

HEALTHCARE AND THE GIG ECONOMY: A MARRIAGE OF RISK AND REWARD

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Healthcare is one of the country's largest industries, accounting for trillions of dollars in annual spending. Given its magnitude, it should come as no surprise that healthcare and our national economy are inextricably bound. That's a lot of pressure given the complex and challenging nature of the delivery and administration of healthcare, and is especially problematic given the industry's position of prominence in our everyday lives. The gig economy stands ready to assist.

WHAT IS THIS GIG ECONOMY?

You may be familiar with the so-called "gig economy" even if you have never heard the term. Have you ever taken an Uber or Lyft? If so, you know more about the gig economy than you think. In essence, the gig economy represents a labor market characterized by the prevalence of short-term contracts or freelance work, where the willing worker and eager consumer are connected via digital means (such as a smartphone app).

The gig economy has grown rapidly since the 2008 recession, and current estimates suggest that gig economy workers account for 15 percent of the working population. Virtually every industry has

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evaluated how to capitalize on this contingent workforce (i.e., a wellspring of people who do not mind working a series of one-off tasks, or “gigs”) to boost profits and solve problems. Healthcare, an industry that has experienced significant labor shortages and is under continued pressure to reduce costs, is of course no exception.

THE PRESENT: THE GIG ECONOMY’S IMPACT ON HEALTHCARE TODAY

The healthcare industry has already begun to try the gig economy solution on for size. This is most evident in the shift toward hiring temporary employees and medical staff, and has not been limited to nurses, which is where we see the most drastic, nationwide shortages. The trend has also targeted doctors, specialists, clinicians, and nonmedical personnel.

While shortages are the primary motivating factor (for instance, the United States is expected to see a shortage of 40,000 to 104,000 physicians by 2030), it isn’t the only reason for this development. Aging populations, chronic illness, and the Affordable Care Act—all of which account for increased healthcare consumption—also play a role. Moreover, many healthcare professionals find a versatile work arrangement to be more attractive and lucrative. As healthcare consumption continues to grow and the percentage of millennials (a generation known in part for demanding a desired quality of life and more flexibility from their jobs) that make up the workforce rises, you should not expect the trend toward temporary workers to slow anytime soon.

Ultimately, the gig economy can make healthcare staffing easier and more flexible for both the employers and the professionals they hire. Healthcare institutions can hire temporary workers when they are needed, and professionals can find the opportunities that best suit their needs.

Many companies are already realizing the benefits of taking advantage of these changing market conditions.

Take Dr. Alexi Nazem and his company, Nomad Health, as an example. Nomad is an online platform that connects freelance doctors to hospitals directly, thereby eliminating the “middleman” that was once necessary. Through Nomad, physicians can search for available “gigs,” negotiate their own contracts, and are provided malpractice insurance. In exchange for facilitating the connection, Nomad takes a cut that is significantly smaller than the commission a broker or agency would take in similar circumstances. With this model, the hospital and physician get what they want while saving money, and Nomad makes a profit; win-win-win.

Temporary staffing is not a novel concept in healthcare. Many hospitals already rely on the services of per diem and travel nurses, with such employment relationships traditionally facilitated by specialized job agencies. Nomad and various competitors seek to disrupt this arrangement. Given its success in pairing physicians with hospitals, Nomad is expanding its services to include nurses. Based on the current trends, it is exceedingly likely that similar web-based gig economy companies will totally dominate the temporary staffing market in the coming years.

The gig economy’s impact on healthcare is not limited to temporary staffing, however. Uber, the poster child for the gig economy, is also shaking up the traditional way of doing things. An economist and physician recently collaborated to evaluate what happens when Uber enters a new market. They found that the introduction of this ride-hailing service brings reduces per capita use of ambulances by at least seven percent. Though perhaps not an appropriate means of transportation in the event of a medical emergency, ride-hailing services can transport the non-emergency patient to a healthcare provider faster, cheaper, and more predictably. Plus it affords patients more choice in selecting where they seek medical care.

THE FUTURE: MORE CHANGES COMING TO A HOSPITAL NEAR YOU?

The gig economy is already altering the way healthcare is managed and delivered. In light of these changes, is it safe to predict that it will continue this way until the current method of solving certain problems is forever and irreversibly altered? Looking across the pond, healthcare providers in the U.S. can get a hint of what additional changes could still be to come.

Currently, the British government is evaluating whether to further marry healthcare to the gig economy. Jeremy Hunt, Secretary of State for Health and Social Care, [recently announced plans](#) to introduce an app for England's National Health Service that provides on-demand health care. This service, billed as an "Uber-style" app, would allow those in charge of staffing at healthcare facilities to bring in nurses and other healthcare workers if they find themselves understaffed or overly busy on a particular day. While similar developments are brewing in the U.S., Britain's plan to fill a staffing void essentially in an instant is inevitably attractive to anyone who handles employee scheduling.

THE TAKEAWAY: MANAGING RISK IN AN ECONOMY OF LEGAL UNCERTAINTY

Though participation in the gig economy can certainly increase reward, it may also increase risk. At present, the greatest legal dilemma is how to fit a gig economy worker into the traditional employment law parameters. The most newsworthy example is Uber's prolonged legal battle regarding whether its drivers should be designated as employees or independent contractors. How this matter is ultimately decided will have significant ramifications for all those participating in the gig economy. If deemed employees, Uber inherits a new level of responsibility—and cost—for its drivers. If not, business can continue as usual.

These classification challenges are not unique to the transportation industry. It is often difficult to determine whether a worker is an independent contractor even in the traditional work arena. The IRS, Department of

Labor, National Labor Relations Board, federal and state courts, and state agencies each implement different tests and standards to determine if independent contractor status is proper. Making the wrong decision can be a costly mistake for any business.

While independent contractor status has taken center stage, there are numerous other issues that should be on the gig economy enthusiast's radar. