their company as employees.
  - **54%** say their organization does not currently employ an independent worker who previously performed the same work for them as an employee
  - **10%** were unsure

#### Why don't some organizations use independent workers?

- Reasons why organizations don't use independent workers
  1. We prefer to hire people as employees (60%)
  2. The nature of our work doesn't allow us to use independent workers (39%)
  3. Hiring independent workers doesn't fit into our organizations' culture (26%)
  4. We're concerned about legal risk or difficulty maintaining compliance (16%)
  5. We don't have the resources to hire independent workers (3%)
  6. We don't have a way to find independent workers (2%)
- Among HR professionals whose organizations don't currently use independent workers, only **4%** say their organization "probably" or "definitely" plans to use independent workers in the future.
  - Probably or definitely will (4%)
  - Might or might not (28%)
  - Probably or definitely won't (68%)

#### About independent workers' hours and pay rates

- **Over 3 in 4 (77%)** HR professionals say that, on average, the independent workers who provide services to their organization work 40 hours or less in a week; **6%** say these workers work more than 40 hours in a week on average, and **17%** were unsure.
  - 10 hours or less (20%)
  - 11-20 hours (16%)
  - 21-30 hours (12%)
  - 31-40 hours (29%)
  - More than 40 hours (6%)
  - Unsure (17%)
- **69%** of HR professionals say that their state's or city's minimum wage is higher than the current federal minimum wage of \$7.25/hour.
  - *92% of HR professionals in the West say that their state's or city's minimum wage is higher than the federal minimum wage of \$7.25/hour versus 80% in the Northeast, 70% in the Midwest, and 49% in the South.*
- Among HR professionals who say their state's or city's minimum wage is higher than the federal minimum, **93%** say independent workers who provide services to their organization are paid at or above their state or city's minimum wage rate (**Less than 1%** say no; **6%** are unsure).



- **On average, approximately what rate are the independent workers who provide services to your organization paid for their work?**
  - Less than \$7.25/hour (0%)
  - \$7.25/hour - \$10.00/hour (0%)
  - \$10.01/hour - \$12.50/hour (1%)
  - \$12.51/hour - \$15.00/hour (4%)
  - \$15.01/hour - \$25.00/hour (15%)
  - \$25.01/hour - \$35.00/hour (11%)
  - \$35.01/hour - \$45.00/hour (9%)
  - \$45.01/hour - \$55.00/hour (8%)
  - More than \$55.00/hour (25%)
  - Unsure (28%)
    - *HR professionals whose organizations operate in states or cities with a minimum wage higher than the current federal minimum wage of \$7.25/hour are more likely to say the independent workers who provide services to their organization are paid more than \$55/hour (28%) when compared to HR professionals whose organizations operate in states or cities where the minimum wage is \$7.25/hour (19%).*
    - *HR professionals whose organizations are in the professional, scientific, and technical services industry are significantly more likely to say independent workers who provide services to their organization are paid more than \$55/hour (52%) than HR professionals whose organizations are in other industries (19%).*
    - *HR professionals whose organizations are in the retail, wholesale, and transportation and warehousing industries (9% vs 26% all others), government and education industries (10% vs 28% all others), food, hospitality, and arts, entertainment, and recreation industries (10% vs 26% all others), and construction industry (12% vs 26% all others) are significantly less likely to say independent workers who provide services to their organization are paid more than \$55/hour than HR professionals whose organizations are in other industries.*

#### Are organizations willing to offer their independent workers benefits?

- When HR professionals were asked if their organization would be willing to offer independent workers certain benefits if it didn't risk their status as non-employee workers, **nearly 2 in 3 (65%)** said their organization would still not choose to do so.
  - **17%** would be willing to provide access to wellness resources and services
  - **15%** would be willing to offer paid vacations and holidays
  - **14%** would be willing to offer paid sick time
  - **13%** would be willing to offer healthcare benefits
  - **8%** would be willing to offer company contributions to a retirement savings plan
  - **8%** would be willing to offer paid time off to care for a loved one
  - **3%** would be willing to offer tuition reimbursement
- **42%** of HR professionals say their organization provides training to their independent workers (**47%** do not, **11%** were unsure).

- *Organizations in the manufacturing industry (63%) and healthcare and social assistance industry (57%) are more likely to provide training for their independent workers (63%) than organizations in other industries (39%).*
- Among organizations that provide training to their independent workers, the most common types of training offered are...
  - Orientation/onboarding training **(59%)**
  - Skill-based training **(58%)**
  - Compliance training **(51%)**
  - Other training types offered:
    - Occupational health and safety training (42%)
    - Anti-bias and diversity training (28%)
    - Leadership training (6%)
- **Only 12%** of HR professionals say their organization offers professional development opportunities to their independent workers (**75%** say no, **13%** were unsure).

## Independent Worker Survey Results

### Key Findings

1. **The Department of Labor's (DOL) proposed rule would not deter many independent workers from continuing to perform independent work. In fact, many said it would make them more likely to continue working as an independent worker.**
  - Nearly half of independent workers (**45%**) said the DOL's proposed rule would make them **more likely** to continue working as an independent worker; **38%** said it would have **no impact**, and only **10%** said it would make them **less likely** to continue working as an independent worker.
2. **In support of the rule: Almost half of independent workers surveyed said they would be supportive or very supportive of the DOL's proposed rule. Very few said they would be unsupportive or very unsupportive of the rule.**
  - **44%** of independent workers said they would be supportive or very supportive of the DOL's proposed rule change. Only **9%** said they would be unsupportive or very unsupportive of the DOL rule change.
3. **When asked how interested they would be in receiving access to benefits that employees receive from their organization in exchange for a lower pay rate, nearly two-thirds of independent workers said they would be at least slightly interested.**
  - **30%** of independent workers said they would be **very interested** and **35%** said they would be **slightly interested** in receiving access to benefits that employees receive from their organization in exchange for a lower pay rate (**65%** total who would be very or slightly interested). **17%** of independent workers said they would **not be interested at all**.
4. **Independent workers rated health care, paid vacations and holidays, and contributions to a retirement savings plans as the benefits they felt were most important.**
  - One-third of independent workers (**33%**) rate **health care benefits** as the most

## **EXHIBIT B**

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# Executive Insights

- › The external workforce includes many different types of nontraditional work arrangements, including independent contractors, temporary workers, online task contract workers, freelancers, service delivery contract workers, on-call contract workers, subcontractor workers, and others.
- › Various estimates suggest that 16.5 million<sup>1</sup> to 56.7 million<sup>2</sup> U.S. workers currently work outside of traditional employer-employee arrangements. More than a third have an external job as a primary or secondary job.<sup>3</sup>
- › Despite a common belief that workers engage in external work because they can't find anything better, external workers have a variety of motivations. Almost one in five workers in our study said they preferred external work, and 45% explained that they saw advantages in both types of work but just happened to be doing external work. The most commonly cited reasons for becoming an external worker were "being able to set my own schedule," "choosing how many hours I work," and "choosing my work location."
- › Broadly, internal employees working alongside external workers did not think that external workers had changed their work experience. Although they expressed a slightly elevated concern over job security, job satisfaction, and their company's culture, they noted that working with external workers made their organization's performance better. Managers felt that the effect of external workers on their internal employees was generally neutral but felt more strongly than internal employees that external workers led to greater gains in worker productivity and organizational performance.
- › Managers and HR professionals both overestimated the extent to which the chance at an internal position or additional contract work motivated external workers, and somewhat underestimated external workers' interest in bonus compensation for good work.
- › Nearly one in five managers said that their organization was slightly effective or not at all effective at "attracting, sourcing, and selecting the right quantity and quality of external workers." One in five also felt that their organization was slightly or not at all effective at onboarding external workers.
- › Nearly nine in ten HR professionals agreed or strongly agreed that "external workers positively contribute to the business productivity of my organization." Yet HR, as a group, is quite worried about the legal implications of external work. Nearly three-quarters of HR professionals reported some level of concern and one in ten was very concerned.

1. <https://www.bls.gov/news.release/conemp.nr0.htm>

2. Freelancing in America: 2018, Freelancer's Union and Upwork, October 2018

3. The Gig Economy and Alternative Work Arrangements, Gallup, 2018

# Introduction

Much has been written about the “gig economy” and the changing workplace over the last few years. While estimates vary broadly based on study methodology, somewhere between 16.5 million and 56.7 million U.S. workers currently work outside of traditional employer-employee arrangements. Gallup estimates that 29% of U.S. workers have a external job as their primary job, and 36% of all U.S. workers participate in nontraditional work as a primary or secondary job. It is common for people whose main work is as an internal employee to do external work as well. In fact, Deloitte reports that 64% of millennial full-time workers want to “do side hustles to make extra money.” While a strong economy and low unemployment seem to have tempered growth in full-time external work in the last year or two, they appear to have also made available more opportunities for part-time external work, so a holistic view of external nonemployee work suggests that it will only grow in the future. In a recent study of executives, 65% said that the external workforce is important or very important to operating at full capacity and meeting market demands.

While there have been several recent studies exploring the phenomenon of external workers in the last several years, most have either focused on a single component of the nontraditional workforce (e.g., the gig economy) or explored the issue from a single perspective (e.g., executives). In this research program, the Society of Human Resource Management (SHRM) and SAP sought to explore the topic quite broadly, incorporating all types of nonemployee work—which we call “external work”—from the points of view of managers, human resources professionals, internal employees who share their workplaces with external workers, and external workers themselves. Our goals were to explore the landscape of external work, reveal areas in which the constituencies had disparate views of external workers and external work, and find opportunities for organizations to improve business outcomes and the experience of external workers.

4. <https://www.bls.gov/news.release/conemp.nr0.htm>

5. Freelancing in America: 2018, Freelancer’s Union and Upwork, October 2018

6. The Gig Economy and Alternative Work Arrangements, Gallup, 2018

7. The Forces Reshaping How Work Gets Done, SAP Fieldglass/Oxford Economics, 2018

8. Freelancing in America: 2018, Freelancer’s Union and Upwork, October 2018; Agents of change: Independent workers are reshaping the workforce, Kelly Services, September 2015; The rise and nature of alternative work arrangement in the United States, 1995-2015, Katz & Krueger & Rand Corporation, March 2016; Independent Work: Choice, necessity and the gig economy, McKinsey Global Institute, October 2016; The Gig Economy and Alternative Work Arrangements, Gallup, 2018; External Workforce Insights 2018: The Forces Reshaping How Work Gets Done, SAP Fieldglass/Oxford Economics, 2018

# Who Are External Workers?





# Who are External Workers?

## Types of External Workers

We looked at six broad categories of external work for this study.<sup>9</sup> It is important to note that a given worker may perform more than one type of external work (figure 1).

In this study, 940 external workers sourced from National Opinion Research Center’s (NORC’s)

national representative AmeriSpeak® Panel were surveyed about their experiences as external workers. Their responses were weighted to reflect the U.S. adult general population. (See Survey Methodology for more complete information.) Respondents represented a broad range of external work types (figure 2), and both full and part-time

FIGURE 1 Types of External Workers

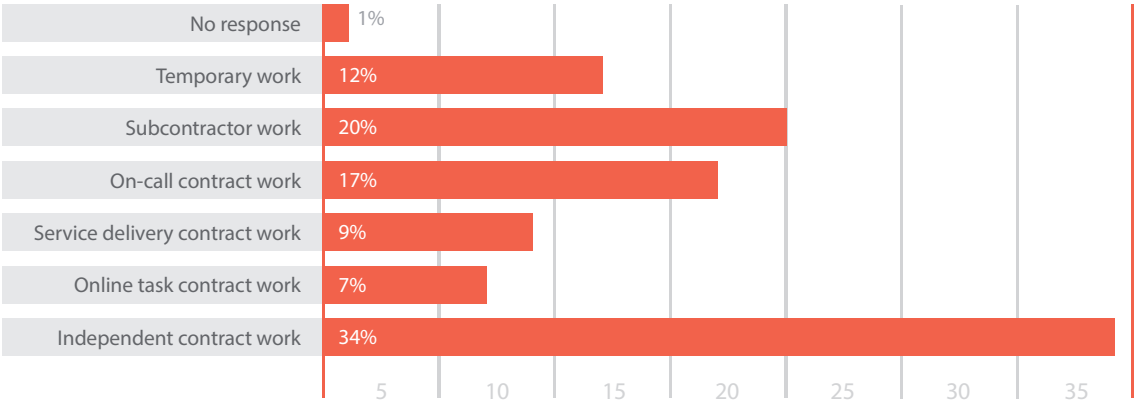
Independent contract work	Workers find customers or companies either online or in person who pay them directly to fulfill a contract or provide a product or service. Examples include an independent consultant or a freelance worker.
Online task contract work	Workers are paid for doing tasks done entirely online and the companies they contract with coordinate payment for the work. Examples include transcribing information, completing surveys, or completing online personal assistant activities such as booking appointments.
Service delivery contract work	Workers are paid for performing short in-person tasks or jobs for customers who they meet through a website or mobile app. Examples include using your own car to drive people from one place to another, delivering something, or doing someone’s household tasks or errands.
On-call contract work	Workers are paid for doing work where they are prequalified and placed in a pool of people who can be called “on an as needed basis” to cover specific work shifts or assignments. This may vary from working a few hours to working several days or weeks in a row. Examples include substitute teachers and construction workers supplied by a union hiring hall.
Subcontractor work	Workers are paid by a company that contracts services out to other organizations. Examples of work include security, landscaping, computer programming, construction, project management, or maintenance.
Temporary work	Workers are paid by a temporary service or staffing agency that contracts time out to other organizations to perform temporary tasks and jobs. Examples of work include manual labor, administrative tasks, and other activities that can be performed with little or no advanced training.

9. The Gig Economy and Alternative Work Arrangements, Gallup, 2018

workers. While independent contractors were the largest portion of our sample, each of the six categories of external work were represented.

About half of external workers reported working with a contract company or agency who places them in roles/assignments (49%), while half (50%) found their external work through some other means.

FIGURE 2  
Which of the following most accurately describes the majority of the external work that you do?



External worker motivations

External workers were asked why they do external work, and were provided four options (figure 3). Contrary to common perceptions, the majority of external workers do not say that they are engaged in external work because they can't find better work. Nearly half of all external workers reported that "this is just the type of work I'm doing right now," and among the 11% of external workers who selected other, the most common open-ended responses were "for supplemental income" and "to do something I enjoy." Temporary workers were the only group for whom "I'd prefer an internal job" reached the same level as "this is just the kind of work I'm doing right now." Independent contract workers

were most likely to report a preference for external work, not surprising given that this group includes many highly skilled blue- and white-collar workers for whom independent contractor work often offers autonomy, flexibility, and generous compensation.

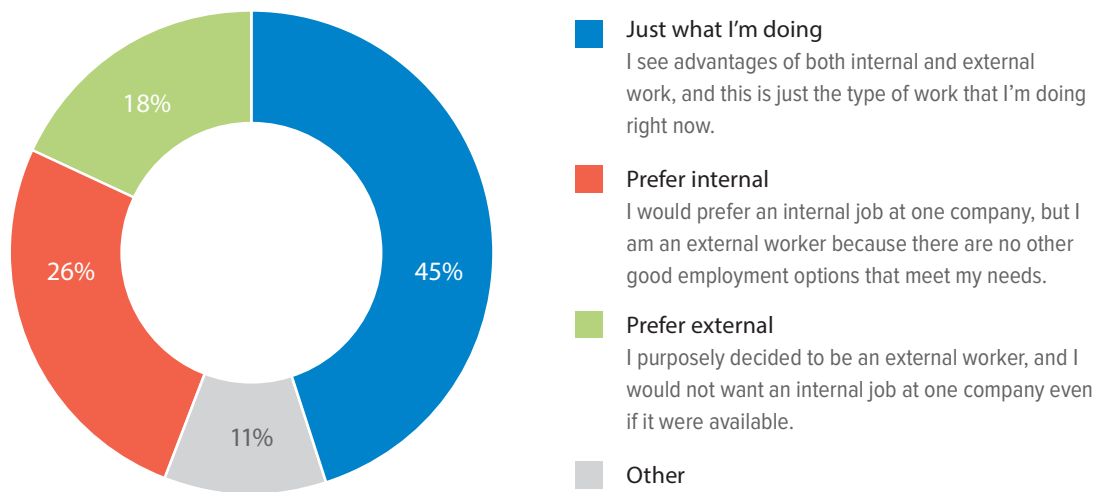
Smaller subgroups of internal employees who were former external workers (N=119), internal employees considering external work (N=74), and internal employees not considering external work (N=155) were asked about the reasons for those decisions. In all cases, their responses reflected a largely realistic view of external work as providing greater flexibility and autonomy, but less job security and stability.

Workers’ perceptions of external worker compensation were much less aligned. Although about a third of external workers reported that they can make more money as an external worker, about 42% of those who gave up external work to become an internal employee did so for better pay, and 49% of those employees who are considering external work believe that they would have better pay as external workers.

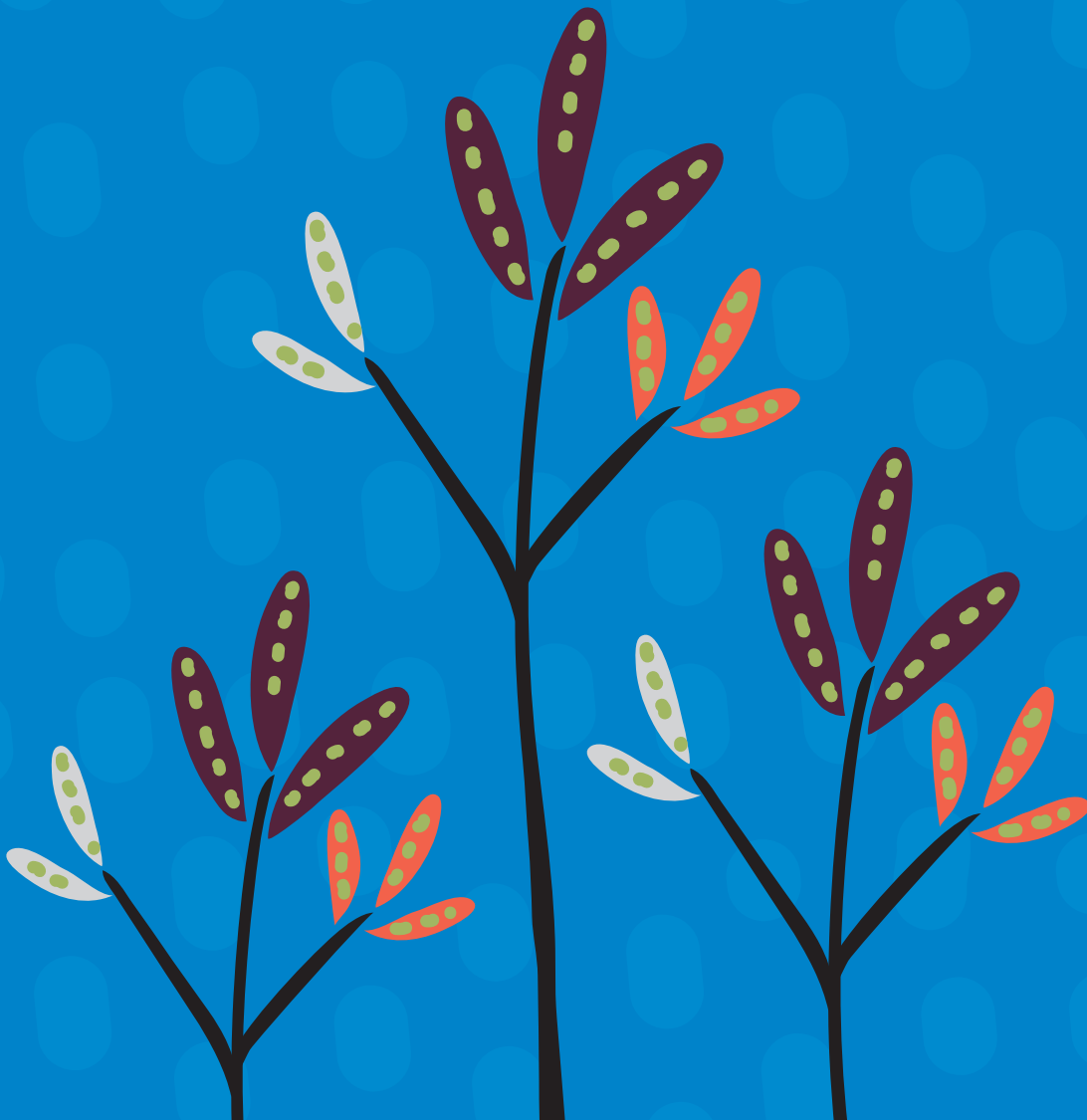
Interestingly, benefits were valued much more by former external workers (62%) than by those content with internal work (43%). For those who left external work, only better job security and stability (68%) exceeded benefits as a reason for change.

FIGURE 3

Why external workers do external work



# Who We Asked— Other Stakeholders



# Who We Asked— Other Stakeholders

In addition to the external workers we’ve already introduced, we gathered the perspectives of internal employees, managers, and HR professionals in our exploration of the external work landscape. In the following sections, we’ll introduce you briefly to each of these groups and their perspectives on the external workforce. As we discuss the external worker lifecycle later in this paper, we’ll return to these groups to explore their varied perspectives on external work and external workers.

## About the Internal Employees

We asked a group of 350 internal employees sourced from NORC’s AmeriSpeak Panel to share their thoughts about external work and external workers. Just over a third had done external work at some time in the past. Of those who had never done external work, 30% have considered it.

We also asked them about their experience with external workers. Only 22% reported no experience working with external workers at all, while 5% said they had a lot of experience. Just over 40% of internal employees reported that their organization currently employs external workers, with the

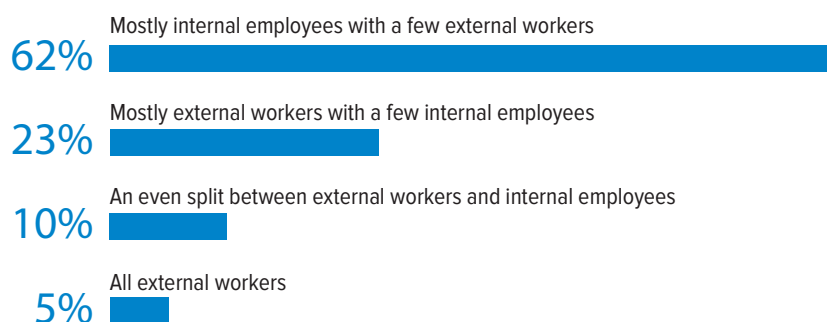
remainder nearly evenly split between those whose organizations don’t use external workers and those who don’t know if their organization utilizes external workers.

## About the Managers

We included a group of 424 managers who supervise external workers sourced from NORC’s AmeriSpeak Panel. The majority manage mostly internal employees, but nearly 40% manage teams comprised of at least half external workers (figure 4). Further, 62% of managers surveyed reported that they have quite a bit or a lot of experience supervising external workers.

FIGURE 4

What is the general composition of the team you’ve managed over the past 12 months?



We also looked at the broad types of work that managers reported their organizations are using external workers for, as we suspected that there might be notable differences in organizations that allocate different kinds of work to external workers. Physical tasks were selected by nearly half (48%) of managers, but almost as many (45%) indicated that their organizations use external workers for knowledge-based tasks. Almost 30 percent (29%) indicated their organizations use external workers for customer service tasks, and almost a quarter (24%) indicated that their organizations choose to outsource entire functions (e.g., call center, security, or IT).

Finally, as a measure of the change in use of external workers, we asked managers how the number of external workers they supervise has changed over time. Results were very balanced: about half (49%) report the number to be about the same, while about a quarter (27%) said they have fewer external workers, and another quarter (23%) said they have more.

### About the HR Professionals

Our understanding of the view of external workers held by HR professionals was informed by a SHRM survey that included a total of 1,175 members in a broad variety of sectors, industries, organization size, and parts of the United States. Of those members surveyed, 83% reported that their organization uses external workers.

Of those who reported not using external workers, the most popular response (50%) when asked "Why does your organization not use external workers?" was a simple preference for internal employees. Only 7% indicated that they do not hire



external workers because of legal risk or difficulty maintaining compliance.

The appeal of external workers among organizations not already using them was minimal; only 15% of HR professionals from these organizations thought that using external workers would probably or definitely add value. Only one in five HR professionals in organizations not using external workers wished they had the option of using them. But more than two-thirds of those HR professionals nonetheless acknowledged that doing so would allow them to access talent with special skills or expertise.

Among the 975 HR professionals who reported that their organization uses external workers, almost half (46%) indicated that they have quite a bit or a lot of experience with external workers. In most organizations, external workers make up a small portion of the workforce. Ninety percent of HR professionals said that external workers make up less than 20% of their workforce, and more than half said that external workers comprise less than 5% of their workforce.

Though it is often speculated that organizations turn to external workers to save money, less than 20% of HR professionals indicated that their organization uses external workers to save money. Instead, the

three most commonly cited reasons for utilizing external workers were the following:

- Flexibility to increase and reduce workforce based on business demands **(53%)**
- Access to specialized talent with specific skills or expertise **(48%)**
- Staff specific projects and initiatives **(48%)**

In fact, our results suggest that external work can be a gateway to internal work—almost nine of ten HR professionals report that their organizations often (21%) or sometimes (67%) convert external workers to internal employees.

# Different Points of View





## Different Points of View

We asked external workers, managers, and HR professionals parallel questions about the kind of external work they primarily do (external workers) and the kinds of external workers in their organizations (managers and HR). We believe it is important to point out the differences in the kinds of external work with which each of these groups are familiar, as these varied perspectives will no doubt influence their thinking about and experience of the stages of the external worker lifecycle.

While external workers are influenced by others around them, their thoughts about external work are grounded in their own experiences. Likewise, managers who supervise several or many external workers will have a perspective from interacting with different kinds of external workers and observing how they fit into teams. HR professionals are likely

to have the broadest view of external work in organizations, but not all external workers come into organizations through HR. In fact, the number of HR professionals who reported that their organizations bring external workers in through a combination of means was nearly as great as the number who reported that external workers come through HR only (figure 5). Nonetheless, more than three-quarters (77%) of HR professionals reported that HR's role in hiring external workers was appropriate, with 20% wishing that HR had a larger role.

These varied experiences lead to some striking differences. While temporary workers were one of the smallest groups represented in the external worker survey, they dominated the external workers reported in workplaces by both managers and HR. Online task contract work, service delivery

FIGURE 5

Which of the following groups are involved in the hiring of external workers in your organization?

- Through HR only
- Through a combination of more than one department or function
- Through another function, without the involvement of HR (e.g. Procurement, Operations)
- Operational managers bring in external workers directly

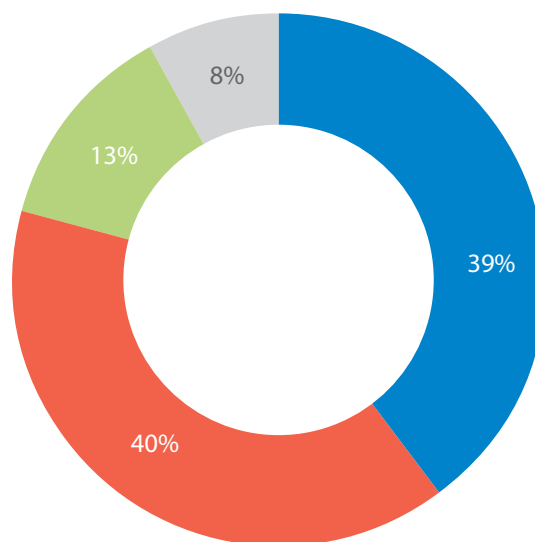
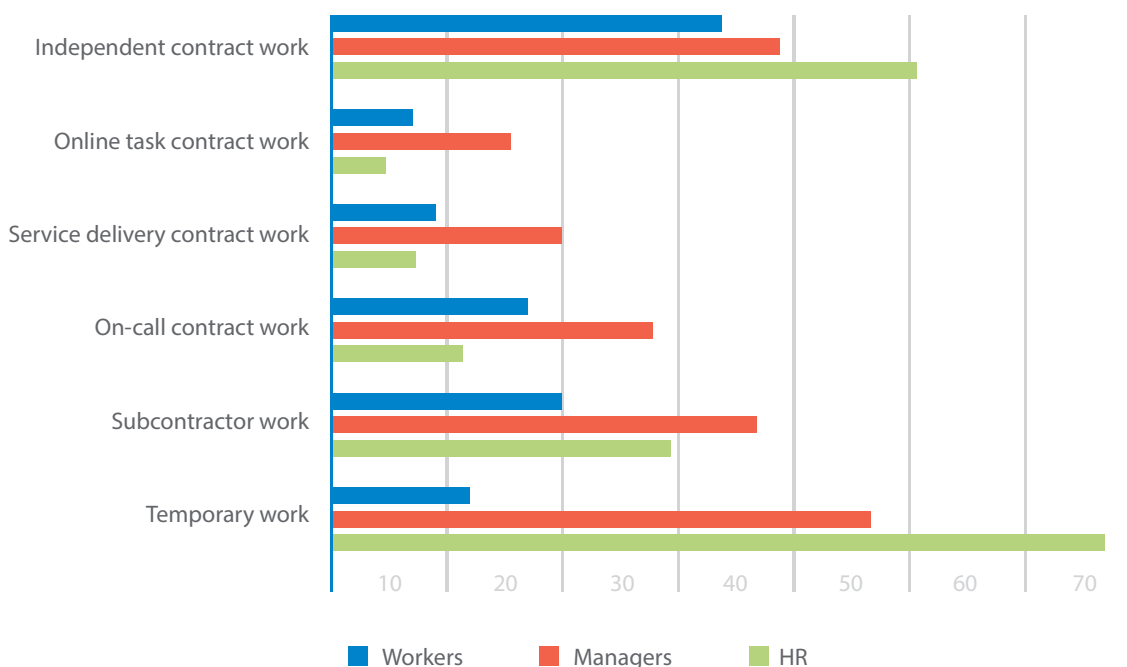


FIGURE 6

Workers: What is the primary type of external work you do?  
 Managers: Which types of external workers have you managed in the last year?  
 HR: Which types of external workers does your organization use?



contract work, and on-call contract work were all reported more often by managers than by HR, likely reflecting the fact that workers in these categories are more likely to enter an organization through direct manager hires or procurement than through a traditional HR pathway. We caution the reader to bear in mind these different points of view when evaluating the other findings of this study. That being said, we undertook this research to investigate the full spectrum of organizations' and workers' experience of external work, so the questions

we've asked are generally applicable across all different types of external workers/work, with the conclusions drawn being broad in nature. Further, where there are notable differences based on type of external worker, type of external work, or organization, we have noted these accordingly. If they aren't noted, the findings that have been shared and conclusions that have been drawn are generally applicable to the external workforce and organizations that employ them.

# The External Worker Lifecycle



# The External Worker Lifecycle

Each of the groups we talked to during this project has a different perspective on the stages of the external worker lifecycle, but the stages of the lifecycle are important to all of the stakeholders in external work (figure 7).

## Planning

For an individual, he or she needs to engage in a decision-making process about whether to pursue internal or external work. When asked to identify the factors that made them decide to become an external worker, the top three reasons external workers identified all addressed flexibility—setting one's own hours, schedule, or work location (figure 8). As evident in the chart below, responses indicating that the worker had little choice in becoming an external worker were the least endorsed.

For workers looking for increased flexibility, external work may have greater appeal than an internal position, and organizations hoping to reap the benefits that an external workforce provides (most notably, organizational flexibility) must be aware

that flexibility is often also crucial to those they are employing as external workers (figure 8).

From the organizational point of view, effective organizations plan which kind of work or roles make strategic sense to fill with external workers. We asked HR professionals about how external workers were distributed in their organizations and learned that, in most organizations, external workers are concentrated in certain functions (figure 9).

The skills of an organization's current internal workforce and possible external talent pool are also key to effective "total workforce" planning. About 60% of HR professionals report that they use external workers to fill skills gaps in their internal workforce, but 45% of them also feel that there is a skills shortage among external workers. Most HR professionals (52%) report that their organization hasn't had difficulty recruiting external workers in the last year, and 50% reported that it is somewhat or extremely easy to hire external workers (figure 10).

FIGURE 7

## The external worker lifecycle

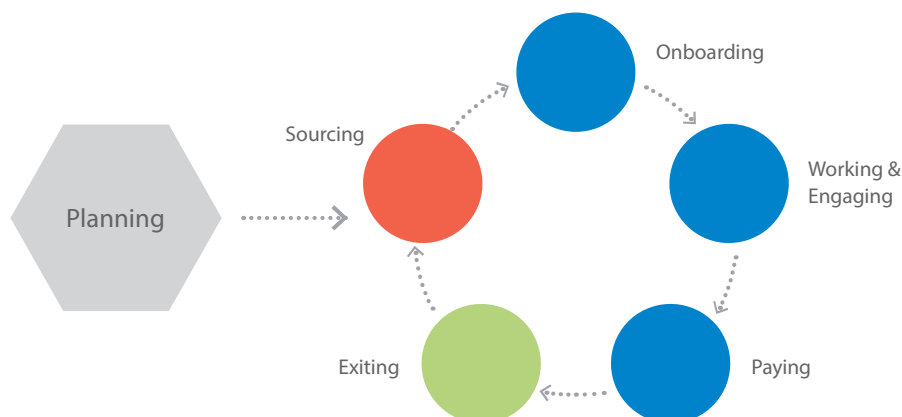


FIGURE 8

Please select the top three most important factors that made you decide to become an external worker.

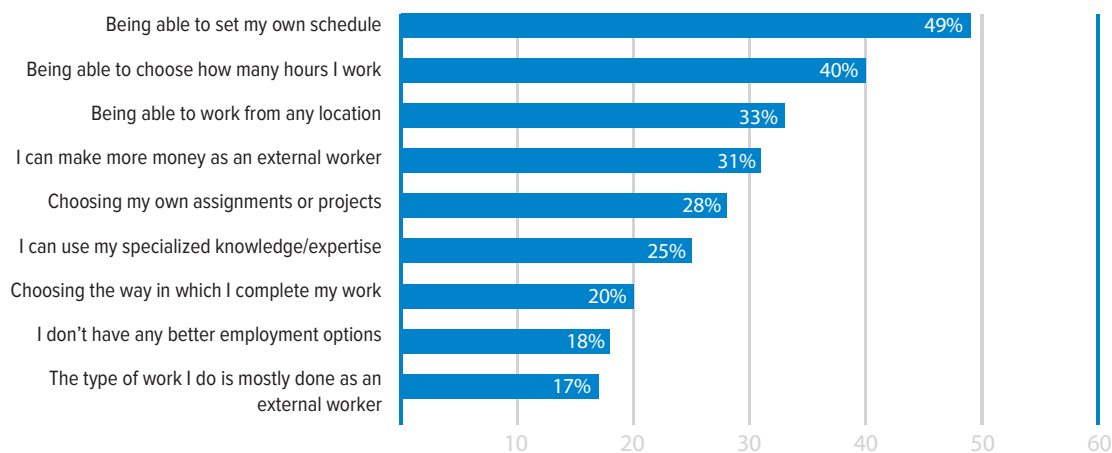


FIGURE 9

Generally, what has been the distribution of external workers across your organization in the past 12 months?

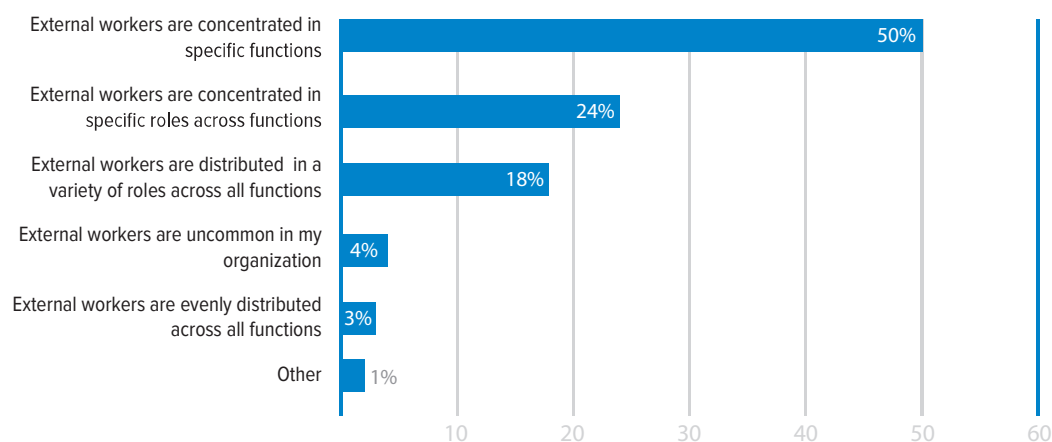


FIGURE 10

Difficulty hiring external workers



## Sourcing

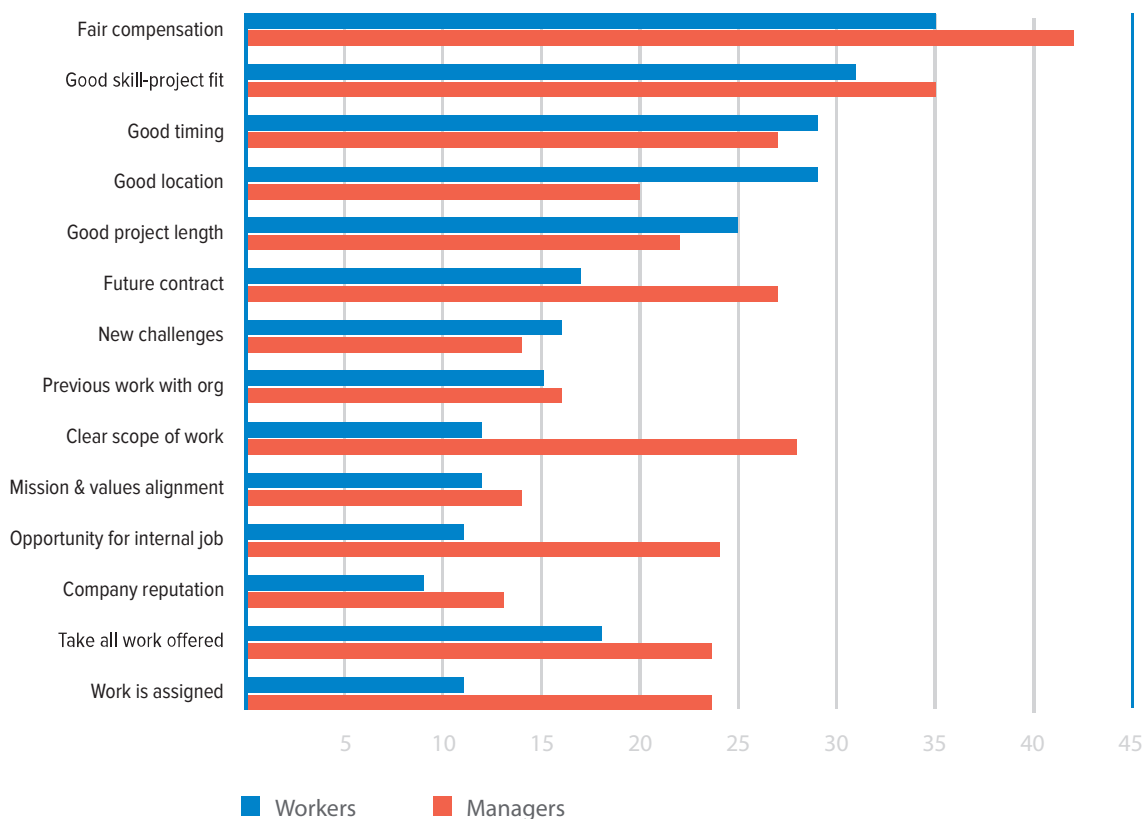
As external work is, by nature, temporary, the sourcing of external workers by organizations and sourcing of work by external workers are ongoing processes for both constituencies. HR professionals report that they use a wide variety of methods for sourcing external workers, in part reflecting the diversity of external work roles. The majority of HR professionals (59%) report that their organization uses several hiring or talent agencies, and nearly a third (31%) report that personal connections with

external workers are important. The use of web platforms (e.g., Upwork, Fiverr) was cited by 9% of HR professionals.

In order to evaluate the degree to which external workers and those who manage them are aligned in understanding the motivations of external workers, we asked them about the three most important factors that they value (as external workers) or thought external workers value (as managers) when deciding to take a specific project or assignment (figure 11).

FIGURE 11

Three things that are most important to external workers when they decide to take a specific project or assignment



In general, external workers and their managers are fairly well aligned in their perspectives, but there are some striking differences. Managers underestimated the extent to which location is important to external workers. They greatly overestimated the extent to which external workers are motivated by the chance to do more work at their organization (27% of managers versus 17% of external workers) and by the chance to become an employee (24% of managers versus 11% of external workers). Finally, although 28% of managers thought that external workers want a clear scope of work, only 12% of external workers cited this as one of their top three motivations. Instead, along with good location, external workers prioritize fair compensation, a good fit between their skills and the project, and good timing when selecting a role or assignment.

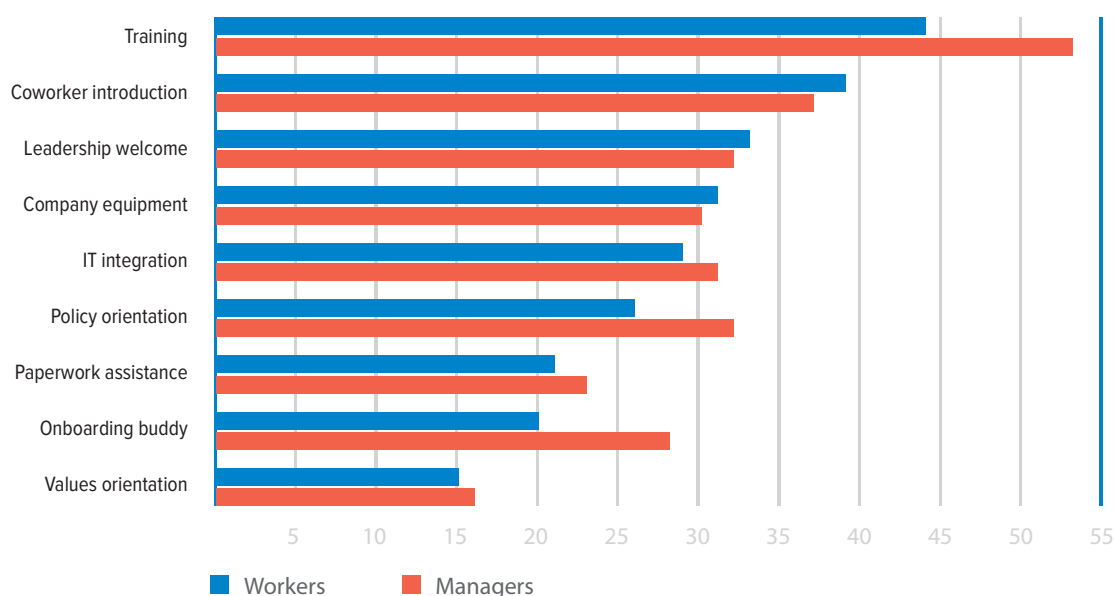
### Onboarding

Even organizations with robust onboarding for new

internal employees may fall short when it comes to orienting and socializing new external workers. Less than half of external workers (44%) report that most workplaces make a point to make them feel welcome when they begin a new assignment or project, and 11% report that most workplaces do nothing to make them feel welcome. Less than half of HR professionals (47%) report that they have a standard onboarding process for external workers, and 11% report that they have no onboarding. Interestingly, among those organizations with external worker onboarding, 61% say they provide similar onboarding to that used with internal employees.

Managers and external workers are fairly well aligned on what new external workers need to get started, both citing “training necessary to help them do their work” and “opportunity to get to know the people they will be working with” as the most important prerequisites (figure 12).

FIGURE 12 Three factors that are most important in helping new external workers get started



### Working and Engaging

When we look at the extent to which external workers, their internal employee colleagues, and managers view their treatment by internal employees and supervisors, the differences, though not large, are quite striking (figures 13 and 14).

External workers feel more strongly about their treatment, being both more likely to say they are treated well and more likely to say they are not treated well, as compared to the views of internal employees and managers.

FIGURE 13 Internal employees treatment of external workers

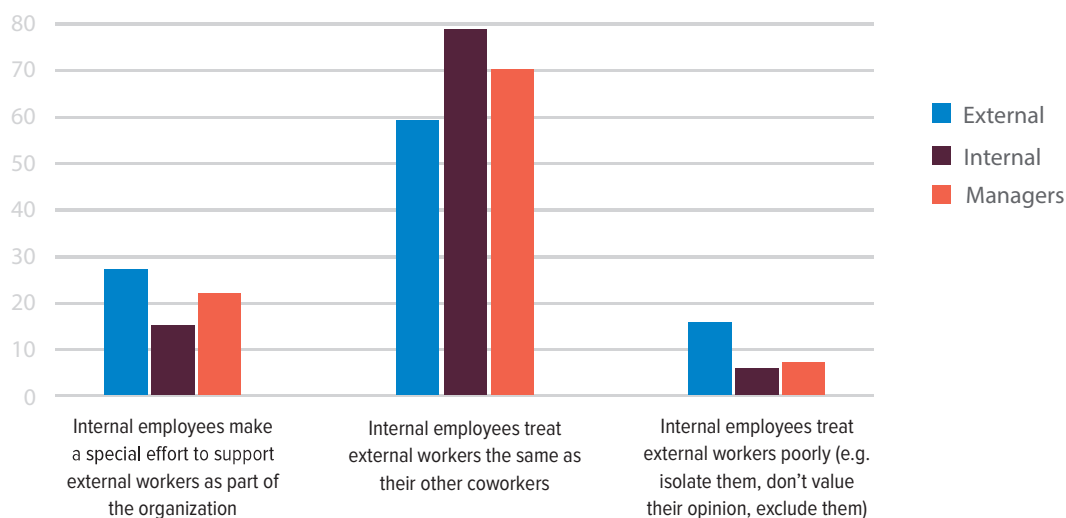
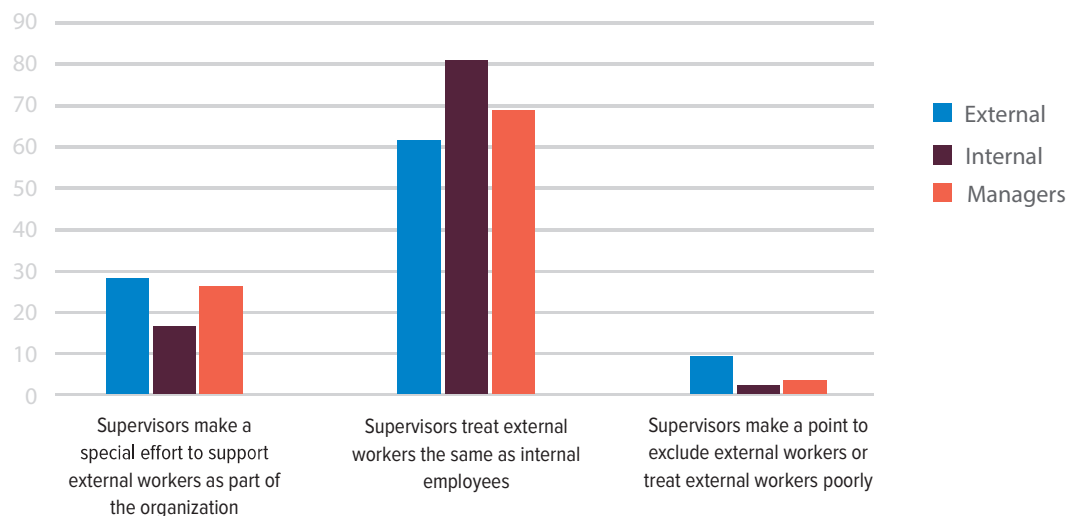


FIGURE 14 Supervisor treatment of external workers





We asked external workers both how important it is for them to feel valued by and connected to the company or individual they are working for and how often they feel valued and connected. More than half (54%) rated it as very important or absolutely essential, and although only 14% reported that they always feel valued, another 59% reported that they feel valued very often or often.

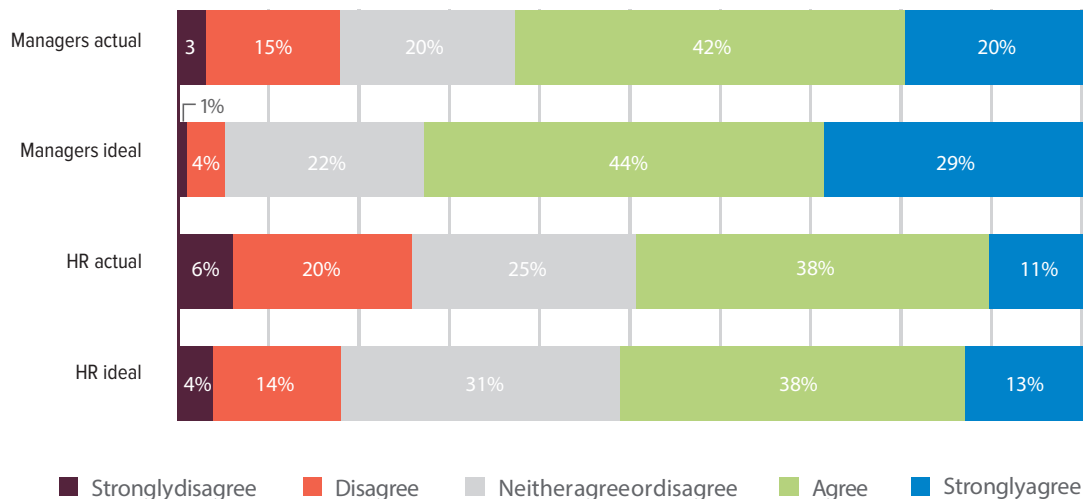
Even those external workers who work with others in a company setting have varied levels of interaction with the internal employees of the company they are working for. About a quarter of external workers

said they interact sometimes, often, or very often, respectively, 19% said always, and only 5% said they never interact with internal employees.

We asked both managers and HR about how integrated external workers and internal employees are on teams within their organizations, and the extent to which they thought complete integration was ideal. Endorsement of complete integration was high in both groups, though the managers felt more strongly that integration is ideal, and also agreed more strongly that this is the current situation in their teams (figure 15).

FIGURE 15

To what extent do you agree that external workers and internal employees are completely integrated within teams at your organization?



Actual = Managers'/HR's perception that external workers and internal employees are completely integrated on a single team

Ideal = Managers'/HR's belief that complete integration of external workers and internal employees on teams is ideal

To understand what motivates external workers, we asked those workers and managers about the top three things that encourage external workers to perform at their best. Both groups cite “being recognized for contributions at work” as the most motivating factor by a considerable margin, and

place high priority on “receiving feedback on my performance,” although managers seemed to overestimate external workers’ interest in becoming employees and being involved in team activities (figure 16).

FIGURE 16

### Three factors that encourage external workers to perform their best



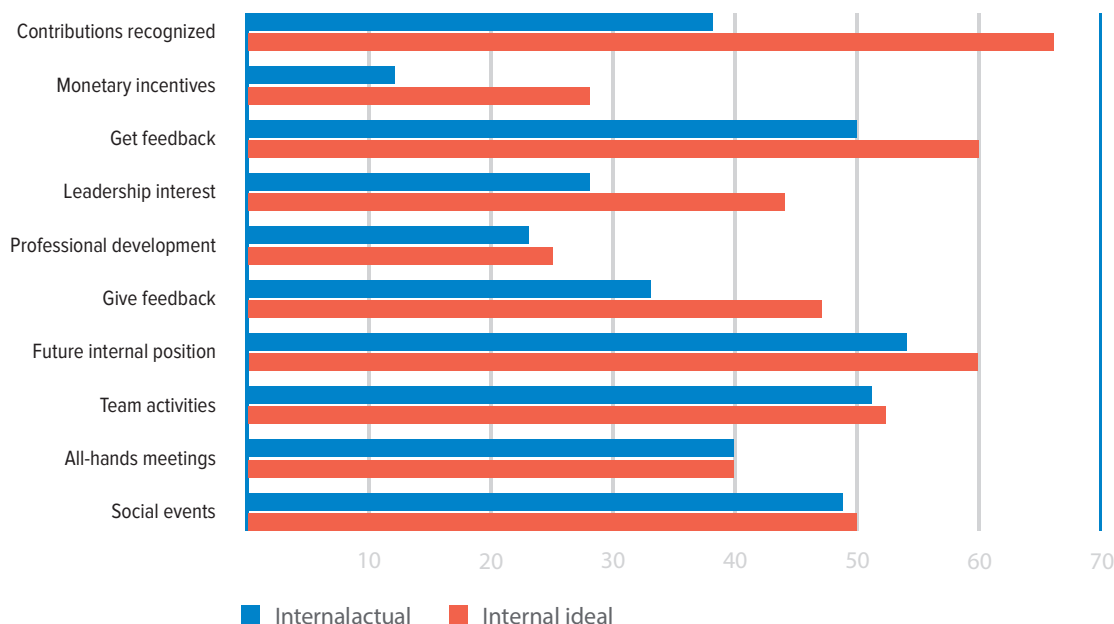
### Internal employees’ views on what should be made available to external workers vs. what is made available

Similarly, we asked internal employees which of these things they thought should be made available to external workers, and which are actually available to external workers. In all cases, they believed that external workers are being given these things at

rates equal to or lower than what internal employees thought they should get. Although only 28% of internal employees thought external employees should get bonuses for meeting performance or productivity targets (monetary incentives), only 12% say that external workers do get these bonuses (figure 17).

FIGURE 17

Which of the following should be (ideal) and are (actual) made available to external workers in your organization?



As external workers, managers, and internal employees all placed a high priority on external workers getting feedback, we wanted to know how organizations actually handle performance management for external workers. The largest group of HR professionals (35%) said that their organization leaves performance management up to individual managers, while another quarter reported that they give performance feedback to a third party (e.g., staffing agency). A small number (5%) said that their organization has a system just for external workers.

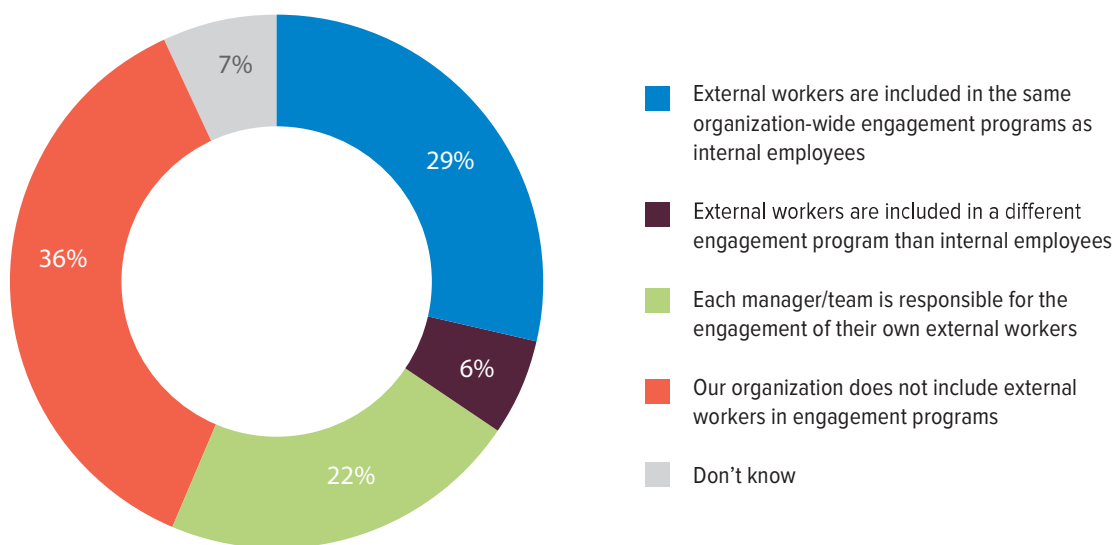
We also wondered what HR did for the engagement of external workers. This was an area in which there was little agreement across organizations. A similar number of organizations included external workers

in engagement programs, excluded them, or left engagement up to managers. Only a small number (6%) had engagement programs specific to external workers (figure 18).

The final element of the external worker experience concerns when something goes wrong. We asked HR professionals if they have “a specific process in place to handle issues that external workers may face (e.g., conflict management, discrimination).” Again, organizations were rather evenly split: 27% use the same policies as for internal employees; 26% refer the problem to a third party (e.g., staffing agency); and 23% have formal policies that apply specifically to external workers. A small number (9%) have no policies or practices to handle external worker issues.

FIGURE 18

How does your organization handle engagement programs for external workers?



### Paying

Compensation of external workers can be a fraught issue for the workers and the organizations where they work. First, from the worker perspective, external work has the potential to pay more in some circumstances but can also come with less job and financial security. To better understand the financial worries of external workers, we asked them to what extent they agreed with the following statements:

- As an external worker, money challenges are not a concern for me.
- As an external worker, I feel confident that I have enough money and financial resources to retire comfortably.
- I feel secure about my future as an external worker.

No strong picture emerged; respondents were roughly evenly divided between agreement,

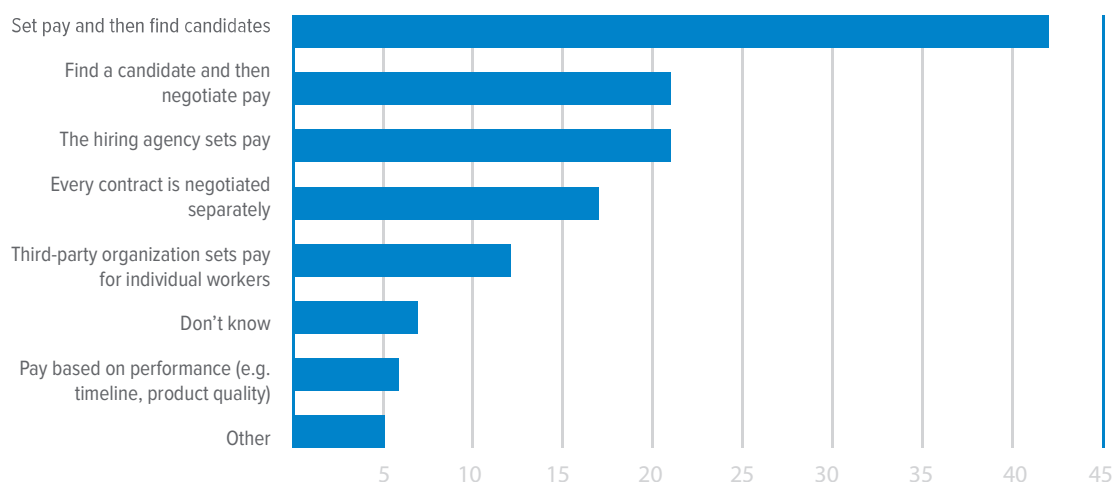
disagreement, and a neutral position across the three statements, conveying, once again, that external workers have very different perceptions about their experiences working in this capacity.

Second, from the organizational perspective, HR professionals were asked how their organizations “set appropriate pay for external workers.” The diversity of responses seems to reflect the wide variety of external workers that organizations engage, although setting pay prior to finding candidates was by far the most common response (figure 19).

While the current regulatory landscape curtails the options that organizations have for providing compensation beyond just pay, we wanted to know what external workers would most value, and what organizational representatives believed they would most value if all options were open. There were some notable differences.

FIGURE 19

Which of the following methods does your organization employ to set appropriate pay for external workers?



Managers and HR thought healthcare benefits would be more appealing to external workers than they conveyed; we hypothesize that many people who become external workers have benefits from another source. On the other hand, external workers expressed a greater interest in retirement benefits than managers or HR expected.

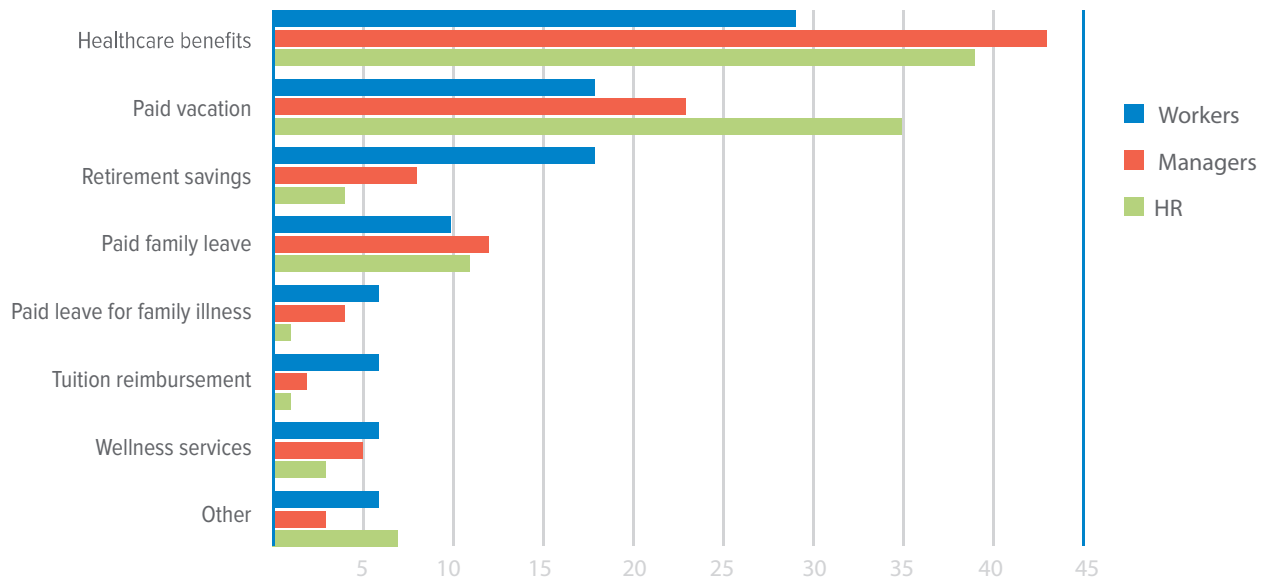
Organizations have opportunities to compensate workers in ways other than pay. For example, other studies suggest that independent workers may find it harder than internal employees to find opportunities to develop new skills and that opportunities for self-improvement are often cited as appealing by external workers. We asked HR professionals if their organizations “have professional development opportunities (e.g., mentoring, stretch assignments) for external workers.” Although 65% responded that they don’t provide professional development opportunities,

19% reported providing them for some external workers and 8% for all external workers.

Organizations have shied away from providing training to external workers due to ambiguity in interpretation of the Internal Revenue Service (IRS) guidelines stating that periodic or ongoing training about procedures and methods is strong evidence that the worker is an employee. Yet the Occupational Safety and Health Administration (OSHA) rules make staffing agencies and host employers jointly responsible for maintaining a safe work environment for temporary workers—including ensuring that OSHA’s training requirements are fulfilled. We asked HR professionals if their organization “provides training (e.g., safety, process/procedure) for external workers.” Only 11% of HR professionals indicated that they didn’t provide training for any external workers; 38% provide training for some; and 48% provide training for all external workers.

FIGURE 20

Which one of the following benefits, if provided in addition to pay, do you believe would most motivate you/external workers to work for a certain company?



## Exiting

In discussions with HR professionals and business leaders, it became clear that few organizations do much planning for the end of an external worker engagement. Even organizations that have invested effort in the employee exit experience have often overlooked the external worker's exit, even though an inherent feature of using external workers is frequent and planned exits.

We asked external workers to reflect on their experiences ending their assignments and exiting organizations. The chart below shows the three statements to which external workers responded (figure 22). Three-quarters of external workers said that all three statements applied at least somewhat, and more than a third reported that they applied a

great deal. Yet, less than a third of HR professionals (30%) report that their organization maintains contact with previous external workers. This suggests that organizations might quickly see value in developing systems to allow them to keep track of and stay in contact with prior external workers.

When we look at the exit experience of an external worker from the organizational and worker perspectives, we once again find managers and HR somewhat out of step with external workers (figure 21). While the chance at another contract with the company was one of the two things that external workers most value, both managers and HR overestimated its importance, and they underestimated the importance of a bonus (drastically, on the part of HR). And managers did

not think that external workers value being thanked as much as they actually do (figure 22).

Although external workers don't say that providing feedback to their worksite is a top priority, HR professionals have shared anecdotes about how

valuable the information is that they gain from external workers during exit interviews. Yet, only 41% of HR professionals indicate that their organizations do exit interviews with external workers. For many organizations, interviewing departing external workers may be a missed opportunity.

FIGURE 21

How much do the following statements apply to you as an external worker?

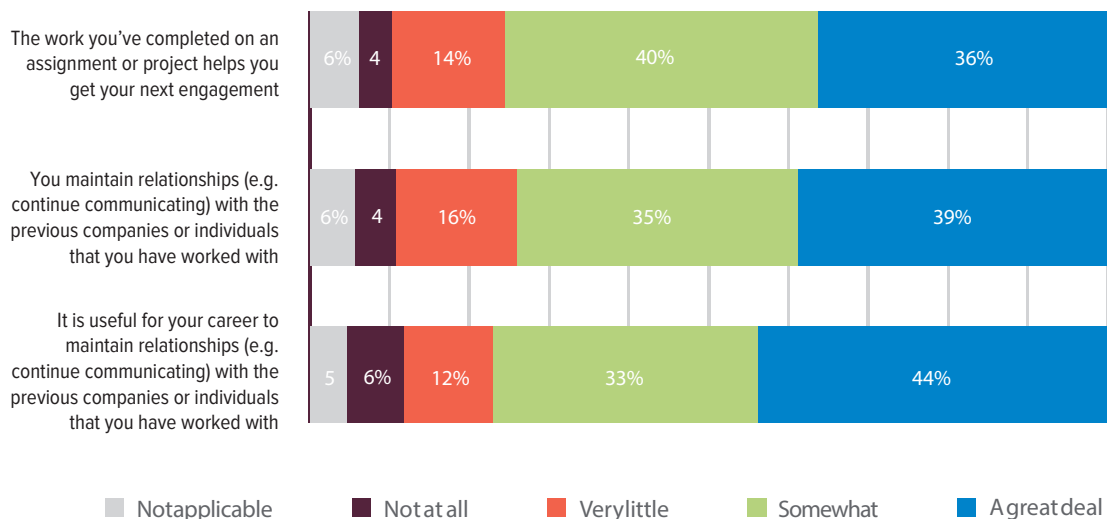
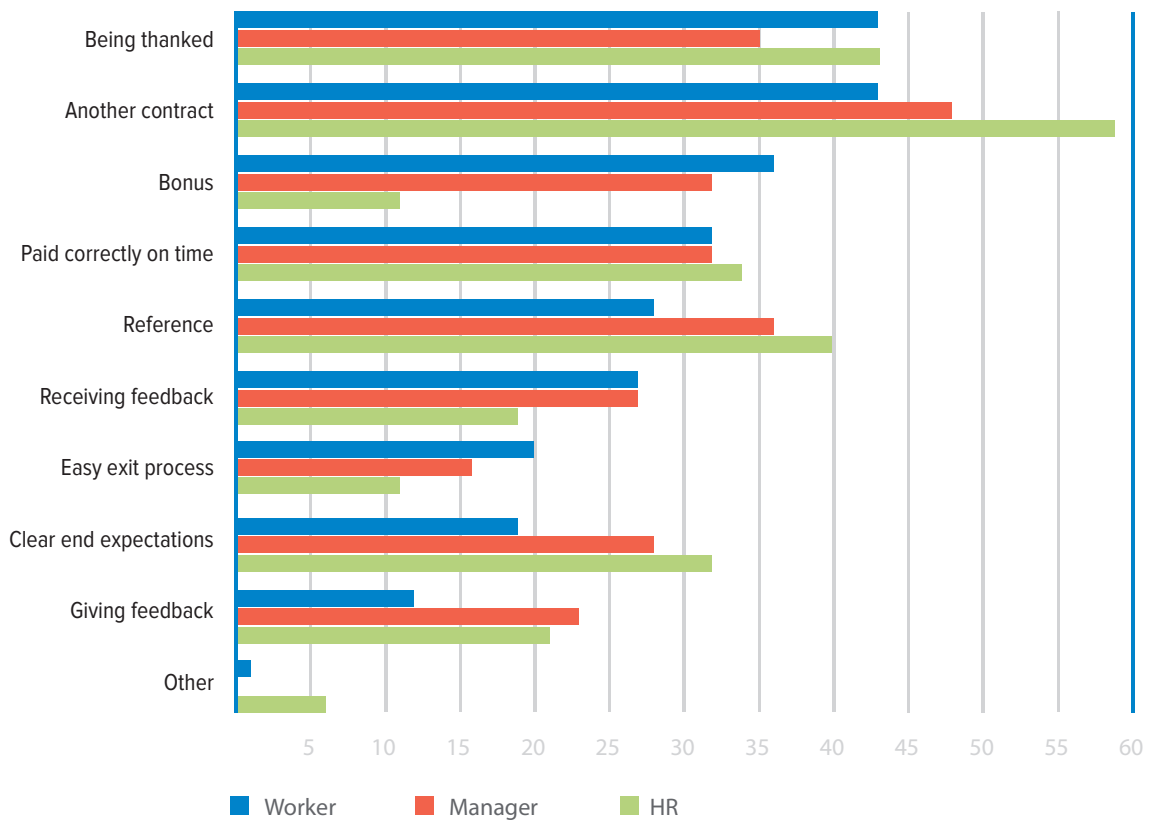


FIGURE 22

Top three things that make external workers feel the most positive about a work experience





# Perceptions of Risk/ Reward in the Use of External Workers



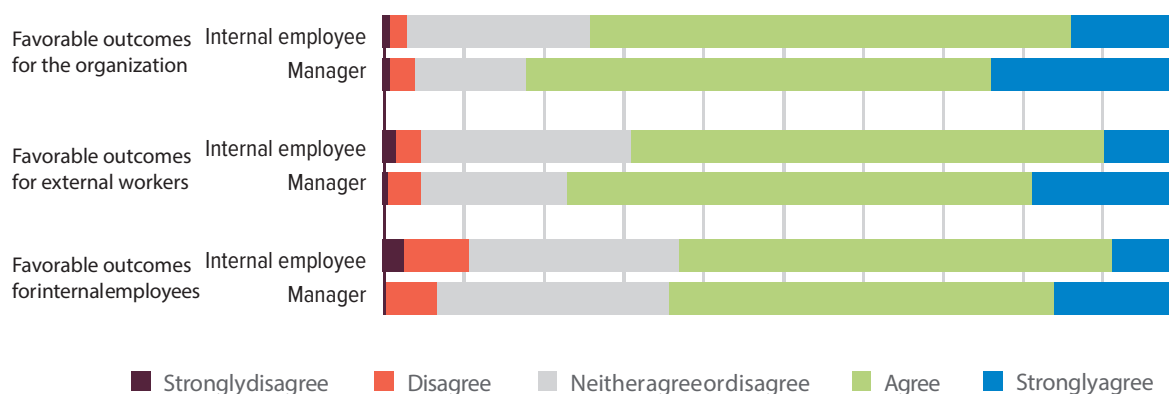
# Perceptions of Risk/Reward in the Use of External Workers

We asked internal employees and managers to evaluate whether the use of external workers leads to favorable outcomes for their organizations, external workers, and internal employees. Managers were more strongly positive than internal employees

but, with the exception of a few concerns among internal employees about whether external workers lead to favorable outcomes for them, both groups had only very small negative sentiments (figure 23).

FIGURE 23

To what degree do you agree that your organization's use of external workers leads to favorable outcomes?



## The Internal Employee View

We asked internal employees if they have had a positive experience working alongside external workers, and 58% of them agreed or strongly agreed that they had. An additional 36% neither agreed nor disagreed.

We also wanted to know to what extent internal employees find external workers to be a threat. Overall, the main theme was that internal employees

**only 5%** have had a negative experience working with external workers

do not think that external workers have changed their work experience very much. Many noted that working with external workers has made their organization's performance better. There were

their experience worse: job security, job and their company's culture (figure 24).

ed internal employees to tell us how ould be to take several actions, based

that they were likely or extremely likely to look for external work themselves, but 44% of them would be likely or extremely likely to recommend that their organization hire an external worker to fill a needed role.

## Ill experience, what effects have external workers had on you anization?



### The Manager View

One of our interests with managers was to learn how different they found the experience of managing external workers from that of managing internal employees. We asked them to consider the external workers that they've been managing in the last twelve months and rate their level of agreement on a number of statements. While a quarter of managers (26%) agree or strongly agree that legal requirements limit their ability to manage their external workers, and a third (32%) don't find it easy to engage and motivate their external workers, managers of blended teams generally report positive experiences managing external workers (figure 25).

We also asked managers to select the top three benefits and challenges of using external workers. Managers were most pleased with the flexibility and agility that external workers bring to their teams, but they also acknowledged that turnover and transitions, logistics, and cultural alignment of external workers all presented management challenges (figures 26 and 27).

We also asked managers to evaluate the effect of external workers on their internal employees and organization, much as we asked the internal

employees themselves. Managers, like internal employees, generally saw no difference in the experience, but did report greater gains in worker productivity and organizational performance than did internal employees (figure 28).

To better understand how effective managers find their organizations' use of external workers, we had them evaluate each phase of the external worker lifecycle. At least half of managers rated their organization as very or extremely effective with each stage of the lifecycle except staffing and onboarding. Nearly one in five managers (17%) said that their organization was slightly effective or not at all effective at sourcing, defined for managers as "Attracting, sourcing, and selecting the right quantity and quality of external workers." One-fifth (20%) also felt that their organizations were slightly or not at all effective at onboarding (figure 29).

These results are more alarming when paired with the information that nearly one-quarter of managers (24%) selected sourcing as the most critical stage for an organization to have an effective external workforce process, and another 14% said that onboarding was the most critical stage (figure 30).

FIGURE 25

Considering the external workers you've managed in the last 12 months, rate your agreement with the following statements

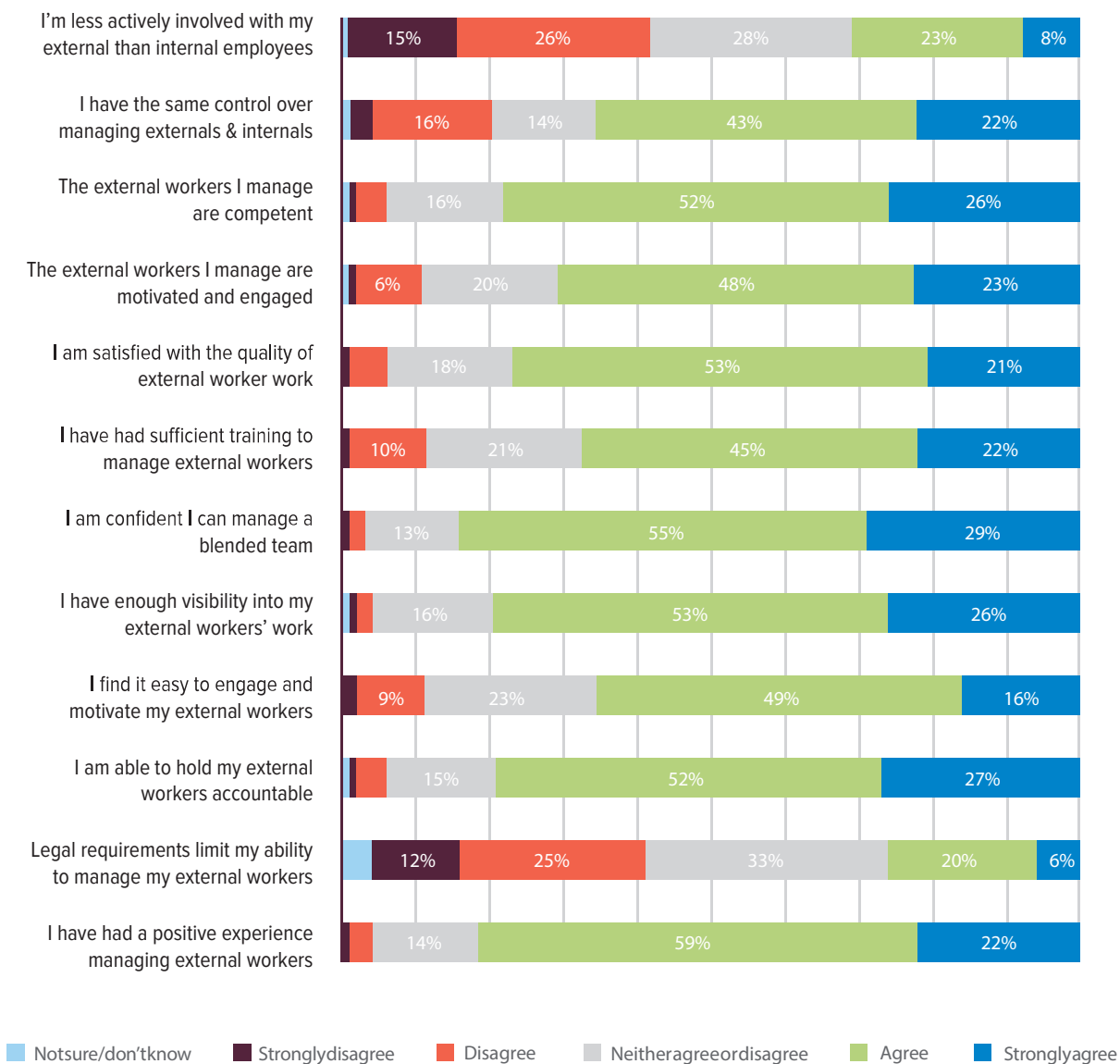


FIGURE 26

Please select the top three benefits of using external workers

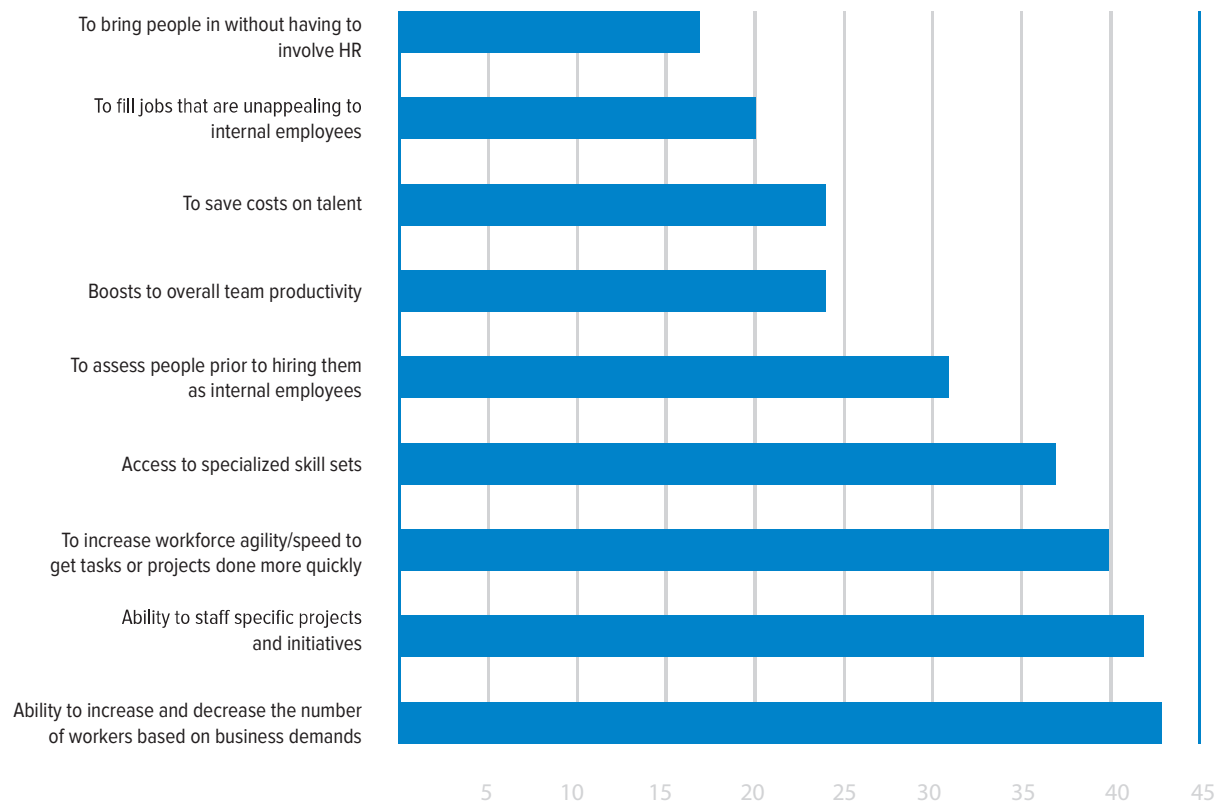
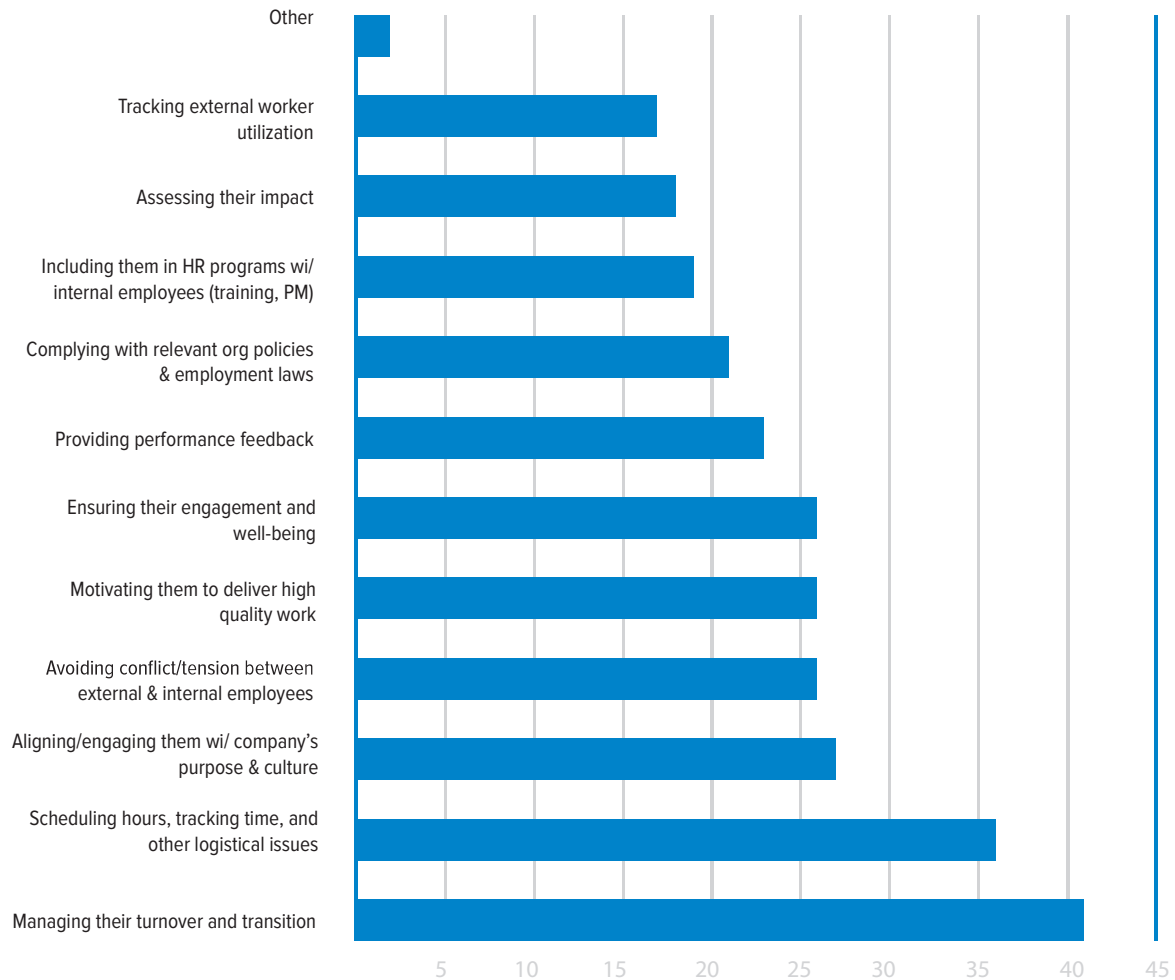


FIGURE 27

Please select the top three challenges of using external workers



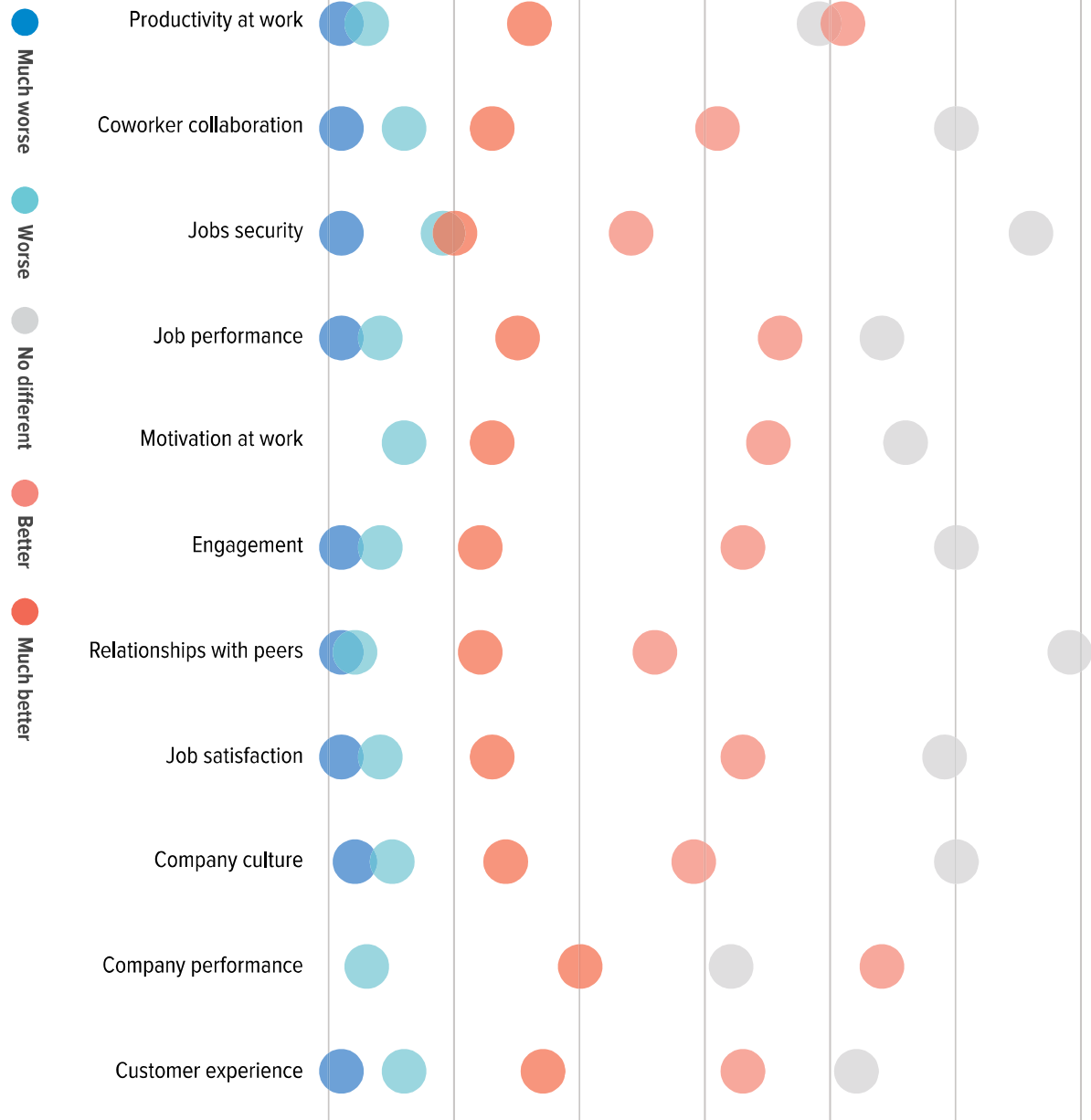




FIGURE 29

Please rate your company's effectiveness with each of the following stages of the external worker lifecycle

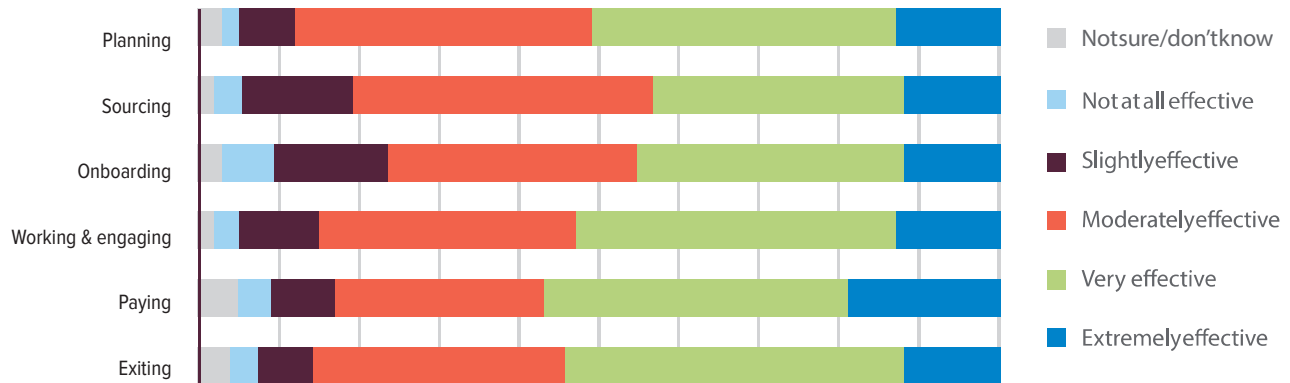
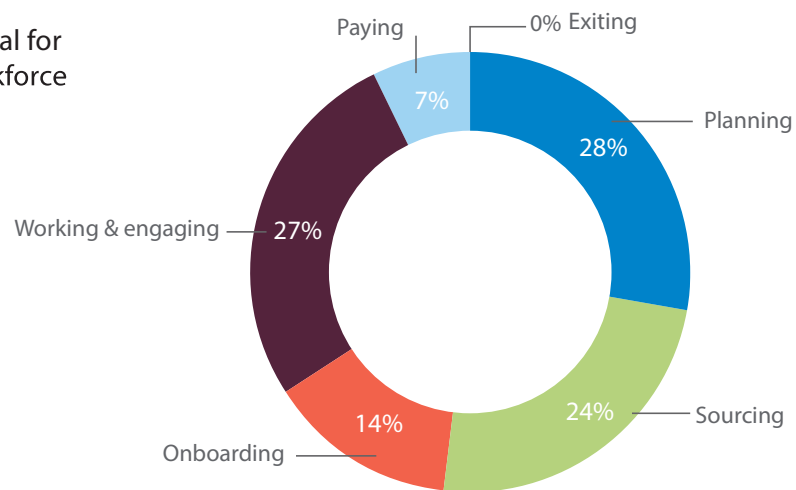


FIGURE 30

Which stage is most critical for an effective external workforce business strategy?



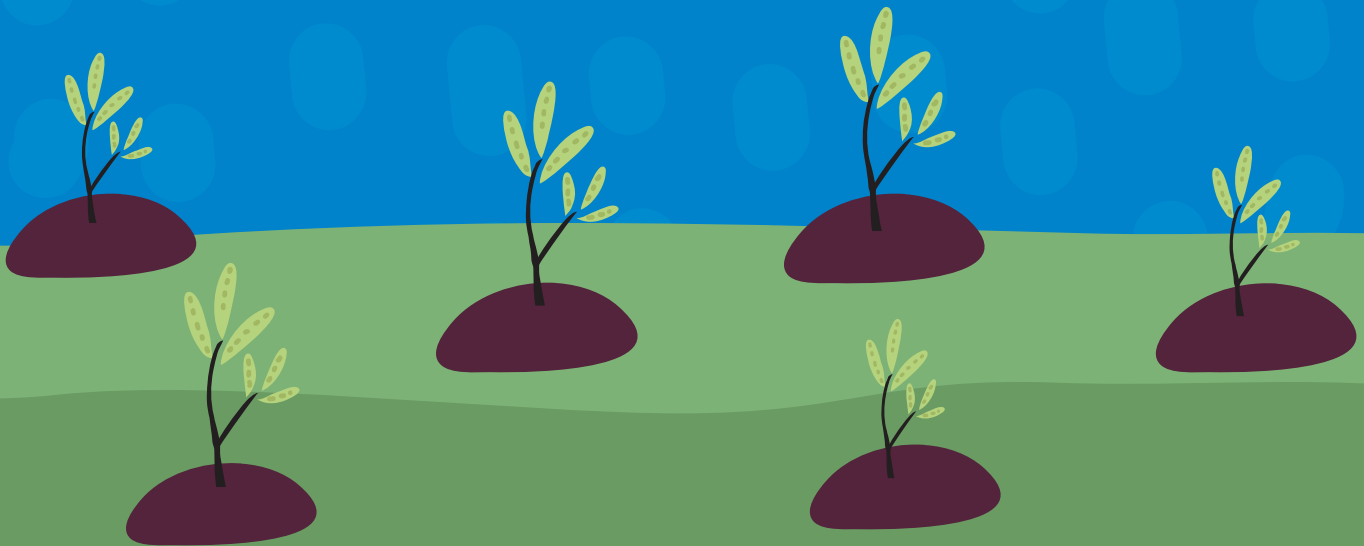
### The HR View

Nearly nine in ten HR professionals (88%) agreed or strongly agreed that “external workers positively contribute to the business productivity of my [their] organization.” Yet HR, as a group, is quite worried about the legal implications of external work.

Nearly three-quarters of HR professionals reported that they are somewhat concerned, concerned, or very concerned about the legal landscape of external work, with 11% reporting that they are very concerned. While HR is among those responsible for making sure that organizations comply with

external worker employment law, in 84% of organizations, this is a shared responsibility. More than a quarter of HR professionals cited staffing agencies (32%), managers (27%), and legal (25%) as responsible, and another 8% felt that external workers themselves are among those responsible for compliance. When asked what was the biggest issue or challenge that they would like to see resolved related to external workers, many HR professionals cited legal ambiguity regarding the use and management of external workers as their greatest concern.

# Are You Ready for Your External Workforce?



# Are You Ready for Your External Workforce?

We at SHRM and SAP believe that the external workforce is a central part of the future of work. As organizations strive to respond to a world of work in which flexibility and agility are instrumental for competitiveness, external workers will be a key element of their success. Those organizations that view their external workforce as an essential part of their human capital and plan and prepare for the strategic use of external workers will be more successful than those whose use of external workers falls outside of their strategic objectives and HR practices.

Based on the results of the survey research program described here, along with focus groups conducted with HR professionals across the country and interviews with business leaders, SHRM and SAP are developing an External workforce management toolkit. This toolkit will enable organizations to understand the current maturity of their approach to external workforce management and engagement, and create policies, programs, and practices that maximize organizational results while fostering positive outcomes for external workers, their internal employee colleagues, and their managers.

The toolkit will include:

## FOUNDATIONS

### The external workforce maturity model

A framework to help you understand the current maturity of your external workforce strategy, and which areas to focus on given your current state.

### The external worker experience

A profile of who external workers are, including their motives, preferences, and experiences inside companies, to dispel stereotypes and help organizations understand how they can best manage and engage this part of their workforce.

### The business case for investing in your external workforce

Suggestions for how to build a business case for investing in your external workforce that speaks to the unique needs of your organization.

## STRATEGY

### External workforce strategy and governance

Best practices for creating an external workforce philosophy, strategy, and governance model.

### Legal facts versus myths about your external workforce

How to deal with the complexity and ambiguity of law around the external workforce, including how to balance rewards and risks effectively.

## THE EXTERNAL WORKER LIFECYCLE

### Planning

Why organizations hire external workers and tips for making that decision-making process more strategic and effective. Decision tree for choosing an external worker versus an internal employee for any given role.

### Sourcing

Best practices for creating an external worker employment brand, and how external workers may impact your internal employee employment brand. Sourcing analytics that companies should utilize for their external workforce.

### Onboarding

Best practices for onboarding your external workforce.

### Working and Engaging

Guidance for managers on how best to manage a blended workforce. Metrics for measuring and

managing the work of external workers. Best practices for engaging your external workforce.

### Paying

Considerations for external worker compensation.

### Closing

Best practices for exiting your external workforce.

The “External workforce management toolkit– Strategies and tactics for optimizing your external workforce” will be available at [externalworker.com](https://externalworker.com).

A decorative banner with a dark red, rounded rectangular center. The banner is adorned with stylized green plants featuring black, dotted berries. One plant is on the left, and another is on the right. The banner is set against a blue background with a pattern of lighter blue circles.

# Survey Research Methodology

# Survey Research Methodology

The surveys of managers, external workers, and internal employees were conducted by NORC at the University of Chicago for the Society for Human Resource Management (SHRM) and SAP. Data were collected using the AmeriSpeak Panel. Supplemental sample was obtained from a nonprobability sample source, Lucid.

The AmeriSpeak Panel is NORC's probability-based panel designed to be representative of the U.S. household population. During the initial recruitment phase of the panel, randomly selected U.S. households were sampled with a known, non-zero probability of selection from the NORC National Sample Frame and then contacted by U.S. mail, email, telephone, and field interviewers (face-to-face). The panel provides sample coverage of approximately 97% of the U.S. household population. Those excluded from the sample include people with P.O. Box only addresses, some addresses not listed in the USPS Delivery Sequence File, and some newly constructed dwellings.

This study was offered in English-only and self-administered on the web. Interviews for this survey were conducted between April 9 and April 22, 2019. A sample of U.S. adults age 18+ who were either currently employed, or not currently employed but potentially seeking employment, was selected from NORC's AmeriSpeak Panel for this study. Respondents who indicated that they were currently

employed and met one of the following criteria qualified to complete the survey.

- External workers—workers who complete contract-based or temporary assignments for companies or other people. These workers are often referred to as "contingent workers," "gig workers," "contractors," and "temps," though there are many labels for these workers. They might be employed by a contracting organization (for example, a contractor company or staffing agency) who helps them find assignments or they might work for themselves.
- Internal (non-management) employees—employees who are employed full or part-time by one organization on a more permanent basis. Employees are paid directly as part of the organization's payroll.
- Internal (management) employees who have managed external workers within the past 12 months.

In total, NORC collected 1,714 interviews, with 1,612 from the AmeriSpeak Panel and 102 from the Lucid Panel. The screener completion rate is 23.8%, the weighted recruitment rate is 34.2%, the survey completion rate is 46.3%, and the weighted household panel retention rate is 85.1%, for a cumulative response rate of 3.2%. The overall margin of sampling error is +/- 4.2 percentage points at the 95% confidence level, including the

design effect. The margin of sampling error may be higher for subgroups.

The survey of HR professionals was conducted by SHRM. Twenty thousand SHRM members were invited to complete the survey and interviews were

conducted between March 28 and April 28, 2019.

Interviews were conducted in English on the web, and 1,178 HR professionals completed the survey.

The survey completion rate was 5.9% and the survey margin of error is  $\pm 2.85\%$  at a 95% confidence level.

The data were not weighted.



# About the Partners

# About the Partners

SHRM, the Society for Human Resource Management, creates better workplaces where employers and employees thrive together. As the voice of all things work, workers and the workplace, SHRM is the foremost expert, convener, and thought leader on issues impacting today's evolving workplaces. With 300,000+ HR and business executive members in 165 countries, SHRM impacts the lives of more than 115 million workers and families globally.

The SAP SuccessFactors HCM Suite helps customers deliver exceptional workplace experiences at every moment that matters, use intelligence to strengthen engagement across the entire workforce, and join a community defining the future of work. The industry-leading SAP SuccessFactors solutions help more than 6,700 customers around the world turn purpose into performance.

## **EXHIBIT C**



# Focus your forces

External Workforce Insights **2018**:  
The **Forces** Reshaping  
How Work Gets Done

Research in  
collaboration with



OXFORD  
ECONOMICS

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# The external workforce: is it on your C-suite agenda?

The rapid growth of the external workforce—that is, the use of both non-payroll workers and contracted services providers to get work done—is one of the most important business stories of our time, with far-reaching implications for both employers and employees. Yet most companies are still figuring out the best ways to manage this extended workforce, and too many C-level executives are not paying close enough attention. Those who manage external labor effectively are finding it to be a driver of competitive advantage, but others risk being left behind as their rivals make better use of these critical human resources.

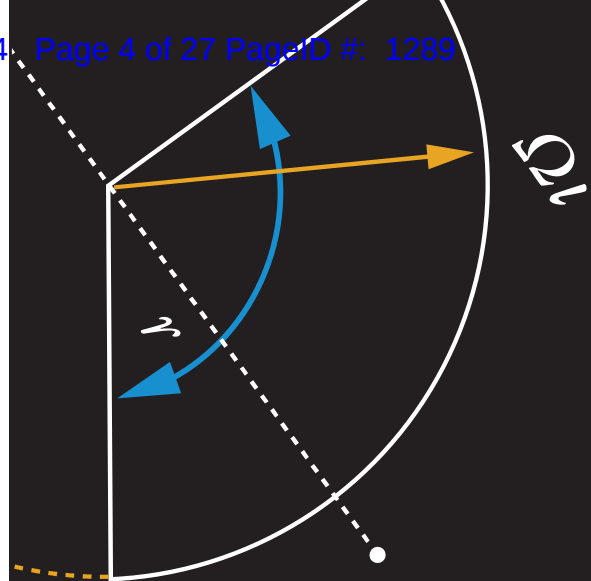
How can businesses gain better value from independent contractors, consultants, and temporary workers, and from services providers like consulting firms, marketing agencies, and facilities management companies? To find out, we collaborated with Oxford Economics to survey 800 senior executives—one-third of them C-suite leaders, including chief procurement officers and chief HR officers—in 16 industries and more than a dozen countries.

The results provide an unprecedented deep dive into the ways the external workforce is sourced, managed, and deployed—and how it can pay off for a business.

## Key themes from our research



The external workforce is not a C-level issue at many companies. It should be. The effective use of non-payroll talent can be a strategic and competitive differentiator and a driver of organizational agility and competitive advantage in the digital age. This labor can be sourced through multiple channels, both traditional and digital, and can provide critical skills and capabilities essential for core operations and growth. Yet these vital assets are critically under-managed. That creates a new imperative for the C-suite: to increase their visibility of the external workforce—and the total workforce—in order to help their companies thrive.



## Who's who in the extended workforce?

### Non-payroll workers (contingent labor):

individuals hired by a company to do work on its behalf, but not as traditional employees. They could include independent contractors, consultants, or temporary labor, and could be contracted via staffing agencies, through freelance marketplaces, or sourced directly.

**Services providers:** organizations such as consulting firms, marketing agencies, and facilities management companies. They are typically contracted to do project-based work via a Statement of Work (SoW).

**External workforce:** the combination of non-payroll workers and services providers (also known as an extended workforce).

**On-demand, online marketplaces for freelancers:** digital platforms that provide a mechanism to engage talent and match buyers and sellers of services.



## Introduction

Our analysis of the survey data surfaced four key themes:



### The multi-channel workforce is on the rise

Companies are using a wide range of channels to hire external workers, and the use of these channels is expected to grow. For survey respondents, the external workforce now comprises roughly 44% of workforce spending. That momentum should continue: the top labor market trends for respondents are the availability of talent that prefers to work on a contract basis (rather than as employees) and greater access to talent created by the globalization of the labor supply.

44%

of workforce spend  
is on the external  
workforce



### It's about the core

The external workforce has become essential to core operations—and is increasingly critical to business strategy. Nearly half (46%) of respondents say that without an external workforce they would be unable to conduct business as usual. Around two-thirds (65%) say the external workforce is important or extremely important to operating at full capacity and meeting market demands.

65%

say the external workforce is  
important or very important to  
operating at full capacity and  
meeting market demands



### Cost is not the whole story

While still important, controlling costs is no longer the principal driver for using an external workforce. Rather, the external workforce is now seen as essential to improving business performance. Two-thirds (66%) of respondents say it is important or very important to increasing speed to market; 64% say it is important or very important to increasing organizational agility; 62% say it improves overall financial performance; and nearly half (47%) say it allows them to compete in a digital world.

68%

say the external workforce is  
important or very important to  
developing or improving products  
and services



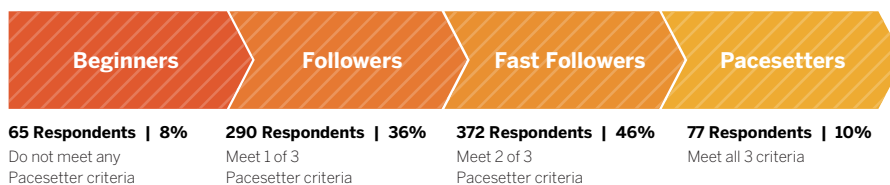
### Visibility is everything

The external workforce is critically under-managed at most companies. Limited visibility and inadequate attention from the C-suite hinders effectiveness. Executives are generally not well informed about the who, what, where and when of their external workforce. About one-third (35%) of respondents are highly informed about who is doing work for their organization when it comes to non-payroll workers, and less than half (47%) when it comes to services providers. C-suite executives who are responsible for leading their functions are less in the know: just 25% are highly informed regarding non-payroll workers, and 35% about services providers. As a result, many companies are not realizing the maximum benefit from their external workforce.

## Pacesetters demonstrate superior performance in managing and extracting value from the external workforce

Our survey reveals a path forward for companies that need to catch up. Some respondents demonstrate much more deliberate approaches to managing the external workforce than their peers. These companies—we call them **Pacesetters**—make up about 10% of the survey population and stand out from the crowd in three important ways: their **visibility** into the external workforce, their **effective management** of this workforce, and the **business impact** of these workers (see page 23 for a detailed definition of our Pacesetter methodology).

Using these criteria, we were able to segment our survey respondents into four groups—**Beginners**, **Followers**, **Fast Followers**, and **Pacesetters**—each group represents an increasing level of rigor in the successful management of the external workforce.



It is important to note that while Pacesetters lead the pack now, even they still have much to do to fully capture the value—and mitigate the risks—of this dramatic transformation in the way work gets done.

This report explores these themes and survey findings in detail. We describe the behaviors that set Pacesetters apart, define some of the actions organizations can take to improve the way they manage the external workforce—and drive better outcomes for their businesses.

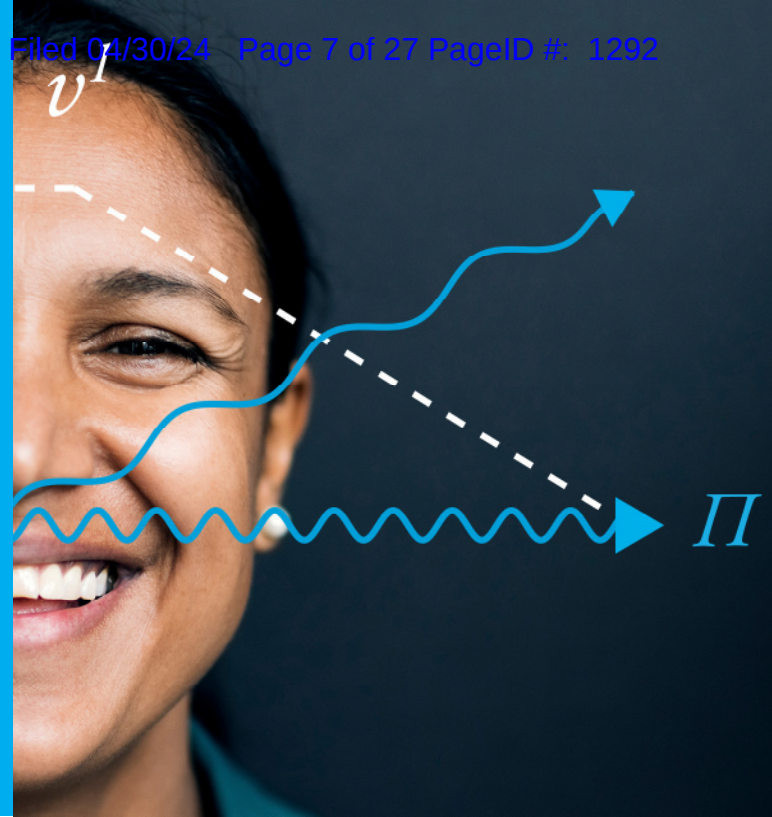
# 79%

of Pacesetters say the external workforce is a key enabler of business performance, yet only 52% of Non-Pacesetters say so





# The multi-channel workforce is on the rise



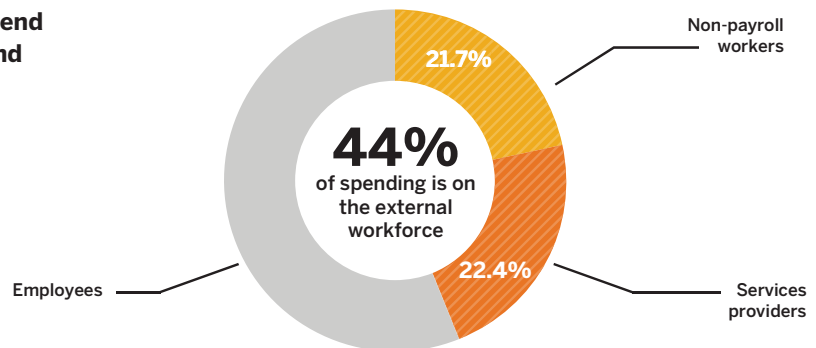
The shift from traditional models of employment to external labor is a fundamental transformation of how work gets done, and it is well under way: our survey shows that nearly half of workforce spending now goes to contingent workers and services providers, and that these workers are deployed in a wide variety of roles across organizations. This shift is expected to continue in the coming years. As it does so, the external workforce will become increasingly critical to business strategy.

The impact of these changes extends well beyond individual businesses. In fact, the growth of the external workforce affects the daily lives of millions of people—and even the performance of major economies. A 2016 study<sup>1</sup> by the National Bureau of Economic Research, a prominent US nonprofit organization, suggests that net job growth in the United States between 2005 and 2015 was due entirely to contingent workers, including temporary and on-call workers, independent contractors or freelancers, and the fastest-growing group: contract employees.

**Fig. 1. There has been a big shift in the way work gets done**

**What is the split of your organizational spend across employees, non-payroll workers, and services providers?**

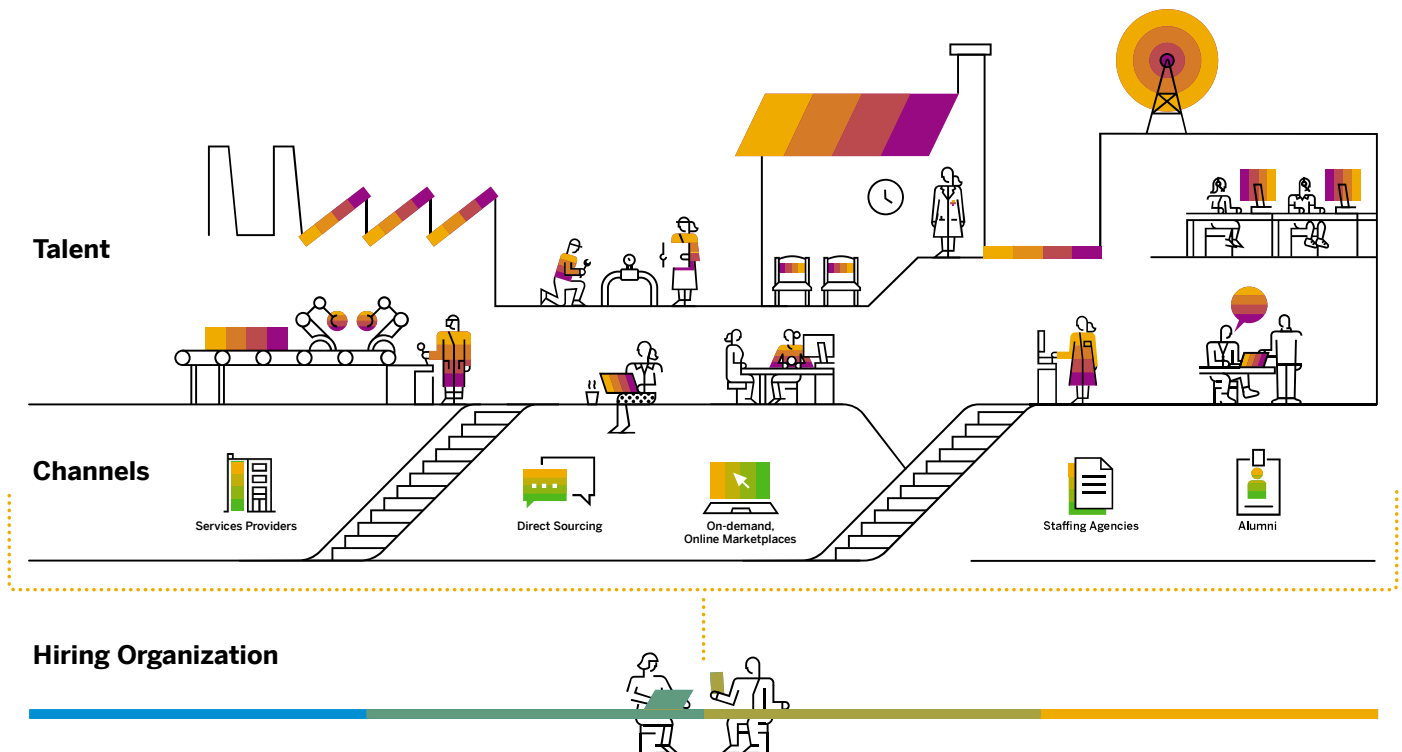
Mean responses shown



The multi-channel workforce is on the rise

Our survey shows that companies are relying on numerous channels to access external talent. The most widely used is services providers, such as consulting firms, marketing agencies, and facilities management companies (cited by half of respondents), with nearly as many (48%) sourcing talent themselves, followed by on-demand online marketplaces for freelancers (38%), staffing agencies (35%), and alumni networks (9%). We call this use of talent sourced through a variety of channels the **multi-channel workforce**.

## The multi-channel workforce: the way work gets done



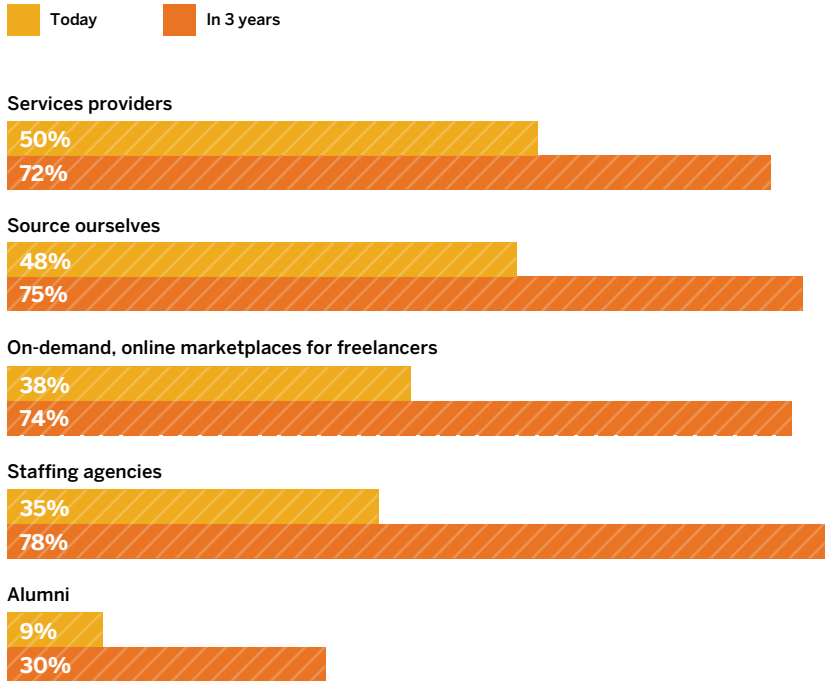
These channels are expected to show strong growth over the next three years, suggesting ongoing, and even increasing, demand and competition for external workers.

The multi-channel workforce is on the rise

## Fig. 2: Strong growth ahead across talent channels

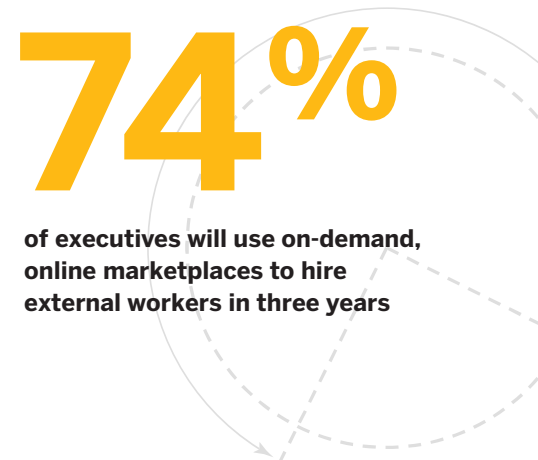
Through which of the following sources do you hire your external workforce today? In three years?

Respondents could select all that apply



Importantly, Pacesetters are more likely than others to engage multiple channels to source talent, including services providers (used today by 75% of Pacesetters vs. 47% of others) and staffing agencies (60% vs. 32%), whereas Followers and Beginners are less likely to use these channels.

Pacesetters also are more likely to use on-demand online marketplaces for freelancers, both today and in the next three years. Online marketplaces and talent portals are increasingly important ways to find and hire an external workforce. While just 38% of respondents use them today (either frequently or always), putting them well behind established channels like services providers and self-sourcing, nearly twice that number (74%) say they will use online marketplaces and talent portals in three years' time. **These digital channels are essential to enabling companies to find and work with the best talent anywhere in the world, and are also a critical means of engaging digital natives and next-generation talent.**

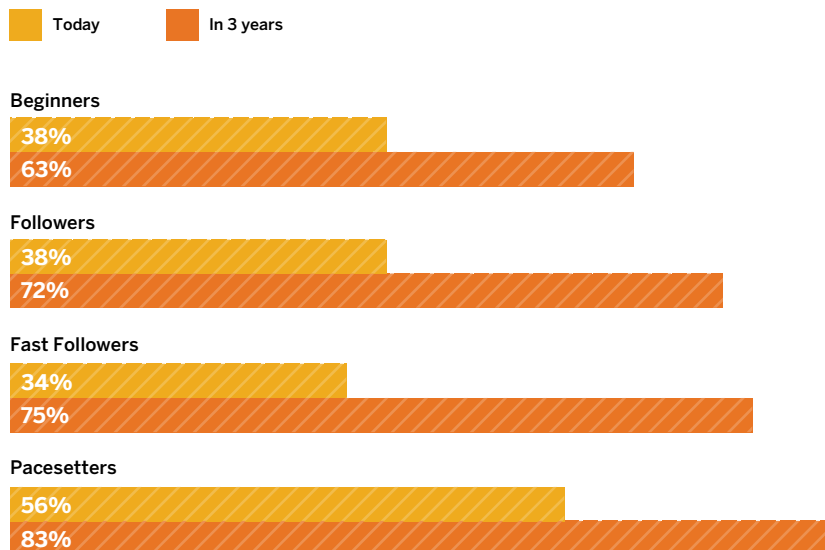


The multi-channel workforce is on the rise

### Fig. 3: Growth of online talent marketplaces

**To what extent does your organization use on-demand, online marketplaces for freelancers today? In three years?**

“Very often” and “Always” responses



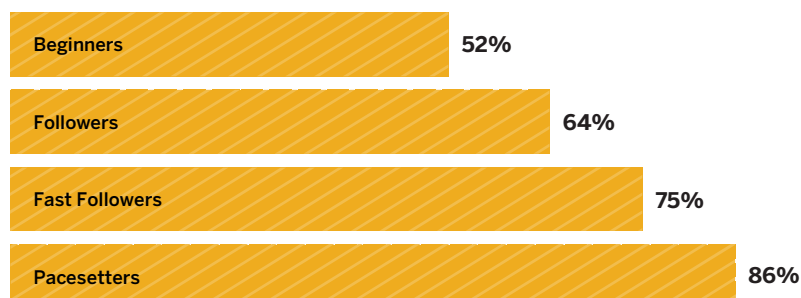
**Talent strategy is increasingly dependent upon sourcing strategy.**

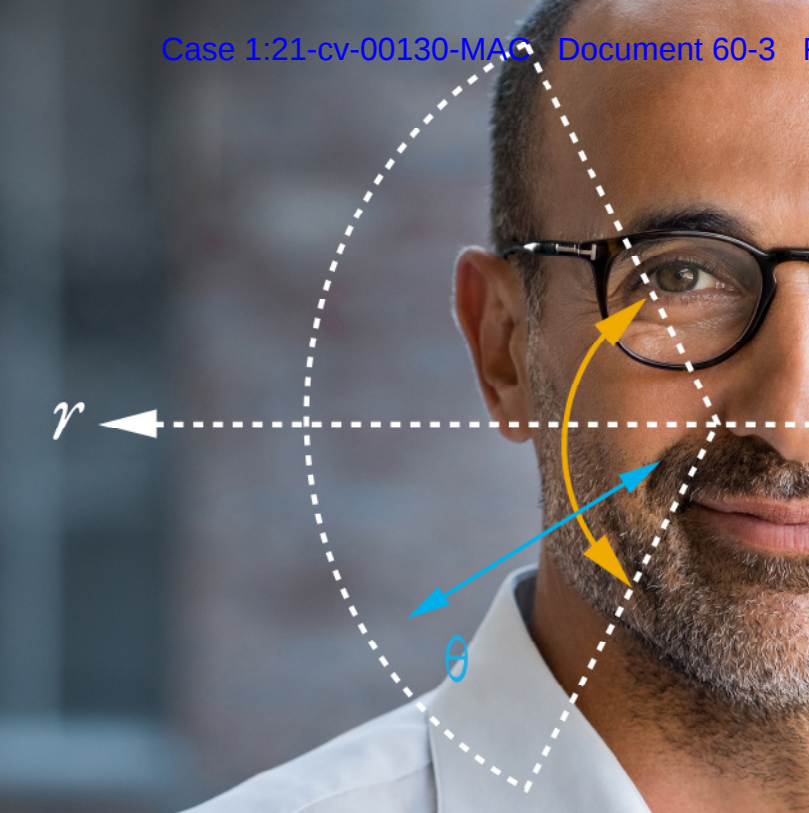
Pacesetters and Fast Followers—the two groups most advanced in their management of the external workforce—are more likely to say their organization has a talent strategy that encompasses both employees and the external workforce (86% and 75% respectively, vs. 64% of Followers and 52% of Beginners).

### Fig. 4: Leading organizations focus on total workforce strategy

**Our organization has a talent strategy that encompasses employees and the external workforce.**

“Strongly agree” and “Agree” responses



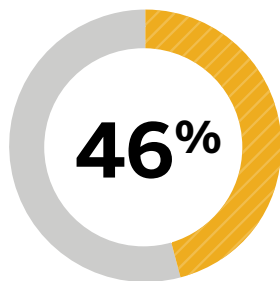


## It's about the core

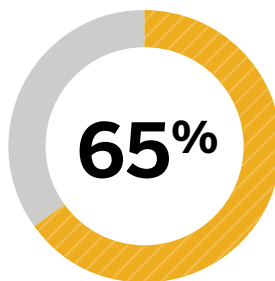
In a global economy in which digital skills and other specialized capabilities can make or break a business, meeting the demand for talent at the right time and in the right place is essential. Our survey shows that external labor has become an important means of doing so, while also creating a rich well of talent for staffing core functions across the enterprise.

Nearly half (46%) of respondents say that without an external workforce they would be unable to conduct business as usual, and about two-thirds (65%) say the external workforce is important or very important to operating at full capacity and meeting market demands.

**Fig. 5: The external workforce is critical to keeping the lights on**



say they would be unable to conduct business as usual without an external workforce



say their external workforce is critical to operating at full capacity and meeting market demands

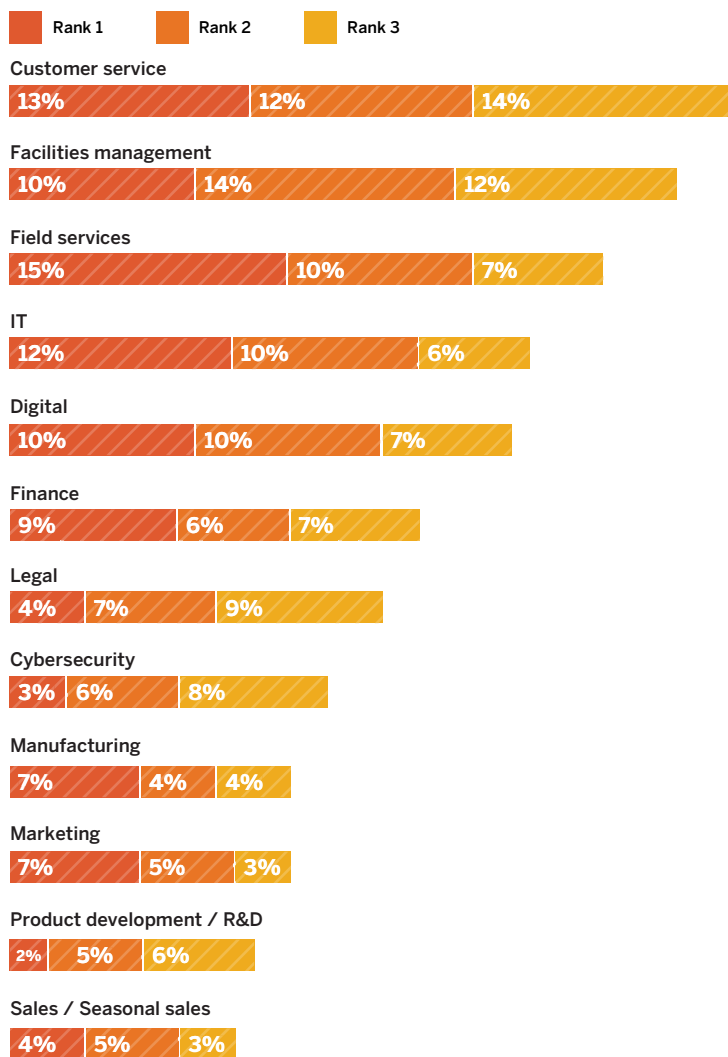
It's about the core

This high demand for external labor comes from functions across companies, including areas as diverse as customer service, IT, and facilities management.

Nearly three-quarters of respondents are using an external workforce for support services, and well over a third are doing so for field services/manufacturing, corporate staff, and outsourced projects. Interestingly, Pacesetters are least likely to say they use an external workforce for staff augmentation (13%), while Beginners are most likely to do so (37%). This may well be because staff augmentation is one of the easiest places to start using an external workforce.

## Fig. 6: The external workforce is being used widely across organizations

### Which business functions rely most heavily on an external workforce?



It's about the core

The external workforce is critical for sourcing hard-to-find skills. Nearly three-quarters of executives cite the importance of these workers in sourcing skills that are in scarce supply, with virtually all respondents (91%) saying this will be the case in three years' time. Respondents experiencing the fastest revenue growth (20%+) cite challenges in accessing specialized skills (e.g., AI and machine learning, data science, industry-specific expertise) as the number one market trend impacting their business (31% vs. 18% for others).

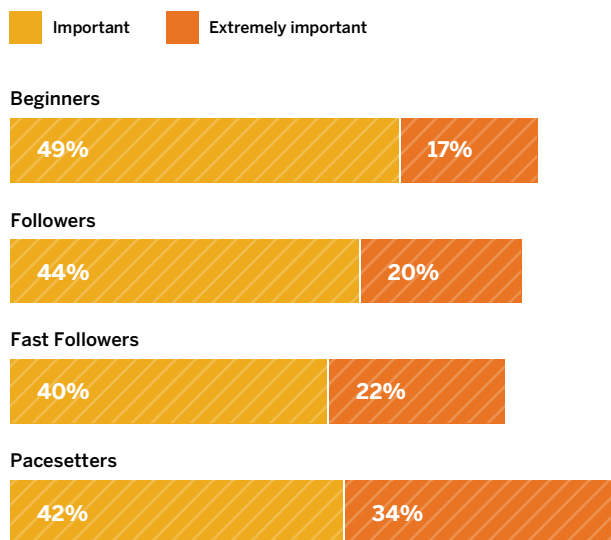
The importance of non-traditional labor sources is expected to continue its rapid growth. Our survey shows that executives think it is increasingly important to meeting business needs in a wide range of areas, both today and in three years' time, including support services (77% today vs. 94% in three years), corporate staff (63% today vs. 94% in three years), and field services/manufacturing (63% today vs. 88% in three years).

**The fastest revenue growth companies (20%+) state that challenges in accessing specialized skills (e.g., AI and machine learning, data science, industry-specific experience) is the**

**#1 labor market trend impacting their business**

## Fig. 7: Companies depend on the external workforce

**How important is the external workforce in operating at full capacity/meeting market demands?**



It's about the core

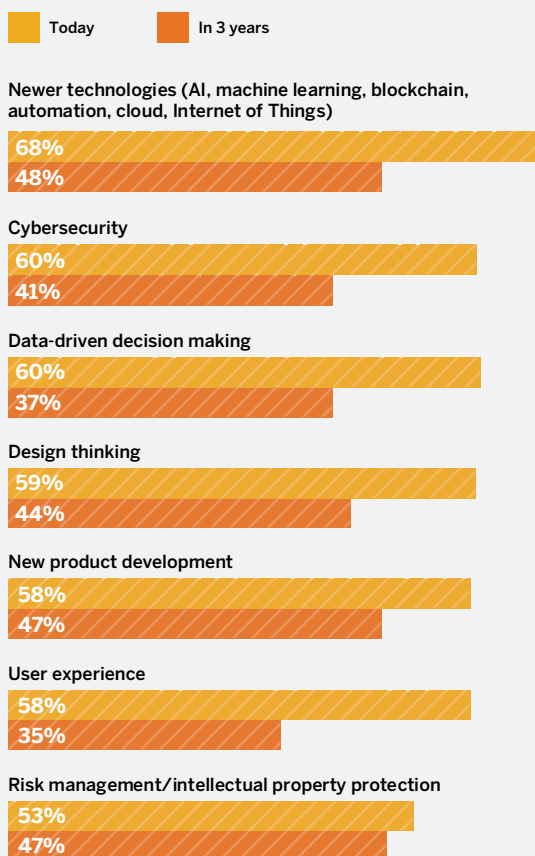
## Heading for a skills shortfall?

Many companies do not have the skills they need to stay competitive. More than half of the respondents to our survey report talent shortfalls in critical areas such as data-driven decision-making (60%), design thinking (59%), new product development (58%), user experience (58%) and intellectual property protection (53%). Yet all these skills will be increasingly important in developing digital products and services.

### Fig. 8: Staying competitive in the digital age

**To what extent does your organization have the skills it needs in the following areas today? In three years?**

“Not quite enough” and “Major shortfall” responses



The numbers are no better when it comes to the technology skills required to fulfill broader digital transformation agendas. About two-thirds of respondents lack skills in newer technologies—artificial intelligence (AI), machine learning, blockchain, automation, cloud, and the Internet of Things. And while they believe their preparedness for these technologies will improve, about half still anticipate having insufficient skills in these areas in three years' time.

If the supply of skills remains unchanged, many companies may be less prepared than they expect in the coming years. With nearly everyone expecting to increase their hiring, the competition for skilled talent will make the ability to source, recruit, and retain non-payroll workers even more important than it is today.





## Cost is not the whole story



One of the big ideas behind the use of the external workforce is that it saves companies money: it gives them the flexibility to scale their workforces up and down depending on demand—and reduce overhead in the process. These are non-trivial means of cost control, and spending discipline remains one of the important benefits of adopting the external workforce. Yet our survey shows that other motivating factors are now more important in deciding to move beyond traditional employment arrangements.

We asked respondents how important the external workforce is to their ability to meet a range of business goals. The top answers were developing or improving products and services (with 68% saying this is extremely important or important), increasing speed to market (66%), operating at full capacity/meeting market demands (65%), and increasing organizational agility (64%). Managing costs is close behind at 60%, ahead of reducing risk (54%).

# 62%

**of executives say their external workforce enables them to improve the company's overall financial performance**

Cost is not the whole story

## Fig. 9: The external workforce delivers on strategic goals

**How important is the external workforce in meeting the following business goals?**

“Important” and “Very important” responses



This reveals a new and expansive outlook on the value of the external workforce. More than half of respondents say it is a key enabler of business performance. A similar proportion say it provides them with the flexibility to respond to opportunities when and where they arise. And nearly half say their external workforce helps them compete in a digital world.

**60%**

**of Pacesetters and Fast Followers say their external workforce allows them to stay competitive in the digital age**

## Pacesetters stand out from the crowd

Pacesetters show their true colors when it comes to realizing value beyond cost control. Nearly 80% of this elite group report that the external workforce is a key enabler of business performance, followed by 71% of Fast Followers, 35% of Followers and 18% of Beginners.

**About 60% of Pacesetters and Fast Followers say their external workforce allows them to stay competitive in the digital age, while only 32% of Followers and 18% of Beginners make the same claim.**

Cost is not the whole story

## Finding value beyond the hard numbers

Non-traditional work arrangements can improve company performance in ways that go beyond traditional business metrics. Our survey shows that well over half (61%) of respondents say the external workforce challenges employees to do their best work. Over half (54%) say it improves their culture by bringing in people with different backgrounds and experiences, and 49% say it connects the workforce to new ideas.

Maximizing this kind of value calls for effective management of the external workforce. That includes training and educating these workers, and integrating them into the company culture. This is another area where Pacesetter companies, with their stronger management strategies, stand out from the pack. These companies are more likely to say their external workforce raises the bar for other employees (66% vs. 34% of Beginners) and are more likely to say it is important that their company is viewed as a good place to work by external workers (74% vs. 31% of Beginners).

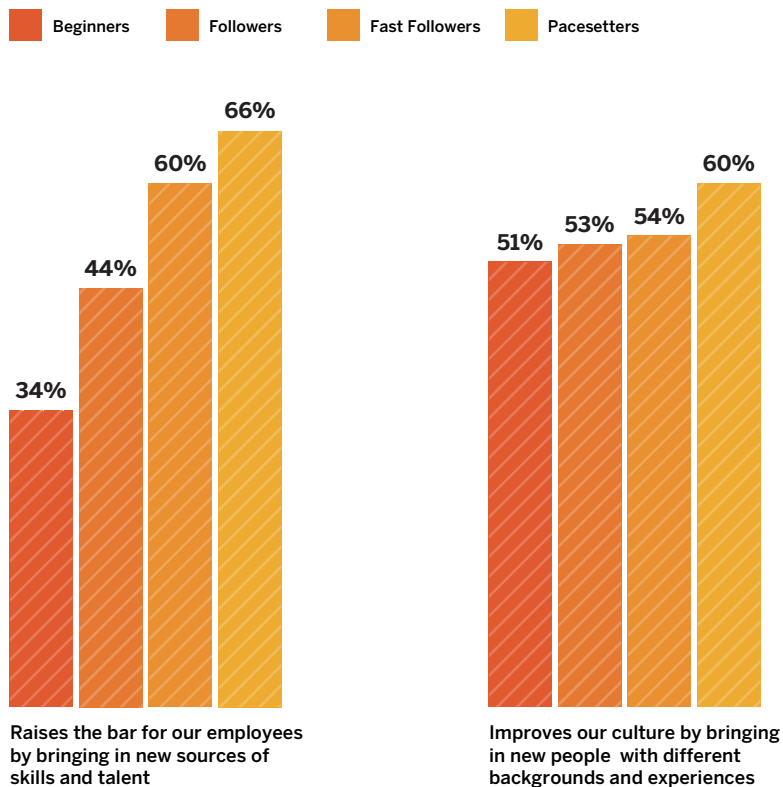
# 61%

**of executives say the external workforce challenges employees to do their best work**

## Fig. 10: Soft benefits accrue with deliberate management

**To what extent do you agree with the following statements about the impact of the external workforce on your organization?**

“Strongly agree” and “Agree” responses





# Visibility is everything

A fundamental truth of business is that you can't manage what you don't measure. That makes the lack of visibility into the external workforce a serious problem for most companies. New work arrangements require a new kind of management, and senior executives—the C-suite included—are not paying close enough attention.

## Failing to get a clear picture of non-payroll workers and services providers

Only half of the respondents to our survey consider themselves well informed about the labor rates charged for their contingent workforce. Other key data points appear even more opaque to these executives, including compliance with negotiated rates and contingent workers' responsibilities, tenure, quality of work, headcount, and access to facilities (with only 40%-47% saying they are "highly informed" about these issues). Visibility dips further still when it comes to contingent workers' location, compliance with required licenses/certifications, access to systems and confidential company information, and identity (35%-38%).

A similar pattern emerges for services providers. About half (51%) of respondents consider themselves well informed about the contract terms for their services providers. Only 53% are "highly informed" regarding their responsibilities, and even fewer know the duration of work, access to facilities, systems and confidential information, work quality, progress against milestones and/or deliverables, and compliance with licenses and certifications. Notably, across the board, Pacesetters are much more informed about these issues than their counterparts.

Visibility is everything

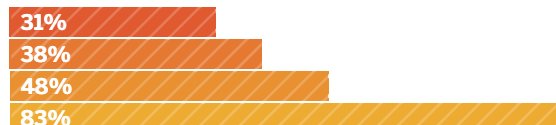
**Fig. 11: Pacesetter executives are in the know**

**How informed are you personally about the following details of your **non-payroll workers**?**

“Highly informed” responses

Beginners Followers Fast Followers Pacesetters

**Responsibilities (what they are doing)**



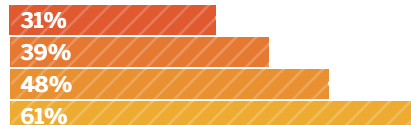
**Labor rates**



**Compliance with negotiated rates**



**Quality of work**



**Access to systems & confidential company info**



**How informed are you personally about the following details of **services providers** doing work for your organization?**

“Highly informed” responses

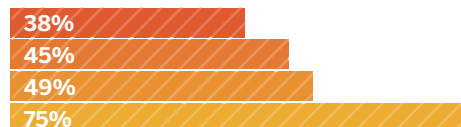
**Responsibilities (what they are doing)**



**Who is doing the work**



**Duration of work**



**Quality of work**



**Access to systems & confidential company info**



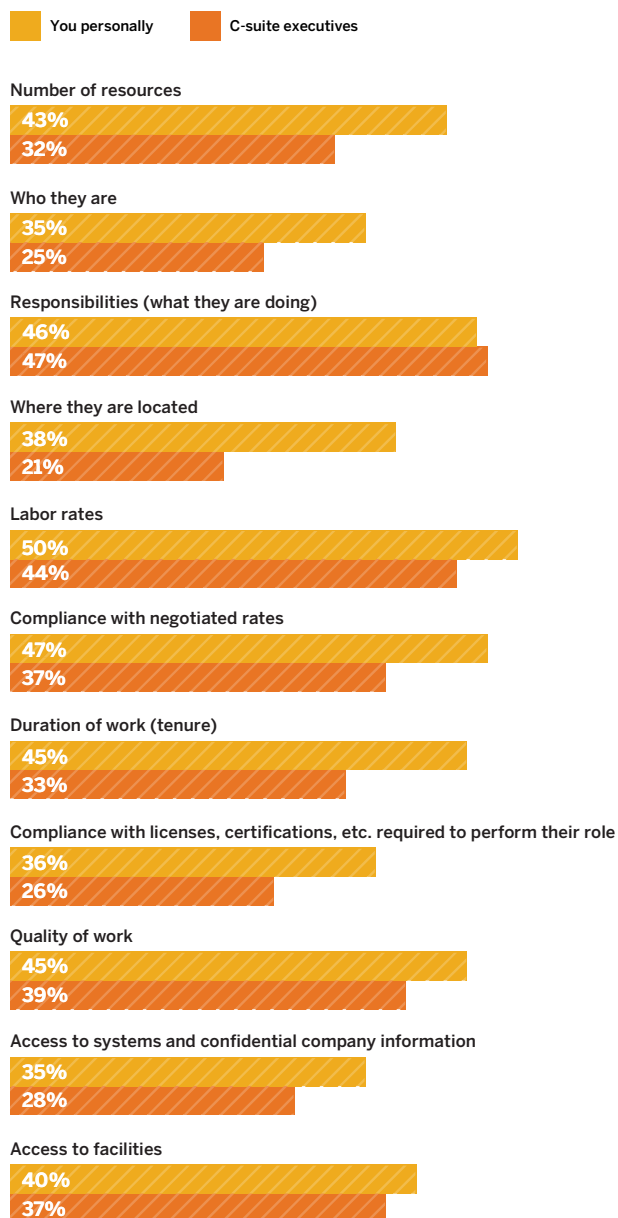
While respondents admit that their visibility of the external workforce is often poor, they rate the C-suite executives who lead their functions even worse. This lack of transparency into a vital labor resource could be a question of poor data sharing: most companies manage their external workforce by functional groups and lines of business and may not be sharing information effectively with the C-suite.

Visibility is everything

## Fig 12: Poor visibility goes all the way to the top

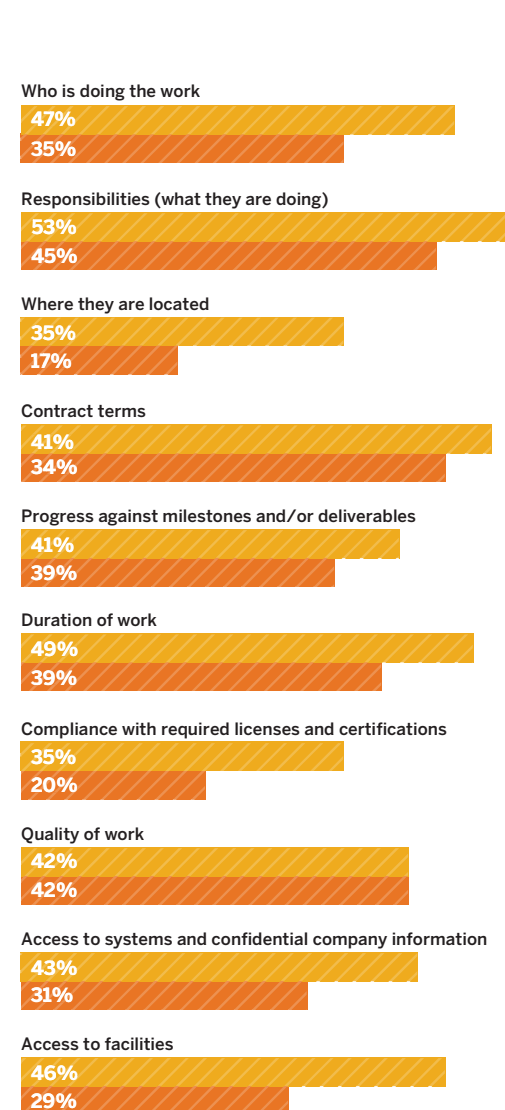
**How informed are you, and the C-suite executive who leads your function, about the following details of **non-payroll workers** doing work for your organization?"**

"Highly informed" responses



**How informed are you, and the C-suite executive who leads your function, about the following details of **services providers** doing work for your organization?"**

"Highly informed" responses



Unsurprisingly, these shortfalls translate into some serious management issues. Well over half (60%) of executives surveyed report that tracking resource and project quality is a big challenge. Managing digital (59%) and physical (56%) security also creates headaches for many companies, and physical security breaches (acknowledged by 37% of respondents) and digital security breaches (31%) are distressingly common.



Visibility is everything

## Fig 13: Management challenges abound

How challenging are the following aspects of managing your external workforce?

Extremely challenging Really challenging Somewhat challenging Minimally challenging Not a challenge

Finding high-quality resources at the right time and in the right place



Tracking resource and project quality



Managing digital/cybersecurity



Ensuring non-employees or suppliers who do not perform well are not re-engaged



Compliance with local tax laws, labor laws, regulatory, and privacy requirements



Financial issues also abound. A third of survey respondents report overcharges and payment redundancies, and a quarter say they have experienced rates that deviate from agreed-to rate cards or master service agreements (MSAs). Similar proportions have had to deal with unauthorized spend without approval from procurement (28%) and compliance issues (29%).

The fact is that a workforce managed ineffectively won't deliver on its full potential.

**While most respondents say their company considers all types of labor when starting new projects, and that they look at the total workforce strategically, in reality the current lack of visibility means management does not have a truly holistic view.**

## Procurement and Human Resources must align

Cross-functional collaboration needs work at most companies. Our survey shows that only 4% of respondents say that collaboration is seamless for contingent workers, and just 10% of respondents say that collaboration is seamless for services providers.

The rigor of a company's approach to its external workforce is highly relevant here: 78% of Pacesetters say that collaboration between procurement and HR regarding non-payroll workers is seamless or effective (vs. 51% of Fast Followers, 44% of Followers, and 37% of Beginners).

# 59%

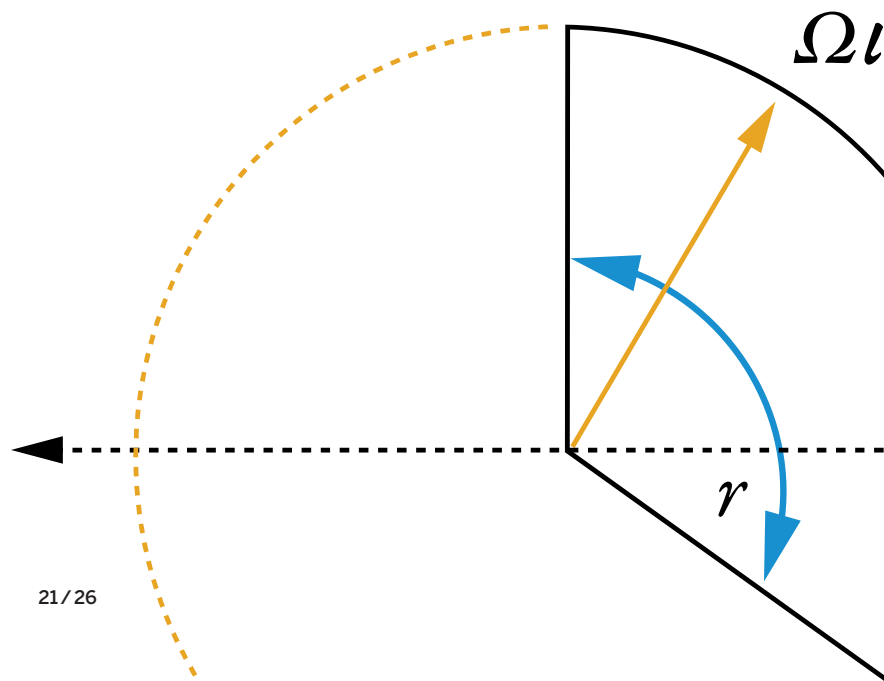
of executives cite managing digital security as a challenge

Visibility is everything

How can that visibility be improved? One solution may lie in technologies like advanced analytics and machine learning, which can give companies better insight into their external workforces. Yet just 15% of respondents strongly agree that their company uses AI/machine learning to inform their workforce strategy. Even fewer say they are using predictive analytics, big data, or AI to inform workforce scenarios, better understand the effectiveness of talent strategies, and get real-time visibility into payroll and rate data.

## Pacesetters show more effective management

Clearly, senior management has much to do before it can realize the full value of the workforce revolution. And our Pacesetters show just how much other companies could benefit from more effective management. Compared with our Beginner companies in particular, Pacesetters find it much less challenging to perform a wide range of external workforce management duties effectively. That includes tracking resource and project quality, managing inconsistencies in talent or project quality, ensuring underperformers are not re-engaged, and remaining compliant with local tax, labor, and privacy laws and regulations, as well as managing unauthorized spend, administrative issues, and digital security. Pacesetters are also less likely to be challenged by inadequate technology in managing external labor, and are more likely to say both they and their C-level executives are informed about their contingent workers and services providers.





The external workforce: a C-suite imperative

# The external workforce: a C-suite imperative

Take a moment to consider one of the standout data points from our survey: today, nearly half of respondents' workforce spend goes outside of the traditional payroll. That is nothing short of a transformation in how work gets done. And we may well have a long way to go in the growth of the external workforce.

That is why we believe the external workforce must now be a C-suite imperative—not only because of the sheer numbers involved, but also because it enables such an impressive range of business outcomes, from developing or improving products and services to increasing speed to market. **Our survey results are clear: businesses increasingly see contingent workers and services providers as a means to access the critical skills and capabilities essential for core operations, and to position themselves for future growth.**

At the same time, it is clear these vital assets are often being critically undermanaged. Those respondents to our survey who manage external labor most effectively—the

Pacesetters—stand head and shoulders above the rest in terms of reaping value from the non-payroll workforce, with nearly 80% saying the external workforce is a key enabler of business performance. These Pacesetters lead the pack in terms of visibility into their external resources, managing them effectively, and realizing a positive impact on their businesses.

The goal for every company should be to emulate or surpass the Pacesetters and manage the external workforce as effectively as possible. Getting there means embarking on a journey. It will not happen all at once, and there is no silver bullet. But those organizations who abandon ad-hoc approaches and put deliberate processes and measures in place to harness their external resources for better business value will ultimately reap the rewards. In the end, the key question for every business is this: shouldn't the same rigor you use to manage your employees be applied to your contingent workers and services providers? In other words, shouldn't the external workforce be on your C-suite agenda?

## Take action today

### Capture the full value of the workforce transformation by managing your external workforce more effectively:

- ✔ Ensure your leadership has visibility into the scope, activities, and quality of your external workforce, the challenges at hand, the benefits realized—and those that could be realized.
- ✔ Know the true value of your external workforce, whether they are most critical to getting products to market faster, providing difficult-to-access skills, driving digital transformation efforts, or controlling costs.
- ✔ Anticipate the skills you will need in the future—and those that will be in short supply. Determine a strategy to acquire, retrain, or source these skills through the multi-channel workforce.
- ✔ Apply workforce strategies to all labor sources, both external and traditional. Embrace the external workforce for the skills and ideas that this talent brings and make them a part of organizational objectives and purpose.

The Pacesetters lead the pack

# The Pacesetters lead the pack

## The journey to better business outcomes

Around one in ten companies that responded to our survey demonstrate markedly superior performance in managing and extracting value from the external workforce. These “Pacesetters” are charting the way forward for others in this still evolving field.

By assessing performance in three distinct areas—**visibility**, **effective management**, and **business impact**—we segmented respondents into four groups reflecting the rigor

of their external workforce management and the stage of their journey to better business outcomes. The **Pacesetters** lead the pack, followed by the **Fast Followers** and then the **Followers**. Those at the start of their journeys are designated **Beginners**. Our segmentation was based on responses to the following survey questions:



### Visibility

#### How informed are you personally about the following details of your **non-payroll workers**?

Pacesetters are “highly informed” about 5 of the 8 areas identified as “very important” by at least half of respondents:

1. Labor rates/pay rates
2. Compliance with negotiated rates
3. Responsibilities
4. Duration of work (tenure)
5. Quality of work
6. Number of resources
7. Compliance with required licenses and certifications
8. Access to systems and confidential information

#### How informed are you personally about the following details of **services providers** doing work for your organization?

Pacesetters are “highly informed” about 4 of the 7 areas identified as “very important” by at least half of respondents:

1. Responsibilities
2. Contract terms
3. Duration of work
4. Who is doing the work
5. Access to facilities
6. Access to systems and confidential information
7. Compliance with required licenses and certifications

The Pacesetters lead the pack



## Effective management

### How challenging are the following aspects of managing your external workforce?

Pacesetters find at least 5 of these 8 categories easier to manage than the others.

A key point: even Pacesetters find several of these issues difficult to manage.

1. Finding high-quality resources at the right time, in the right place, at the right rate
2. Tracking resources or project quality, or inconsistencies in those areas
3. Ensuring non-employees or suppliers who do not perform well are not re-engaged
4. Administrative issues (e.g., overcharging/duplicate charges, invoice reconciliation, complicated payment structures)
5. Unauthorized spend (i.e., spend without approval of procurement)
6. Compliance with local tax laws, labor laws, regulatory requirements, candidate privacy requirements, and worker compliance issues (e.g., licenses or certifications required to perform their role)
7. Lack of adequate technology to manage external labor
8. Managing physical security (e.g., access to facilities) and digital/cybersecurity (e.g., access to systems and confidential information)



## Business impact

### To what extent do you agree with the following statements about your organization's use of an external workforce?

Pacesetters "agree" or "strongly agree" with:

1. Our external workforce enables us to improve our company's overall financial/business performance and/or
2. Our external workforce helps us compete in a digital world

These Pacesetter criteria were used to assign each respondent to a particular group. A company meeting none of the criteria is a Beginner. Companies meeting one or two criteria are designated Followers and Fast Followers, respectively. A company meeting all three criteria is considered a Pacesetter.

About the research

# About the research

Oxford Economics conducted an in-depth survey with 800 senior executives from mid-sized to large companies in 16 industries and 14 countries plus the Nordic region of Europe in late 2017 and early 2018. The survey focused on labor trends, including the use and management of an external workforce, today and in the future, and its impact on business and financial performance.

Visit [externalworkforce.fieldglass.com](https://externalworkforce.fieldglass.com) to access shareable content including an Executive Summary, SlideShare and infographics.



## About Oxford Economics

We are a world leader in economic analysis for business and government. Founded in 1981 as a joint venture with Oxford University's business college, we specialize in evidence-based thought leadership, forecasting, and economic impact analysis. Headquartered in Oxford, with offices around the world, we employ more than 250 people, including over 150 economists, industry experts, and business editors. Oxford Economics has a worldwide client base of over 1,000 corporations, financial institutions, government organizations, professional firms, and universities.



## About SAP Fieldglass

SAP Fieldglass, a longstanding leader in external talent management and services procurement, is used by organizations around the world to find, engage and manage all types of flexible resources. Our cloud-based, open platform has been deployed in more than 180 countries and helps companies transform how work gets done, increase operational agility and accelerate business outcomes in the digital economy. Backed by the resources of SAP, our customers benefit from a roadmap driven by a continuous investment in innovation.

## Survey demographics

**Countries:** Australia, Belgium, Brazil, Canada, France, Germany, Italy, Japan, Mexico, the Netherlands, the Nordics, the Philippines, Spain, the United Kingdom, and the United States.

**Industries:** aerospace and defense, banking, capital markets, construction, consumer packaged goods, healthcare, high-tech, industrial manufacturing, insurance, life sciences, oil and gas, professional services, public service, rail, retail, and utilities.

**Executives interviewed:** procurement (55%), HR and talent management (30%), IT (10%), and finance (5%). A third were C-suite executives; a further third were their direct reports; and the final third were director-level leaders.

**Company size (USD):**  
 \$500 million–\$1 billion: 10%  
 \$1 billion–\$5 billion: 35%  
 \$5 billion–\$20 billion: 40%  
 \$20 billion+: 15%

<sup>1</sup>[The Rise and Nature of Alternative Work Arrangements in the United States](#), 1995-2015; Lawrence F. Katz, Harvard University and NBER, and Alan B. Krueger, Princeton University and NBER; March 29, 2016

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## **EXHIBIT D**

GALLUP'S PERSPECTIVE ON

# The Gig Economy and Alternative Work Arrangements

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**Are You Ready for  
the Gig Economy?**

## Executive Insights

1

Broadly defined, the gig economy includes **multiple types of alternative work arrangements** such as independent contractors, online platform workers, contract firm workers, on-call workers and temporary workers.

2

Using this broad definition, Gallup estimates that **29%** of all workers in the U.S. have an **alternative work arrangement** as their primary job. This includes a quarter of all full-time workers (**24%**) and half of all part-time workers (**49%**). Including multiple job holders, **36% have a gig work arrangement** in some capacity.

3

Gallup data indicate **"a tale of two gig economies."** Independent gig workers (freelancers and online platform workers) often enjoy the advantages of nontraditional arrangements, while contingent gig workers (on-call, contract and temp workers) are treated more like employees without the benefits, pay and stability that come with traditional employment.

4

Workers with **traditional employment** arrangements are **more likely** to say they are doing their **preferred type of work (71%)** compared with **gig workers (64%)**.

5

Baby boomers participate in the gig economy at higher rates than millennials or Gen Xers do. About **one in three baby boomers** have a primary job that is gig. Meanwhile, only about **a quarter of millennials (26%) and Gen Xers (27%)** have full-time or part-time alternative work arrangements.

6

**Legal challenges** involving worker classification are complex and evolving, both in the U.S. and abroad. Misclassifying employees can result in serious **financial consequences**.

7

Alternative workers have **fewer relationships** within organizations, placing additional responsibility on team leaders to communicate culture, values and expectations. Leaders who depend on a gig talent pool must constantly **"check the pulse"** of their alternative workers and **proactively** meet their needs.

A grayscale photograph of a woman sitting at a desk in a home office, working on a laptop. The desk is cluttered with papers, a pen, and a small bowl. In the background, there is a bookshelf, a clock, and a potted plant. A large, semi-transparent circular graphic is overlaid on the image, featuring a thick black arc and a thin green circle. The text "36%" is prominently displayed in the center of the circle.

# 36%

**of all U.S. workers  
participate in the gig  
economy in some capacity,  
including part timers and  
multiple job holders.**

---

# The Way We Work Is Changing

## Our Changing Economy

Since the Great Recession, many analysts have taken notice of the gig economy — a labor market characterized by workers who do not have a traditional, long-term employee-employer relationship.

Don't be mistaken: A majority of Americans still have traditional jobs working for an employer. However, there is no doubt that technology has enabled people to have more flexible income when they need it, whether as a side gig, a job to fill an income gap or a permanent arrangement. From Uber drivers to remote contract workers, Americans are finding alternative ways of working by piecing together a "work life" from a variety of income sources. Some may argue that we have always worked in this fashion. However, many experts are wondering how a rise in gig work would change the social contract between employees and employers. The experience of gig workers depends a great deal on the kind of work they do. Independent gig workers (freelance and online platform workers) typically have greater autonomy and flexibility than traditional workers do, leading to higher engagement. Contingent gig workers (on-call and temporary workers, for example) show much lower levels of engagement at work. In this, we see "a tale of two gig economies."

For executives and other organizational leaders, these unconventional relationships between employers and workers come with new opportunities and challenges such as: *How do I engage a temporary or on-call workforce? What do contingent workers expect from our organization? How can we effectively deliver on our brand promise and distinctive culture with gig workers? What roles or functions are best suited for gig work?* For U.S. policymakers and the general public, these relationships raise fundamental questions such as: *Is the gig economy good or bad for workers? Does it help or exacerbate long-standing economic concerns about access to high-quality work experiences and a sustainable middle-class income?* This report includes Gallup's latest insights on the gig economy and how organizations can use alternative workers to be increasingly agile in ever-changing workplaces and markets.

## What kinds of work arrangements are included in the gig economy?

Recent media coverage of the gig economy has mostly resulted from the increase in mobile- or online-based platform work, like Uber or TaskRabbit. However, online platform workers only make up a small proportion of the U.S. workforce, with 7% of workers doing tasks either online only (e.g., Amazon Mechanical Turk) or customer facing (e.g., Lyft). Larger proportions of gig workers include independent contractors and those who have conditional or short-term working relationships. Despite recent interest in the gig market, wage earners working outside traditional, permanent jobs have long been a mainstay of the U.S. economy. The U.S. Bureau of Labor Statistics (BLS) recently published a long-awaited update to its 2005 report, *Contingent and Alternative Employment Arrangements*. The BLS classifies alternative workers as those who are independent contractors or freelancers, contract firm workers, on-call workers, and temporary help agency workers. The BLS also measured multiple definitions of contingent workers — people who don't expect their jobs to last.

## The Prevalence and Growth of the Gig Economy

When the BLS last measured alternative work arrangements in 2005, it found that 11% of U.S. workers had an alternative work arrangement as their primary job — a metric that had changed very little over a decade of tracking.<sup>1</sup> Similarly, in its most recent update,<sup>2</sup> the BLS found that this estimate has remained largely unchanged, at 10% — suggesting even a possible decrease in the gig economy during the 13-year gap between measurements. However, several other studies conducted by academics, private research firms and government entities since the Great Recession have found larger estimates of U.S. workers engaged in the gig economy. In one such study, economists Larry Katz and Alan Krueger compared the results of a RAND survey conducted in 2015 with BLS estimates.<sup>3</sup> They estimated that 16% of workers were in gig arrangements and contrasted their estimate with the 11% found by the BLS in 2005, suggesting a sizable increase.

Using alternative definitions of gig work, the Federal Reserve's *Report on the Economic Well-Being of U.S. Households in 2017* found that 31% of adults engage in gig work — up three percentage points from its 2016 estimate.<sup>4</sup> Additionally, tax form trends released from the IRS of those holding 1099-MISC forms (i.e., those most closely associated with freelance workers) indicated an increase, versus a decrease in W-2 forms.<sup>5</sup> These two government data sources would conflict with the recent BLS findings and suggest a rise in the gig economy. Other private organizations' estimates of the gig economy surpass those found by the BLS. For instance, the McKinsey Global Institute studied the independent workforce in 2015 and found that 12% of working-age adults were doing this type of work as their primary job. When including supplemental jobs, their estimate increased to 27%.<sup>6</sup> Additionally, Upwork and Freelancers Union found that the percentage of freelancers rose from 34% in 2014<sup>7</sup> to 36% in 2017.<sup>8</sup>

Recent Gallup research finds that 29% of U.S. workers have an alternative work arrangement as their primary job — including one in four full-time workers (24%) and half of part-time workers (49%). Further, when we include workers who have any connection with gig work — including those who work multiple jobs — that proportion is 36%. This means that more than **one in three workers today have some type of job in the gig economy.**

1 U.S. Bureau of Labor Statistics. (2005). *Contingent and alternative employment arrangements, February 2005*. Retrieved from <https://www.bls.gov/news.release/pdf/conemp.pdf>.

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5 Dourado, E., & Koopman, C. (2015). *Evaluating the growth of the 1099 workforce*. Retrieved from <https://www.mercatus.org/publication/evaluating-growth-1099-workforce>.

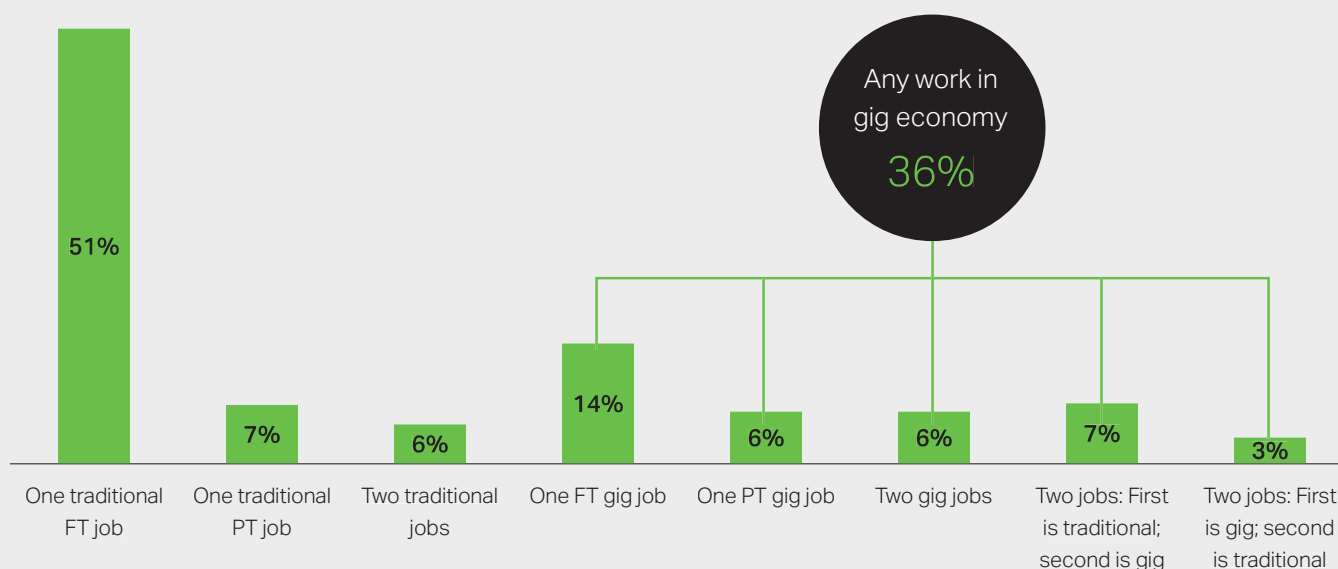
6 McKinsey Global Institute. (2016). *Independent work: Choice, necessity, and the gig economy*. Retrieved from <https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/Employment%20and%20Growth/Independent%20work%20Choice%20necessity%20and%20the%20gig%20economy/Independent-Work-Choice-necessity-and-the-gig-economy-Full-report.ashx>.

7 Edelman Intelligence, Upwork & Freelancers Union. (2014). *Freelancing in America: A national survey of the new workforce*. Retrieved from <https://www.slideshare.net/oDesk/global-freelancer-surveyresearch-38467323/1>.

8 Edelman Intelligence, Upwork & Freelancers Union. (2017). *Freelancing in America 2017*. Retrieved from <https://www.upwork.com/i/freelancing-in-america/2017/>.



Worker Type	Definition	Example	Weighted Estimate of Workers' Primary Job	
<b>CONTRACT FIRM WORKERS</b>	Employees who work for a company that provides their services to another entity on a contractual or project basis	A traveling nurse who is hired and placed by a staffing firm in a hospital for a three-month rotation during a nursing shortage		% of FT workers: 8.5 % of PT workers: 11.3 % of all workers: 9.1
<b>INDEPENDENT CONTRACTORS</b>	People who provide goods and services under a specific contractual agreement to another entity	A freelance graphic design consultant who is self-employed and redesigns logos and advertisements for small to mid-sized businesses		% of FT workers: 10.9 % of PT workers: 31.1 % of all workers: 14.7
<b>ON-CALL WORKERS</b>	Those who only work on an as-needed basis, not including workers who work on-call shifts as part of their regular job	A substitute teacher who works for several different school districts and only works when there is an open teaching vacancy		% of FT workers: 4.4 % of PT workers: 14.7 % of all workers: 6.4
<b>ONLINE PLATFORM WORKERS</b>	Workers who find short jobs through a mobile or online marketplace that connects them directly with customers, either in person or online	A delivery driver who picks up dry cleaning, grocery or food items and delivers the product directly to the customer via a mobile platform request		% of FT workers: 6.8 % of PT workers: 9.5 % of all workers: 7.3
<b>TEMPORARY WORKERS</b>	Workers who have short-term work arrangements, often assigned to them by a temp or staffing agency	A data entry specialist who is given a short-term assignment entering medical records into a system for a healthcare organization		% of FT workers: 4.5 % of PT workers: 16.6 % of all workers: 6.8
<b>ALL WORKERS WHO HAVE ANY OF THE ABOVE ALTERNATIVE WORK ARRANGEMENTS AS THEIR PRIMARY JOB</b>				% of FT workers: 24.4 % of PT workers: 49.4 % of all workers: 29.1

**When all workers were asked about their primary and secondary jobs ...**

Note: Among respondents who worked at least one hour in the past week; n=5,025 (weighted to the U.S. working population)

**Who Participates in the Gig Economy?**

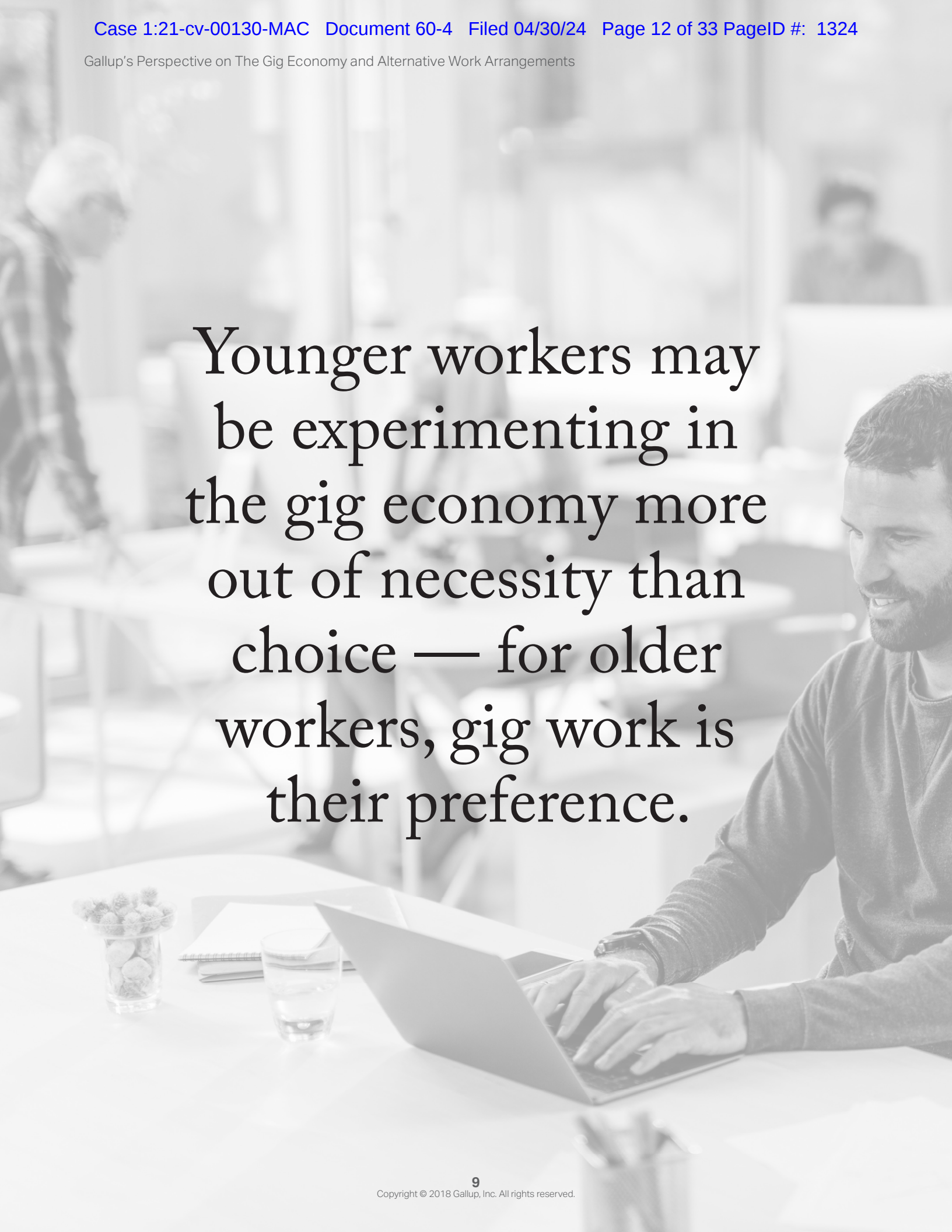
Men are more likely than women to participate in gig work — 29% of men compared with 19% of women work in these arrangements full time. That difference is slightly smaller when we consider all gig workers (32% men vs. 26% women) — indicating that more women may be doing part-time gig work. This finding may suggest that the gig economy may benefit individuals who otherwise might be excluded from the traditional workforce, such as working mothers.

Baby boomers participate in the gig economy at higher rates than millennials or Gen Xers do. About one in three baby boomers have a full-time or part-time gig job as their primary job. Meanwhile, only about a quarter of millennials (26%) and Gen Xers (27%) have

full-time or part-time alternative work arrangements. These results indicate that baby boomers may be transitioning into more flexible work arrangements during retirement to supplement fixed incomes.

Additionally, Gallup finds that millennials in alternative work arrangements (44%) are much less likely to say they are doing their preferred type of work compared with their counterparts in traditional jobs (64%). However, this generational gap is less likely to exist among both Gen Xers (70% of gig workers vs. 71% of traditional workers) and baby boomers (79% of gig workers vs. 83% of traditional workers). This trend is generally consistent for both independent and contingent types of gig work. These findings indicate that younger workers may be turning to alternative jobs based more on necessity than preference.





Younger workers may  
be experimenting in  
the gig economy more  
out of necessity than  
choice — for older  
workers, gig work is  
their preference.

---

Are Gig Workers  
Happy or  
Desperate?

## What Gig Workers Want

Controversy over the gig economy largely centers on what these trends mean for the U.S. labor market, organizational effectiveness and workers' rights.

Are gig workers taking on piecemeal work out of necessity, doing whatever it takes to make ends meet? Or are they consciously opting out of traditional 40-hour, 9-to-5 positions to gain more flexibility and autonomy?

Optimists claim these changing work relationships represent a movement toward increased entrepreneurship and worker empowerment. Critics counter that this trend could signal the deterioration of the social contract between employees and employers, as some organizations employ more contingent workers to cut liabilities and costs, such as taxes and employee benefits.

**Preferred Number of Hours.** According to Gallup research, gig workers are more likely to work less than full time (less than 30 hours per week) compared with traditional workers. However, among those who are working less than full time, about six in 10 do not want to work more than 30 hours a week, while four in 10 are looking for more hours. This demonstrates a divide in the gig economy — some workers are getting the right amount of hours for their life situation, while others are striving for more.

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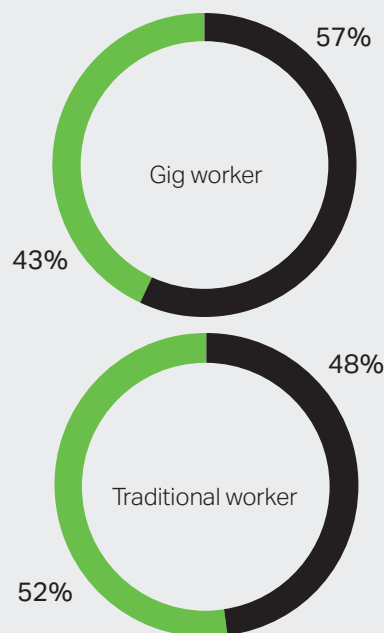
**Only half** of all gig workers have full-time employment. Of the gig workers who work less than full time, a majority don't want to work more hours.

### I already work at least 30 hours/week.



Note: Among respondents who worked at least one hour in the past week; n=5,025 (weighted to the U.S. working population)

### If working less, do you want more hours?

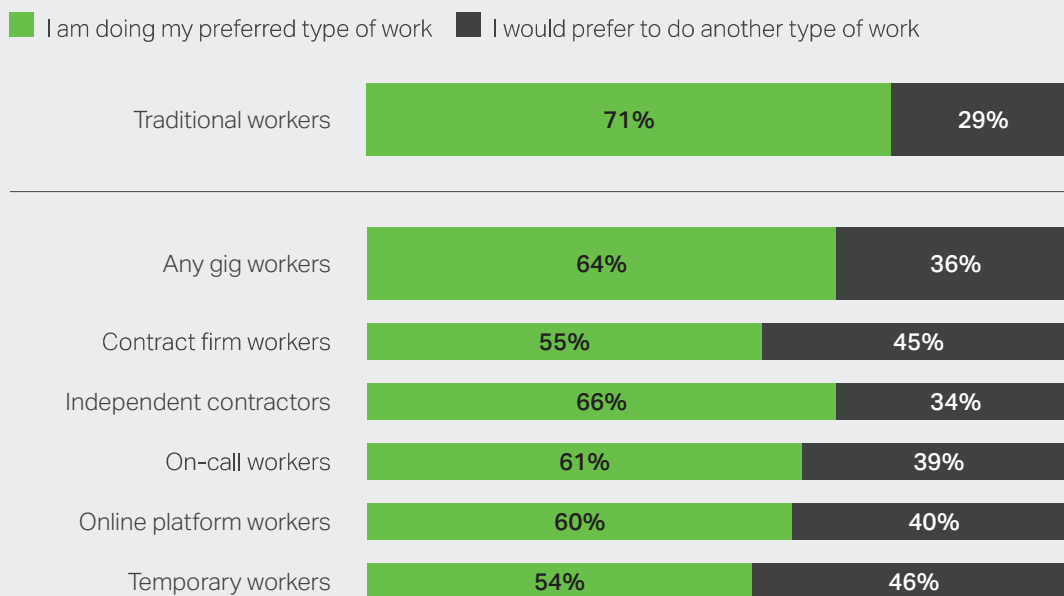


■ No, I do not want to work more than 30 hours/week  
 ■ Yes, I want to work more than 30 hours/week

Note: Among respondents who work less than 30 hours per week

**Preferred Type of Work.** Overall, traditional employees are more likely to say they are doing their preferred type of work (71%) than those in gig work arrangements (64%). However, a majority of gig workers still report preference for the type of work they are doing — with a high of 66% of independent contractors and a low of 54% of temporary workers. Taken together, these results show that although gig workers are less likely than traditional workers to say they are doing their preferred type of work, a majority within each alternative arrangement are working the way they want to.

#### Do you prefer doing this type of work?



Note: Among respondents who worked at least one hour in the past week; n=5,025 (weighted to the U.S. working population)

**Long-Term Career.** Eighty percent of traditional workers consider their current job as a long-term career. Gig workers are less likely to say they are in their long-term career (68%) and more likely to say they are actively looking for a different or additional job. These findings show that while alternative workers are less likely than traditional workers to see their job as a permanent vocation, a majority still consider it their long-term career.

As we will see with other aspects of the gig economy experience, satisfaction with gig work varies by role. Some workers are satisfied with their situation, and others are not. However, while gig workers overall are less likely than traditional workers to say they're doing their preferred type of work and less likely to see their job as a long-term career, a clear majority of gig workers still choose to engage in this type of work and plan to do so as their career.



# 71%

**of traditional workers say they are doing their preferred type of work, compared with 64% of gig workers — but a majority still say gig work is their preference.**

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# Workers' Perspective: The Costs and Benefits of Gig Work



## The Psychology of Gig Work

The desire for a “good job” is a nearly universal human desire.

Having a job is about much more than getting a paycheck, even for gig workers. When someone is engaged at work, they are excited to show up, are willing to go above and beyond, and find what they do meaningful and rewarding. This matters for organizational success — for when employers meet the psychological needs of their workers, those workers in turn drive higher productivity, performance and profit.

Gallup measures 12 aspects of the employee experience that are reliably predictive of productivity, performance, retention, safety and profitability among individuals, teams and organizations. Although the workplace is constantly changing, Gallup's meta-analyses have shown that these employee engagement items — together, the Q<sup>12</sup> — remain one of the best predictors of individual and team performance.

### So how engaged are alternative workers compared with their traditional counterparts?

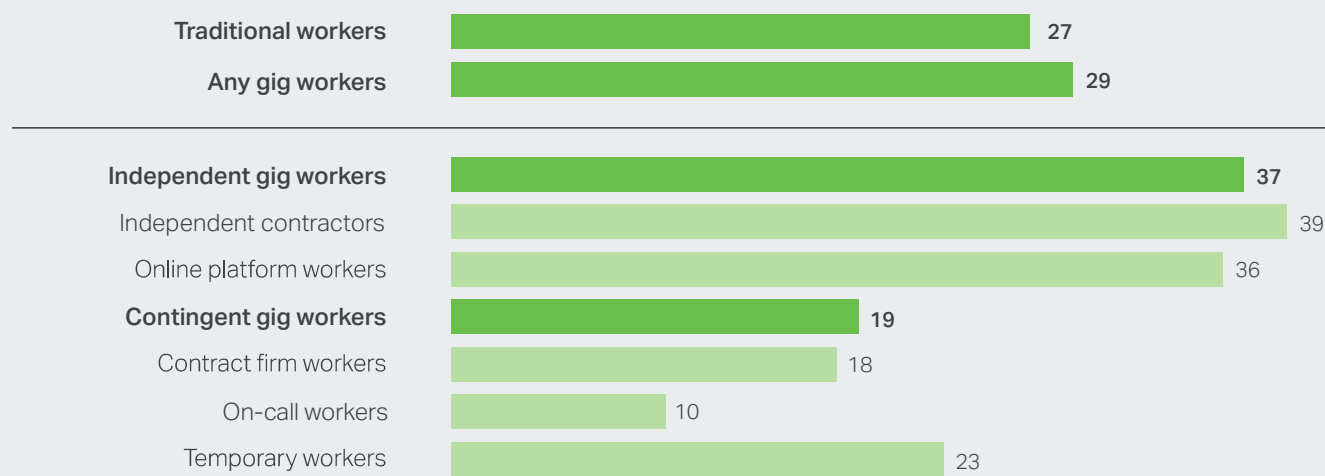
On the surface, gig workers would seem to have similar engagement levels as traditional workers (29% vs. 27% engaged, respectively).

However, there are some stark differences within these alternative work arrangements.

**Gig economy workers with more independent roles — independent contractors (39%) and online platform workers (36%) — are more engaged than traditional workers (27%). But only 19% of contingent gig workers — contract firm, on-call and temp workers — are engaged.**

### Employee Engagement

■ % Engaged



**A Tale of Two Gig Economies: Independent vs. Contingent Work**

In addition to studying the engagement of gig workers, Gallup measured other dimensions of work such as creativity, flexibility, feedback, metrics and pay.

Given the transient nature of their work, it is not surprising that gig workers report having more trouble being paid accurately and on time compared with traditional workers. This is consistent across all gig workers.

However, when we look closely at the kinds of work being done, there is a significant divide between independent gig workers (independent contractors and online platform workers) and contingent gig workers (those who have on-call, temporary or contractual employment relationships).

Independent gig workers experience higher levels of work/life balance, motivational pay, meaningful feedback and creative freedom. Compared with traditional workers, independent gig workers enjoy much higher levels of flexibility, creativity, autonomy and even feedback. Notably, independent gig workers overall tend to score the highest across all of these workplace conditions, with the exception of being paid timely and accurately, where they score the lowest.

By contrast, temporary workers and on-call workers report receiving less feedback about their work and less freedom to innovate in their role. Only one in five say their performance metrics are within their control. In many aspects of their work — belongingness, passion, autonomy, creativity, feedback, performance metrics and hours — contingent gig workers are more similar to traditional workers than they are to independent gig workers.

Taken together with the employee engagement results, we see a divide in these nontraditional workplace arrangements, in which independent gig workers more often enjoy the positive outcomes of this nontraditional arrangement while contingent gig workers are treated more like employees without the benefits, pay and stability that come with employment.

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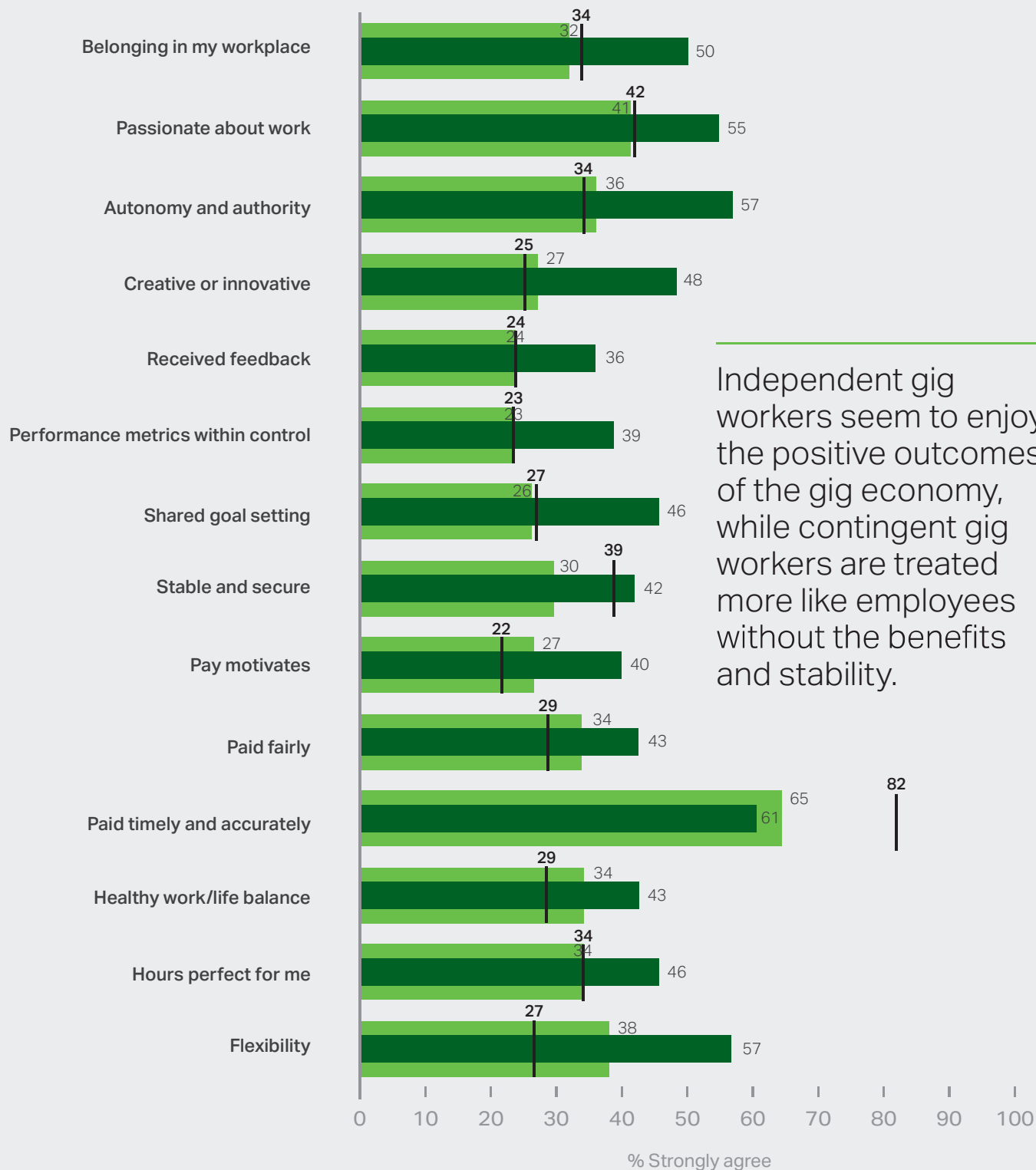
1 in 5

contingent gig workers say  
their performance metrics  
are within their control.



**The Divide Between Independent and Contingent Gig Workers**

Traditional workers    Contingent gig workers    Independent gig workers



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## Team Leaders' Perspective: How to Manage, Motivate and Engage Gig Workers

## Performance Management in the Gig Economy

The gig economy offers unique challenges to organizations with traditional management practices.

All workers have basic psychological needs that need to be met in order to perform at a high level. These needs are typically met by a manager who is responsible for engaging their team to increase performance. These manager interactions with gig workers can be complicated by the risk of worker misclassification if gig workers are treated similarly to employees. Team leaders may struggle to temporarily onboard and integrate these workers into their projects, teams and culture — leaving gig workers confused, disengaged or exiting with a bad impression. For all the complexity surrounding these kinds of work relationships, gig workers are people — motivated and inspired just like traditional workers, with a few key distinctions.

**The Roles of Managers and Teams.** There are meaningful differences between traditional workers, independent gig workers and contingent gig workers in terms of having managers and working in teams. About nine in 10 traditional workers (88%) have a manager, compared with 77% of contingent gig workers and 52% of independent gig workers. Similarly, 81% of traditional workers work as part of a team, compared with 73% of contingent gig workers and 58% of independent gig workers. In short, nontraditional workers have fewer relationships within their organization.

Gig workers' limited relationships place additional responsibility on managers to convey the organizational culture, values and expectations — often in an accelerated and concise yet meaningful way. Managers must onboard workers and ramp up performance quickly, investing the right amount of time while avoiding unnecessary details.

**Planning for Gig Teams.** Project managers who partner with gig workers must also pay attention to documentation and communication to maintain continuity while workers move in and out of projects. Because these workers are not true employees, it is difficult to directly manage and motivate these nontraditional workers using a typical approach to performance management. Organizations have little control over these workers' on-the-job performance outside of their contractual obligations and requirements. Managers might need additional training to help them inspire workers who may have very different motivations, needs and performance metrics than traditional workers.

---

**Managers must convey**  
organizational culture, values  
and expectations — often  
in an accelerated, concise  
yet meaningful way.

## LEGAL CONSIDERATIONS IN THE GIG ECONOMY

Legal challenges involving worker classification are complex and evolving, both in the U.S. and abroad. Misclassifying employees as contract workers can result in serious financial consequences. Therefore, before outsourcing your workforce to gig workers, it is important to carefully consider the roles, tasks and types of work arrangements needed. Perhaps the most central issue is the degree of control an organization has over the worker and project.

Independent gig workers are not employees, and therefore have more autonomy as to how the job gets done. They typically use their own equipment, set their own schedules and decide the sequence of their work. This autonomy does not mean that organizations cannot make contractual demands (e.g., they can tell a painter to finish the job by Tuesday and only paint when they are closed for business). However, independent gig workers who are treated more like employees may be subject to benefits associated with employment.

By contrast, contingent gig workers such as on-call, temporary or contract firm workers are typically considered employees who are hired "by contract." They may even work side by side with employees who do the exact same job. However, they are often hired by a third party who ensures all of the requirements for employment are met, such as taxes and other withholdings. This type of relationship requires a careful balance between the authority of the contract firm and the hiring entity — often determined during contract negotiations.

## KEY TAKEAWAYS FOR MANAGERS:

- Managers must facilitate regular team communication between all types of workers.
- Even though relationships may be temporary, there should be meaningful cohesion between gig and traditional workers on the same team.
- Traditional employees should be available to partner with contractors. Regular employees should mentor and orient contractors to the organization, team and role.
- Managers should be trained to effortlessly express their organization's purpose, brand and culture.
- Gig worker onboarding time must be planned and executed promptly and with excellence.



68%

of gig workers say they are in  
their long-term career, and they  
are more likely to say they are  
actively looking for a different or  
additional job.

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# Executives' Perspective: How Leaders Should Plan for the Gig Economy

## Creating Value in the Gig Economy

### Divided perspectives over the advantages and disadvantages of the gig economy are not merely a matter of public policy discussion.

This issue has become a major factor in human capital management. Gig workers provide a unique set of opportunities and challenges for established companies looking for talent in a fast-paced and competitive marketplace.

**Opportunities in the Gig Economy.** Perhaps the greatest benefit of using nontraditional workers in your organization is that your workforce can be quickly increased or decreased to match client or market demands. Retailers hire temporary seasonal workers to work in their stores for the holiday season. Similarly, hospitals and other healthcare facilities use “as-needed” or on-call workers to keep pace with patient volume or mitigate the costs of high turnover and employee absenteeism. Today, more complex and skilled roles are being filled in this way as well. For instance, when building a new technology system, organizations may temporarily hire or contract with programmers and IT professionals until implementation. Using alternative workers can also serve as a way to test out new talent before making costly bad hires.

Additionally, there are often one-time projects, trainings or technical tasks that require specific expertise. Organizations can use independent contractors or other contract firm workers to capitalize on their expertise without having to maintain those personnel on their balance sheets year-round. For example, during a merger or acquisition, organizational legal and accounting teams may need to hire additional support to coordinate that project to completion. Additionally, outside talent can be used to inspire a languishing project or bring fresh outside perspectives.

Organizations may also be able to use the “gig” concept to their advantage internally, by providing optional challenging tasks that serve business goals for additional incentive pay. This could inspire motivated employees to go beyond their job description and solve long-standing pain points in an organization.

#### OPPORTUNITIES

- more flexible and agile workforce
- project-based work
- more accommodating workforce
- experts on demand
- avoiding bad hires

#### CHALLENGES

- legal ambiguity of worker classifications
- less control over workers
- managing gig performance
- less team cohesion
- less financial certainty for workers

**Challenges With a Gig Workforce.** A flexible workforce also comes with challenges for executive leadership. The legal waters of job classification can be difficult to navigate. Meanwhile, technology continues to blur the lines between employees and more alternative workplace relationships. Courts in the U.S. are currently and cautiously weighing in on topics of worker classification, while some in the United Kingdom have taken action on policies in response to these changing work relationships.

Organizational leaders must analyze and decide which roles are best filled with gig workers — and which positions are business-critical from an operational, brand or information standpoint. Once these roles are decided, leaders need to consider how to develop ongoing relationships within a talent pool that may also be working for their competitors. How do organizations ensure they are keeping their best traditional workers while also maintaining bench strength for work they need done on an as-needed basis? Leaders who depend on a gig talent pool must constantly “check the pulse” of their alternative workers and proactively meet their needs.

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Workers in alternative arrangements are more likely to report feelings of flexibility and autonomy, as well as opportunities to be creative and innovative in their job.

#### ARE SMALL-BUSINESS OWNERS THREATENED BY ONLINE PLATFORMS?

In a recent Wells Fargo/Gallup Small Business Index survey, we asked small-business owners if they thought online platforms like Uber and Fiverr were a threat or a benefit to their small business. A quarter of small-business owners say that these online platforms are a benefit (26%) versus a threat (15%) to their small-business operations.<sup>9</sup>

Many of the small-business owners we polled report using these online platforms for their business. The B2B side of the gig economy can provide delivery drivers for high-volume sales periods or expert freelancers for a specific, one-time project. Certainly, these B2B relationships have been a staple of the small-business American economy for decades — but these technology platforms make it easier than ever for owners to conduct their business and find the right people for the right task.

<sup>9</sup> McFeely, S. (2017). *Is the growing Uber-economy a threat to small businesses?* Retrieved from <https://news.gallup.com/opinion/gallup/211739/growing-uber-economy-threat-small-businesses.aspx>.

#### KEY TAKEAWAYS FOR EXECUTIVES

- Identify positions or projects that are best suited for gig workers.
- Cutting costs should not be the primary goal of utilizing gig workers.
- Establish balance in terms of needs, control and maintaining culture.
- Create a strategic plan for utilizing temporary and contract firm workers.
- Communicate a compelling employee value proposition for alternative workers.
- Define a clear acquisition, retention and account leadership strategy to manage and maximize your gig workforce.
- Not all contingent workers are the same — understand your gig worker life cycle.



## Are You Ready for the Gig Economy?

Gallup offers practical analytics and advice to help leaders adapt to the changing world of work. We can help your organization better understand your part-time, contract and temporary workers to drive stronger partnerships and sustained growth. Gallup's approach is grounded in decades of research that can be applied to your organization to understand the local-level conditions for your gig workers.

We partner with leaders to answer critical questions about the gig workers in their organizations, such as:

### Work Arrangement Audit

- What are the different kinds of work arrangements in my organization?
- Which roles are most appropriate for traditional workers versus gig workers?

### Talent Pool

- How can I maintain a large talent pipeline of alternative workers?
- How are we vetting, selecting and assessing our outsourcing partners to ensure we get the most talented alternative workers?
- How can we create an organizational gig platform to staff special projects and agile teams with current employees?

### Gig and Contract Worker Survey

- What do gig workers want and need from my organization?
- What factors are most important for engaging and retaining gig talent?

### Manager Training

- How do my managers better integrate alternative workers into my permanent teams?
- How do I train managers to lead blended teams of traditional and nontraditional workers?

### Gig Worker Life Cycle

- What is the employee experience for my alternative workers?
- Which points on the employee life cycle are the most critical to get right for alternative workers?



## The Challenge With Measuring the Gig Economy

Understanding the size, scope and growth of the gig economy has been challenging for a number of reasons.

*First*, there has not been consistent measurement. The BLS contingent worker supplement — perhaps the most rigorous longitudinal data available — has six administrations unevenly spread across three decades and disparate economic conditions.

*Second*, many of the temporary, seasonal and task-based work is by its nature transient and short-term and difficult to measure on an annual basis — meaning, some workers might only participate in the gig economy for certain periods of the year. The temporary and seasonal nature of gig and alternative work arrangements might indicate that more regular measurement is needed.

*Finally*, there is not broad agreement on the operational definition of the gig economy. Some gig estimates include only self-employed gig workers such as online platform workers or freelancers; others encompass a wide range of alternative work arrangements. Some include only workers' primary job, while others measure side gigs. Others include people who make passive income in the sharing economy by renting out their property. These inclusion criteria affect gig worker estimates.

Gallup has maintained a broad definition of the gig economy to measure multiple types of alternative workers and their differing work experiences. Given their longitudinal track record, we used the BLS categories to start our investigation. However, we did not try to replicate all of the BLS' exclusion criteria. For instance, the BLS only included contract workers if they are assigned to one customer and work at the customer's site, while Gallup included all contract workers.

For Gallup estimates, we included all independent contractors, contract firm workers, on-call workers, temporary workers and online platform workers with little or no exclusion criteria.

One might argue that many types of contingent gig workers — like contract and temporary workers — are actually employees with a dual working relationship between a contracted entity and a hiring entity. However, some workers are only "hired" by a firm when there is a contract in place, and therefore their financial security depends on securing that next short-term contract.

The estimates presented in this paper are not meant to be comparative to previous estimates. We purposely used a broad definition and did not intend to replicate previously determined inclusion criteria. Additionally, there are substantial mode differences that could impact the comparability of estimates (e.g., web survey vs. in-person or phone interviews). Therefore, these data are not yet informative in establishing the growth of the gig economy.

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When thinking about the gig economy, it is critical to keep in mind the diverse arrangements workers can have within organizations.

## Methodology

These results are based on a Gallup Panel web study completed by 5,025 working adults, aged 18 and older, conducted in October 2017. The Gallup Panel is a probability-based longitudinal panel of U.S. adults whom Gallup selects using random-digit-dial phone interviews covering landline and cellular telephones. Gallup also uses address-based sampling methods to recruit Panel members. The Gallup Panel is not an opt-in panel, and members do not receive incentives for participating. The sample for this study was weighted to be demographically representative of the U.S. adult population, using 2017 Current Population Survey figures. For results based on this sample, one can say that the maximum margin of sampling error is  $\pm 1$  percentage point at the 95% confidence level. Margins of error are higher for subsamples. In addition to sampling error, question wording and practical difficulties in conducting surveys can introduce error and bias into the findings of public opinion polls. The questions below were derived from the Bureau of Labor Statistics.



### **Independent contractors said yes to this question:**

*Last week, were you working as an independent contractor, an independent consultant or a freelance worker? That is, someone who has to find customers either online or in person to provide a product or service?*



### **Online platform workers said yes to either of these two questions:**

*Some people select short ONLINE tasks or projects through companies that maintain lists that are accessed through an app or a website. These tasks are done entirely online and the companies coordinate payment for the work. Does this describe any of the work you did in the last seven days?*

*Some people find short IN-PERSON tasks or jobs through companies that connect them directly with customers using a website or mobile app. These companies also coordinate payment for the service through the app or website. For example, using your own car to drive people from one place or another, delivering something, or doing someone's household tasks or errands. Does this describe any of the work you did in the last seven days?*



**On-call workers said yes to this question:**

*Some people are in a pool of workers who are ONLY called to work as needed, although they can be scheduled for several days or weeks in a row, for example, substitute teachers and construction workers supplied by a union hiring hall. These people are sometimes called "on-call" workers. Were you an on-call worker in the last seven days? (Note: Some people with on-call work as part of their regular job — for example, doctors — are not on-call workers.)*



**Contract firm workers said yes to this question:**

*Some companies provide employees or their services to others under contract. A few examples of services that can be contracted out include security, landscaping or computer programming. In the past seven days, did you work for a company that contracts out you or your services?*



**Temporary workers said yes to either of these two questions:**

*Some people are in temporary jobs that last only for a limited time or until the completion of a project. Is your primary job temporary?*

*Are you paid by a temporary help agency?*

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## **EXHIBIT F**

## **EXHIBIT E**



# ATTITUDES OF APP- BASED WORKERS

Flex Association

SEPTEMBER 2022





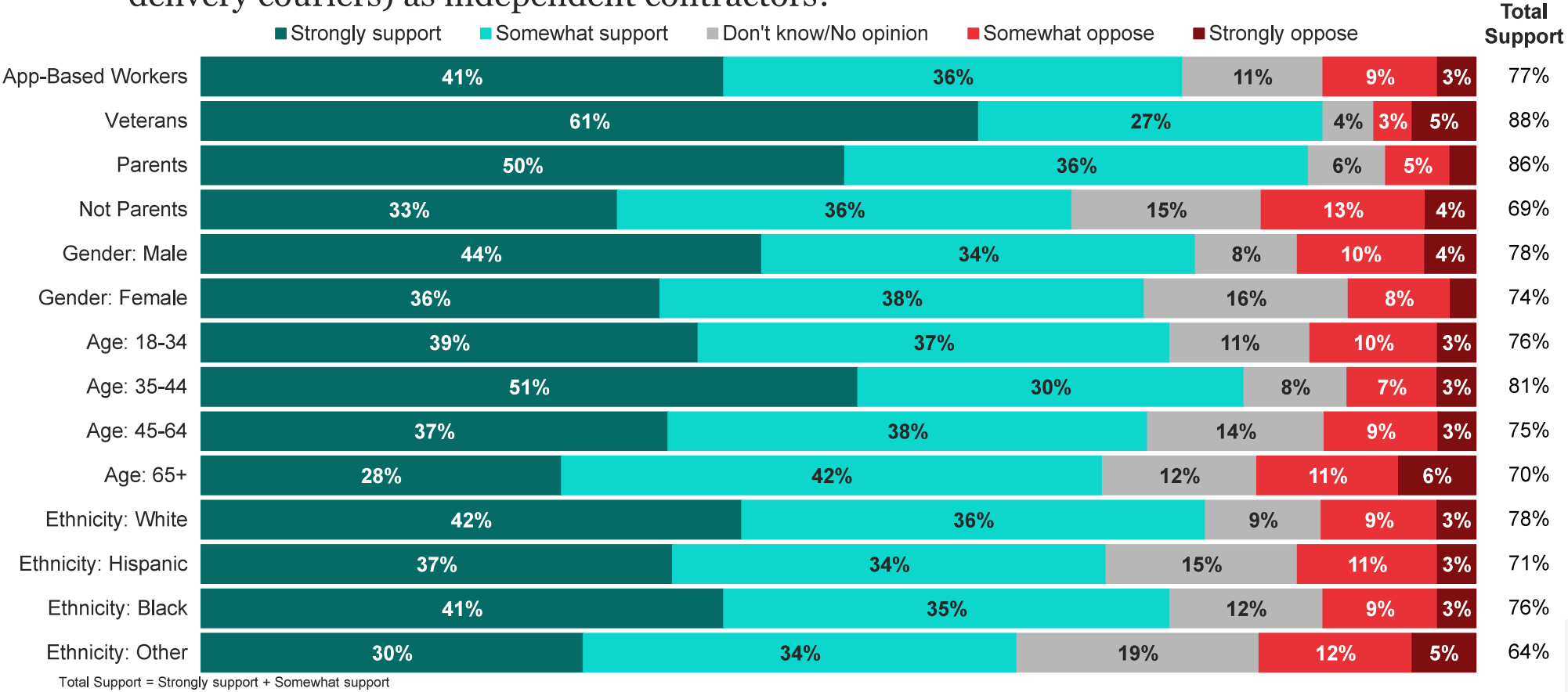
## METHODOLOGY

This poll was conducted between September 23-September 28, 2022 among a sample of 1251 App-Based Workers. The interviews were conducted online and the data were weighted to approximate a target sample of App-Based Workers based on gender, age, race, educational attainment, and region. Results from the full survey have a margin of error of plus or minus 3 percentage points.



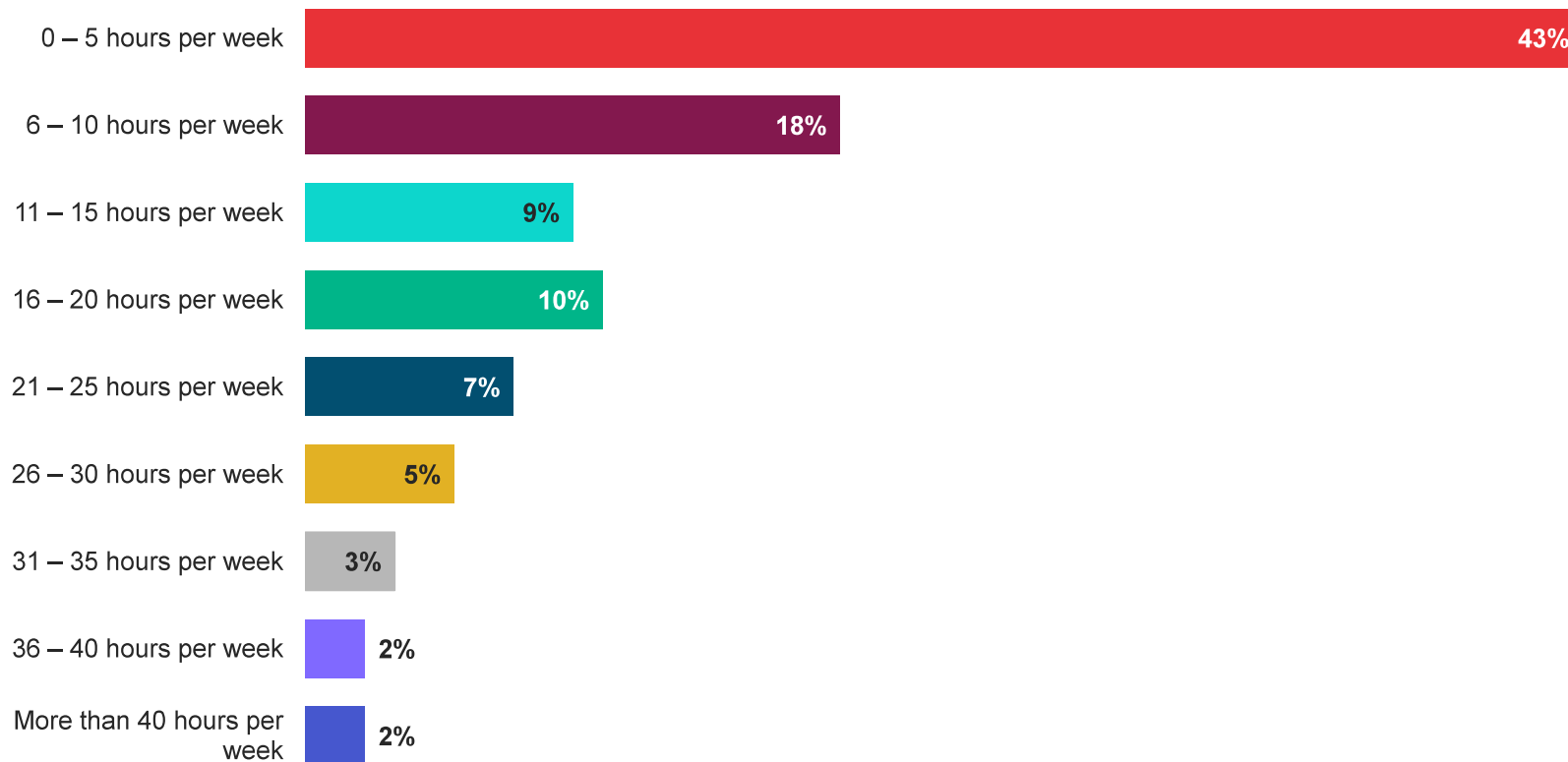
ATTITUDES OF APP-BASED WORKERS

Do you support or oppose maintaining the current classification of app-based platform workers (i.e., rideshare drivers, grocery delivery couriers, food delivery couriers, or package delivery couriers) as independent contractors?



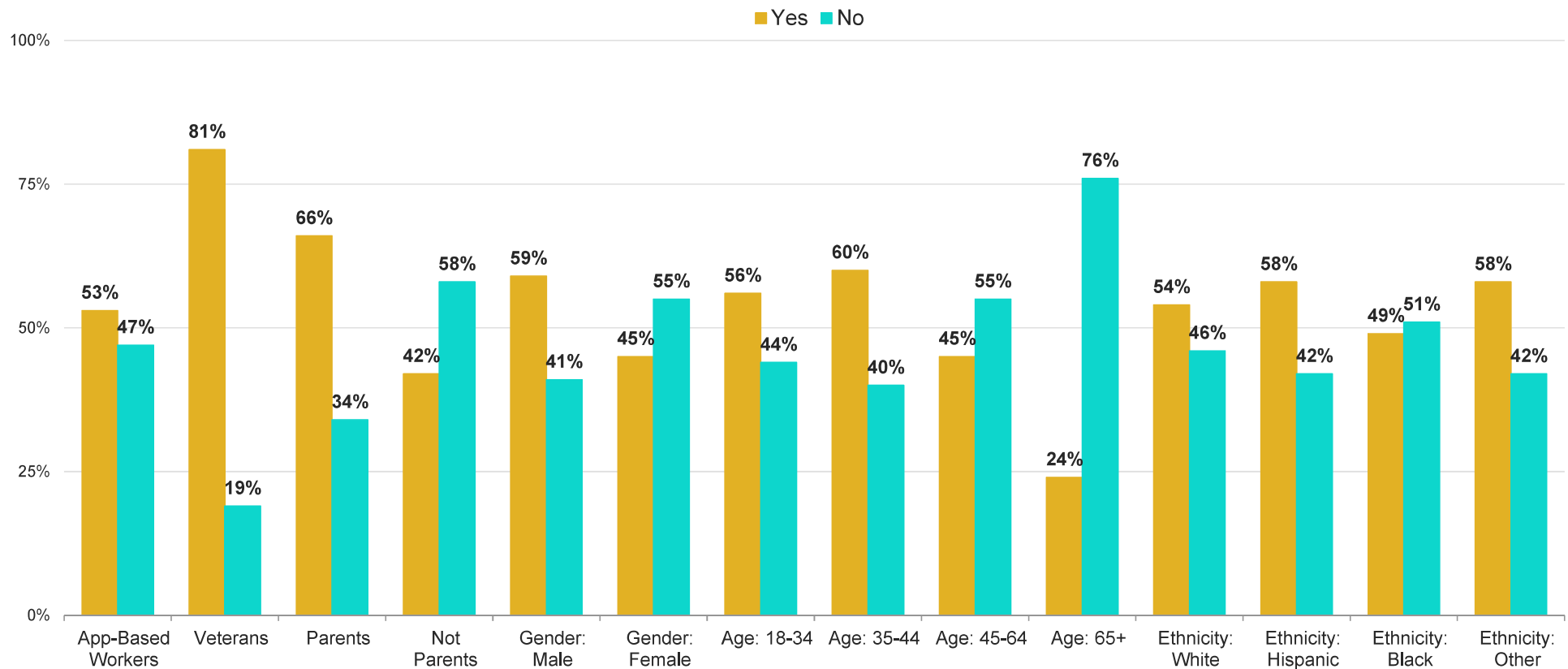
## ATTITUDES OF APP-BASED WORKERS

How many hours per week do you typically use app-based platforms (i.e., Uber, Lyft, DoorDash, GrubHub, etc.) for work?



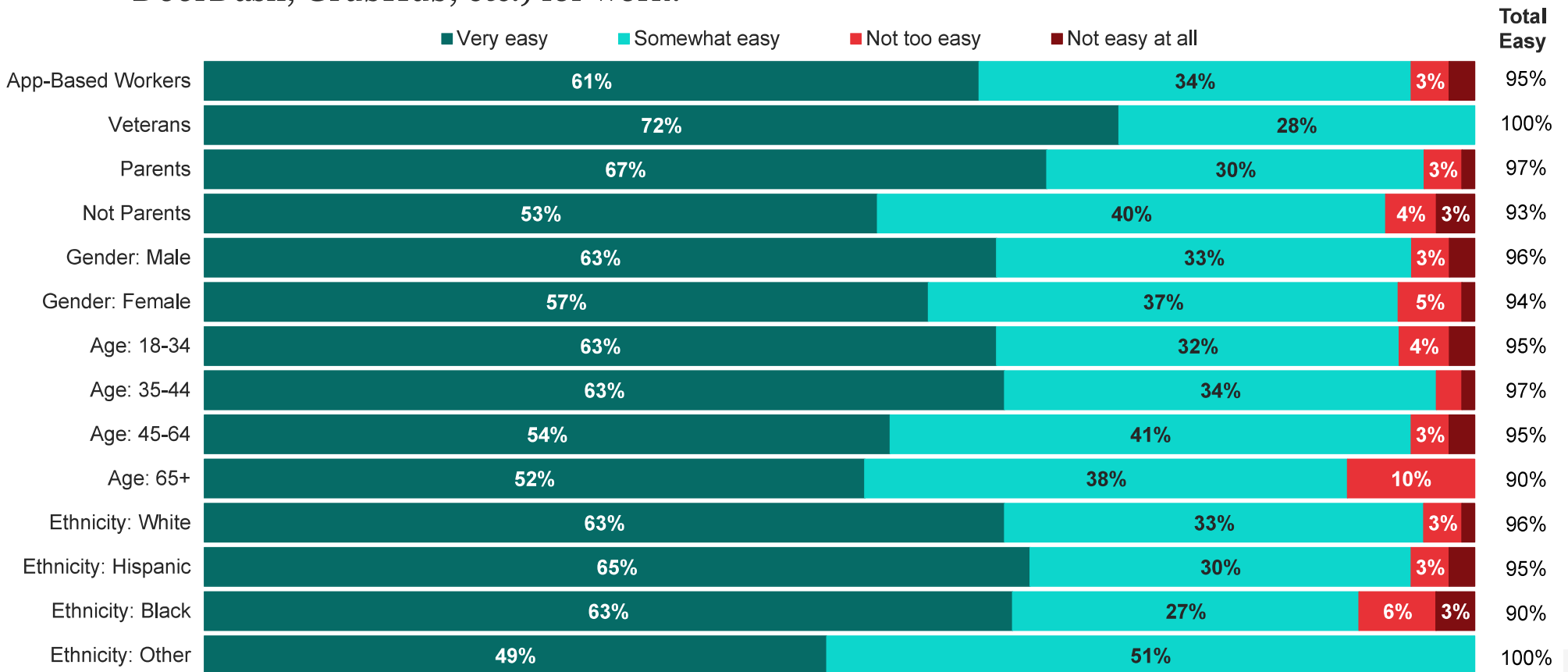
## ATTITUDES OF APP-BASED WORKERS

Do you use more than one app-based platform (i.e., Uber, Lyft, DoorDash, GrubHub, etc.) for work on a given day, week, or month?



## ATTITUDES OF APP-BASED WORKERS

How easy is it, if at all, to switch between different app-based platforms (i.e., Uber, Lyft, DoorDash, GrubHub, etc.) for work?



Total Easy = Very easy + Somewhat easy

## ATTITUDES OF APP-BASED WORKERS

What are the reasons you choose to use app-based platforms (i.e., Uber, Lyft, DoorDash, GrubHub, etc.) for work? Please select all that apply.

% Selected			Parental Status		Gender		Age				Ethnicity			
			Parents	Not Parents	Gender: Male	Gender: Female	Age: 18-34	Age: 35-44	Age: 45-64	Age: 65+	Ethnicity: White	Ethnicity: Hispanic	Ethnicity: Black	Ethnicity: Other
	App-Based Workers	Veterans												
Ability to choose the number of work hours	35%	41%	41%	29%	36%	32%	38%	36%	29%	24%	37%	41%	28%	35%
Ability to choose when to work	42%	48%	48%	37%	44%	39%	45%	45%	36%	24%	42%	46%	45%	36%
Ability to have more than one source of income	41%	49%	47%	35%	44%	36%	48%	37%	33%	17%	40%	49%	42%	42%
Best type of work for me	28%	38%	31%	25%	33%	19%	30%	34%	18%	14%	29%	28%	27%	23%
For fun or for something to do in spare time	28%	43%	33%	23%	30%	24%	32%	31%	15%	19%	29%	30%	24%	31%
Providing services to my community	24%	49%	33%	16%	29%	16%	26%	26%	19%	11%	25%	24%	21%	25%
Skills development	18%	35%	25%	13%	21%	13%	22%	18%	11%	3%	19%	21%	13%	23%
Want to be my own boss	33%	38%	39%	27%	36%	27%	38%	35%	22%	10%	30%	36%	41%	32%
None of these	12%	4%	6%	17%	8%	19%	7%	7%	25%	37%	13%	12%	11%	8%
Other, please specify	0%	0%	0%	1%	0%	1%	0%	0%	2%	0%	0%	1%	0%	3%

Data reflects % selected among respondents of each demographic group, the darker the shading the higher % selected

## ATTITUDES OF APP-BASED WORKERS

In a few words, please explain why this is your top priority.

### EXTRA INCOME

“It’s always great to be able to make some extra money. And difficult times having extra money to pay. Bills is important. This is why I feel it’s important to have other options than just a full-time job.”

“The economy is very rocky, a new election coming up, we are going into a recession, it’s always nice to have extra income to keep up GDP, as well as save for a house.”

### FLEXIBILITY

“So I can spend time with my kids, have the flexibility to work while visiting family and being able to volunteer at my kids school when needed.”

“I work a full-time job already, so being able to choose when to work is a benefit as I can work on days off or not work at all that week if I’ve had a hectic week.”

### OWN BOSS

“I love being my own boss being able to control my own hours for work.”

“Being your own boss is terrific. The ability to come and go is really important to me.”

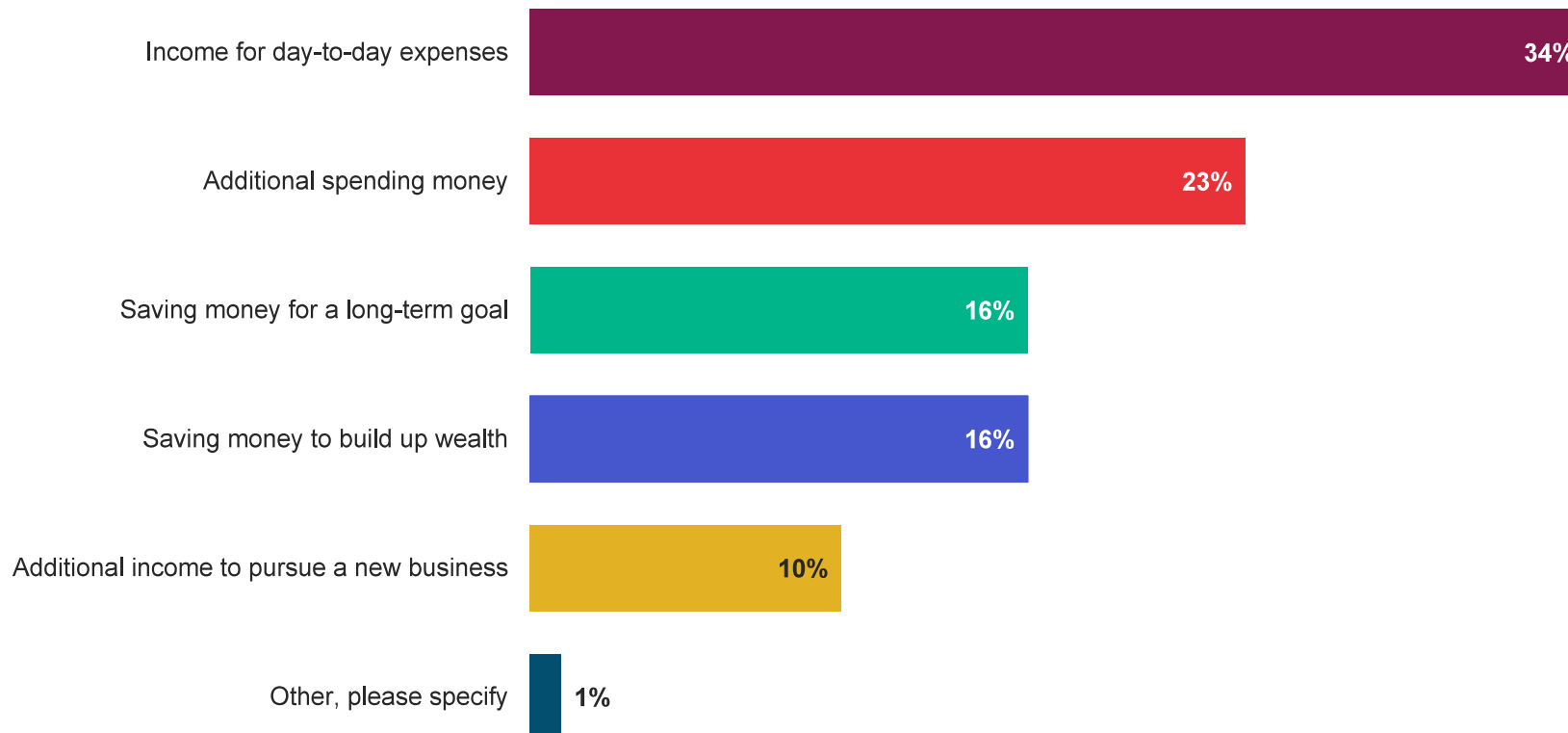
### DISABLED

“I have a disability that is not severe enough to qualify for paid disability but standing for long hours is extremely painful. With Uber I can decide when I am able to work, how many hours I can work and when I need to stop.”

“Because I suffer from chronic migraines that disable me at any time. Doing DoorDash allows me flexibility to work around these issues. Also provides me with an income since the migraines make me unemployable at other jobs.”

## ATTITUDES OF APP-BASED WORKERS

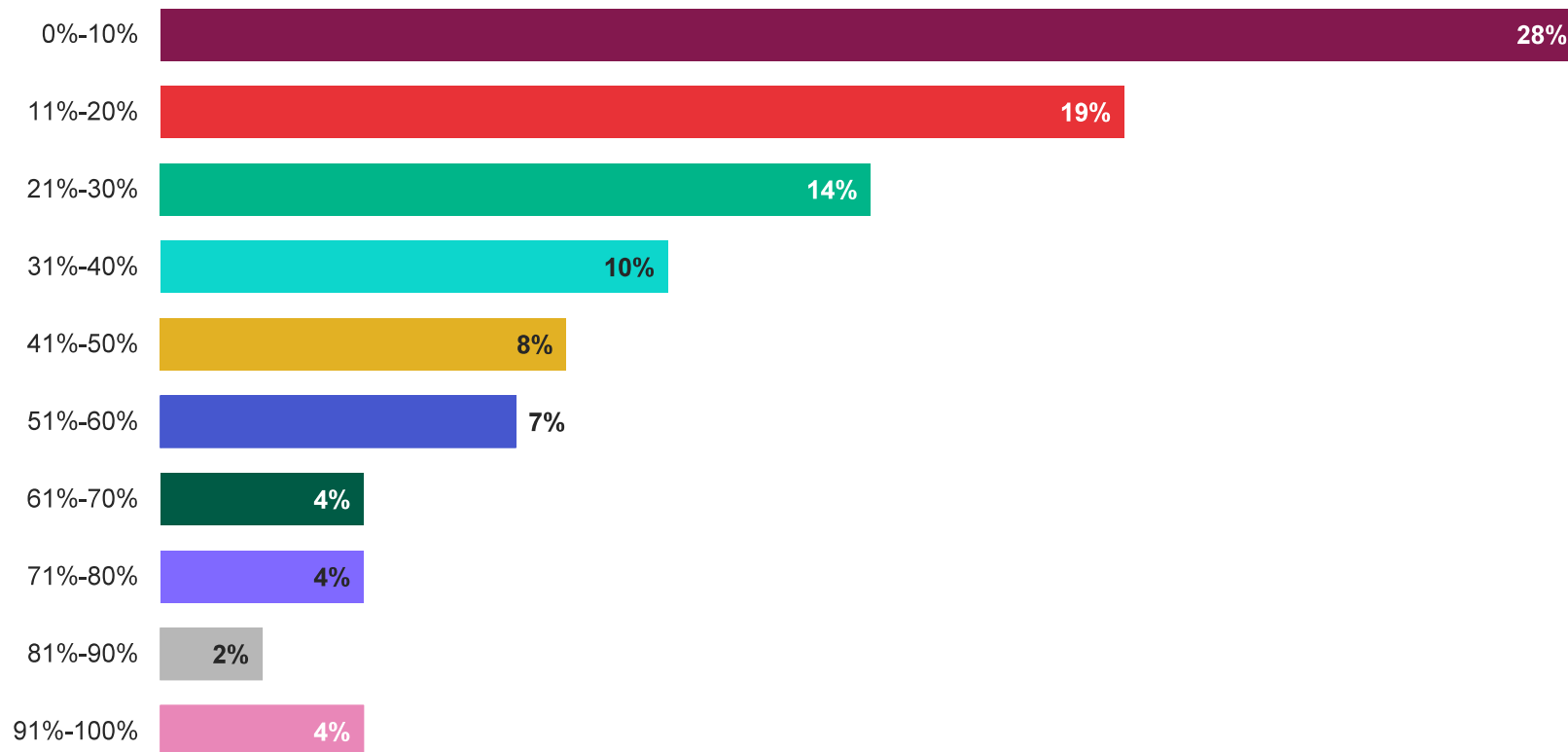
What is your top financial priority when using app-based platforms (i.e., Uber, Lyft, DoorDash, GrubHub, etc.) for work?





## ATTITUDES OF APP-BASED WORKERS

Approximately what percentage of your income comes from using app-based platforms (i.e., Uber, Lyft, DoorDash, GrubHub, etc.) for work?

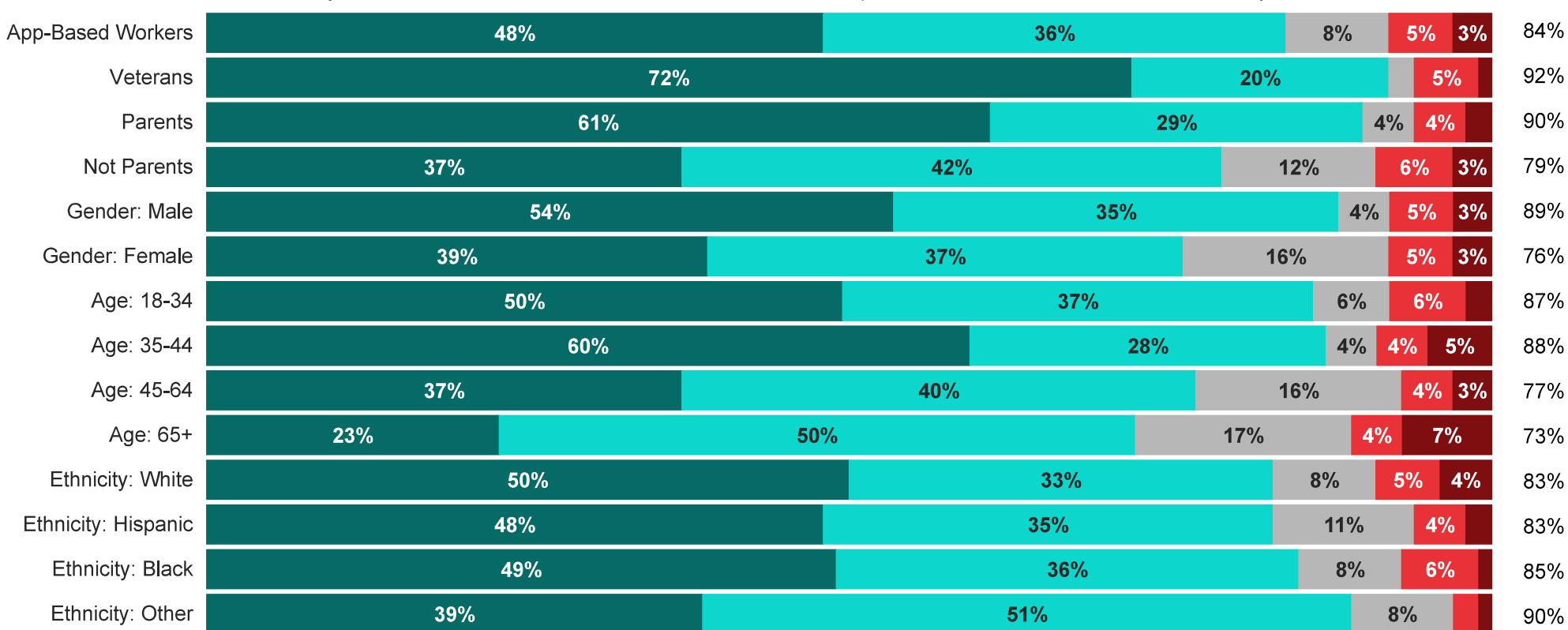


## ATTITUDES OF APP-BASED WORKERS

How satisfied or unsatisfied are you with using app-based platforms (i.e., Uber, Lyft, DoorDash, GrubHub, etc.) for work?

Very satisfied    Somewhat satisfied    Don't know/No opinion    Somewhat unsatisfied    Very unsatisfied

Total  
Satisfied



Total Satisfied = Very satisfied + Somewhat satisfied

## ATTITUDES OF APP-BASED WORKERS

Why are you satisfied with using app-based platforms (i.e., Uber, Lyft, DoorDash, GrubHub, etc.) for work?

## EASY TO USE

“Easy to navigate and nice to meet people.”

“It is easy to use when I have some free time.”

## COMMUNITY

“Because they provide flexible hours. They are instant payout [and] they are servicing the community.”

“Not only helps my income, but helps my community as well.”

## EXTRA INCOME

“It is the best way for me to make extra money on my own time.”

“Because these jobs always help me to catch up bills that other careers take it forever for paycheck but this career easy to have money payday same day when I need for emergency money in case.”

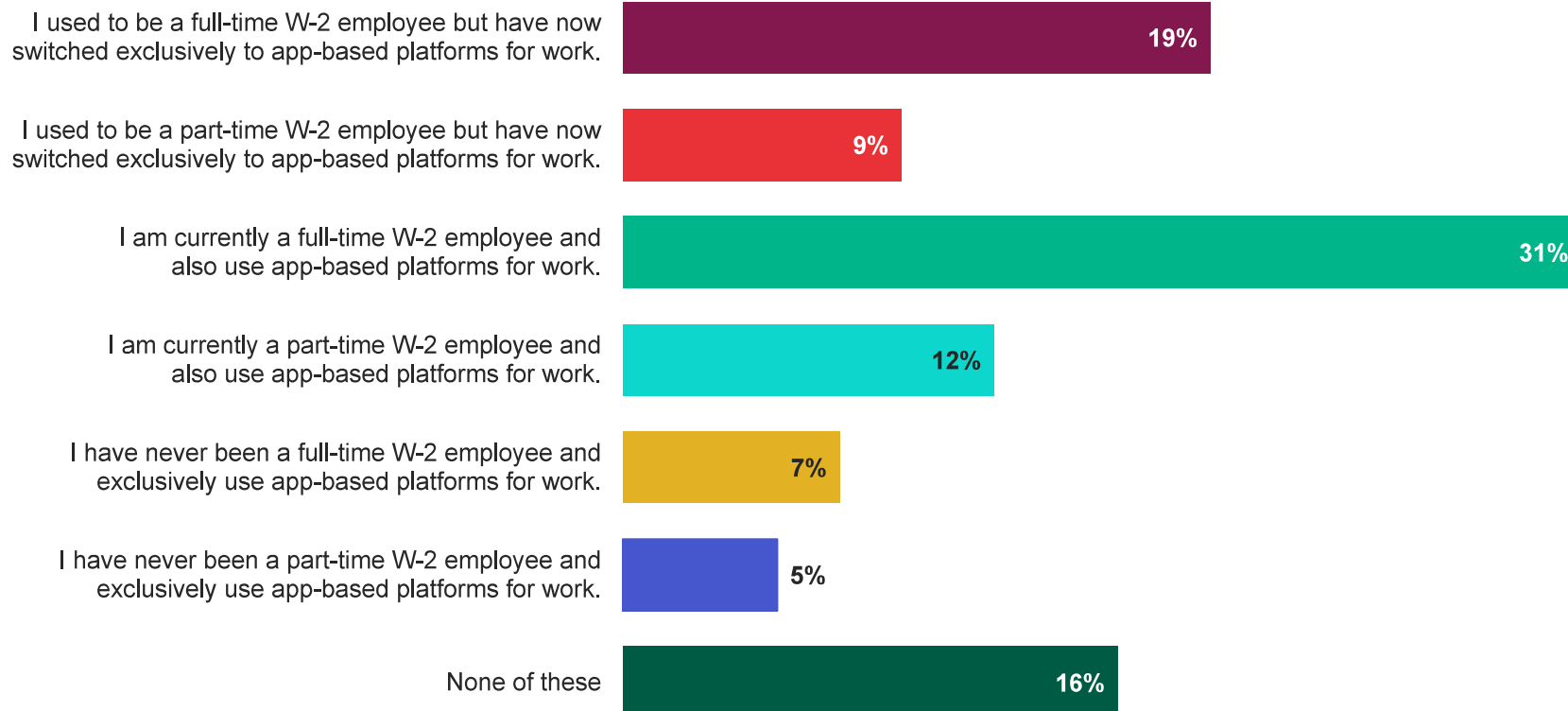
## FLEXIBILITY

“They offer me flexible options for work that works around my health issues.”

“It gives me the flexibility that I need and the extra income to accomplish some short term goals.”

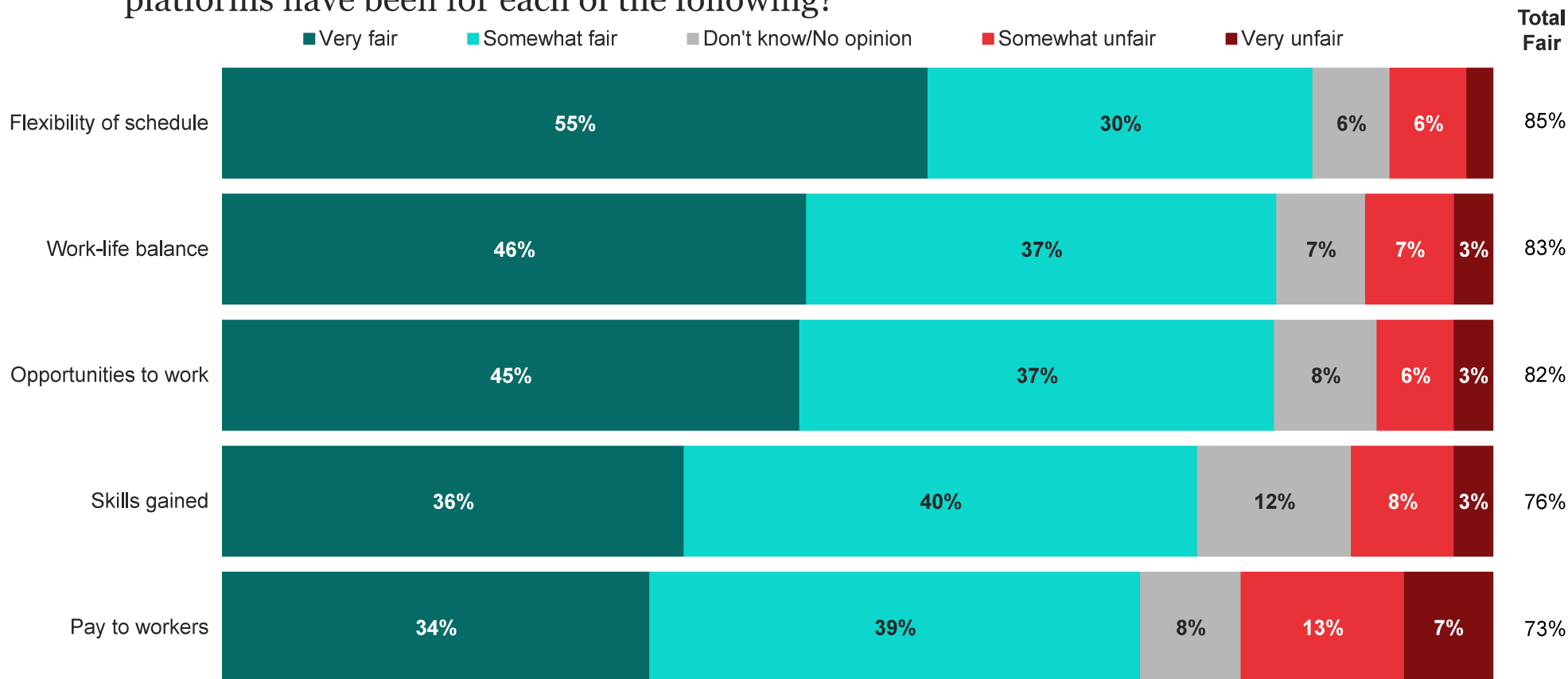
## ATTITUDES OF APP-BASED WORKERS

Which of the following best describes you, even if none are exactly correct?



## ATTITUDES OF APP-BASED WORKERS

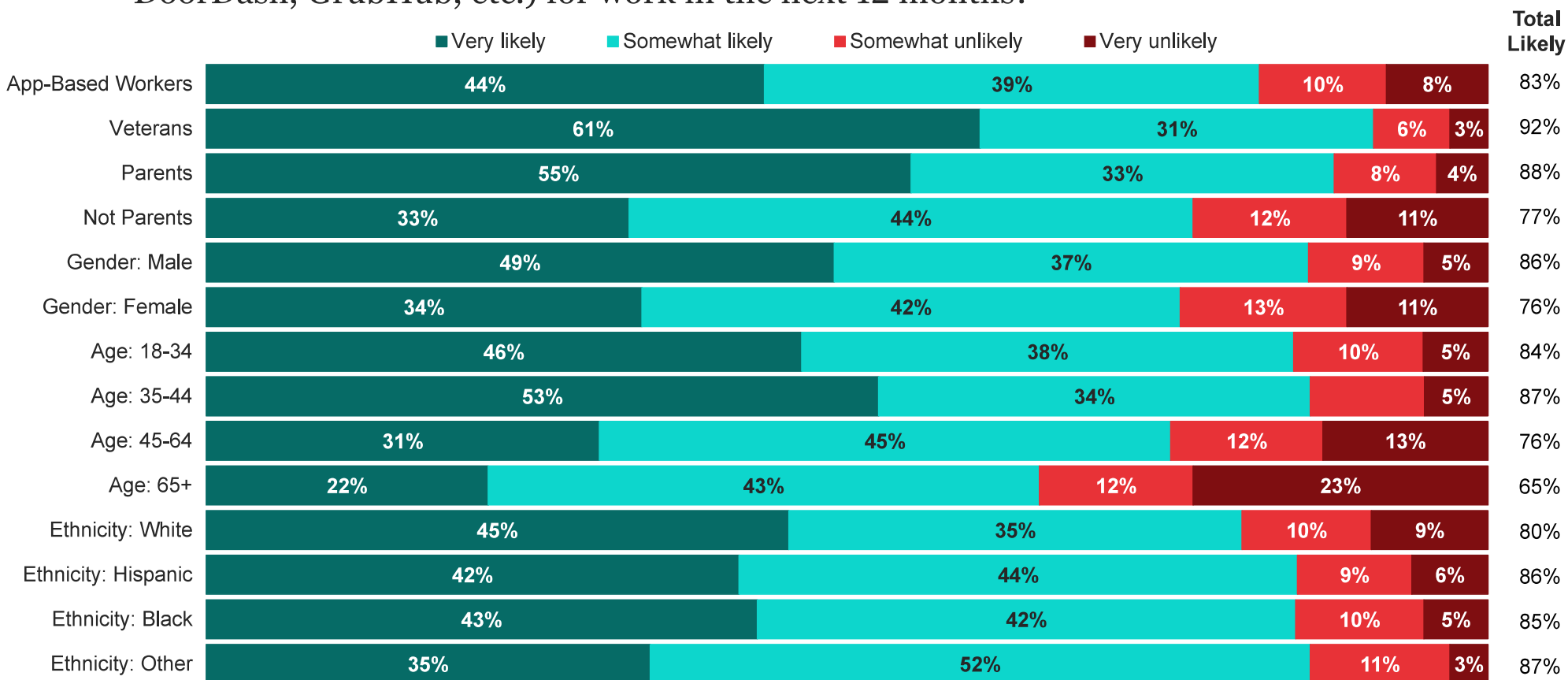
Based on your experience using app-based platforms (i.e., Uber, Lyft, DoorDash, GrubHub, etc.) for work, how fair or unfair do you believe the companies that run the app-based platforms have been for each of the following?



Total Fair = Very fair + Somewhat fair

## ATTITUDES OF APP-BASED WORKERS

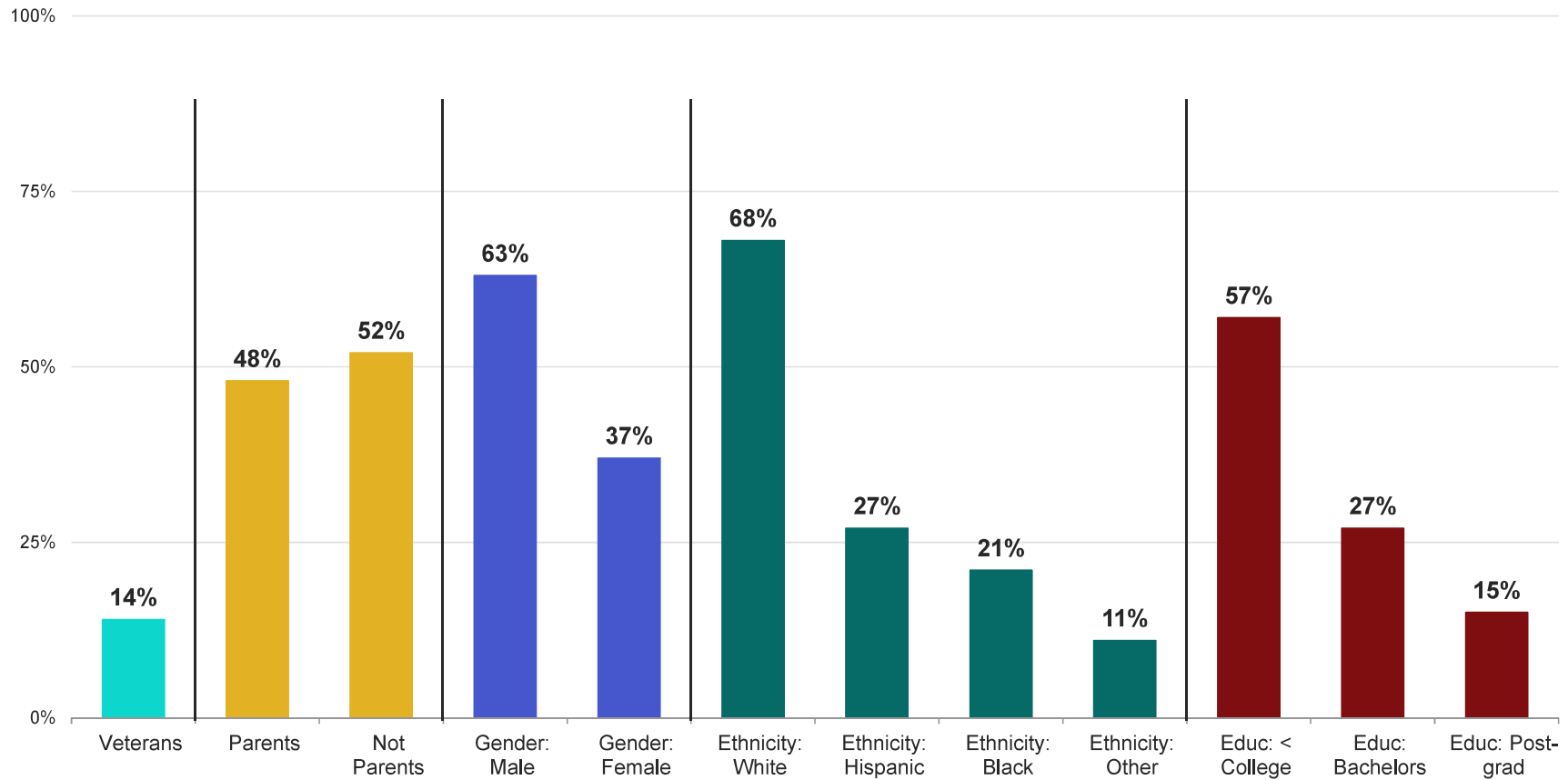
How likely or unlikely are you to continue using app-based platforms (i.e., Uber, Lyft, DoorDash, GrubHub, etc.) for work in the next 12 months?



Total Likely = Very likely + Somewhat likely

## ATTITUDES OF APP-BASED WORKERS

## Breakdown of demographics of app-based worker sample.

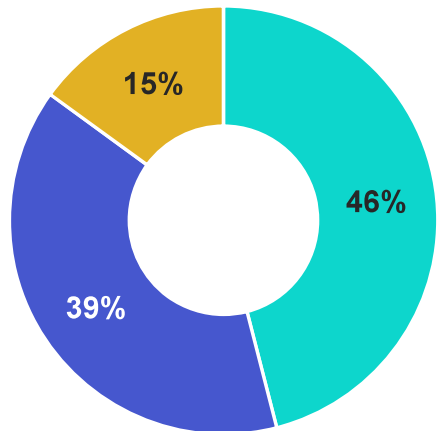


Data reflects % of app-based workers who identify as each demographic type, percentages calculated as N size out of total respondents (N = 1,251)

## ATTITUDES OF APP-BASED WORKERS

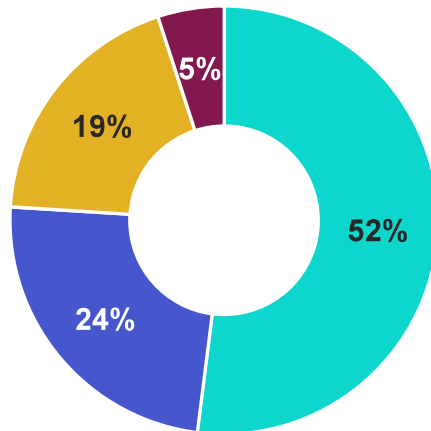
## Breakdown of demographics of app-based worker sample.

COMMUNITY TYPE



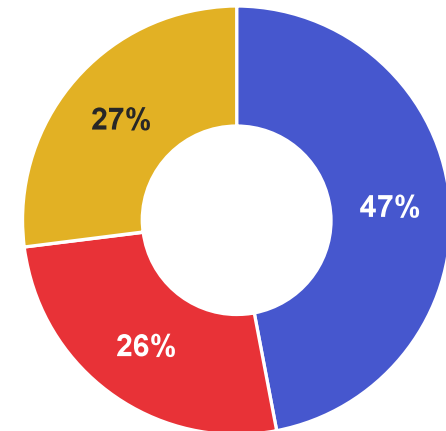
Urban Suburban Rural

AGE



Age: 18-34 Age: 35-44  
Age: 45-64 Age: 65+

POLITICAL PARTY



Democrat Republican Independent

Data reflects % of app-based workers who identify as each demographic type, percentages calculated as N size out of total respondents (N = 1,251)



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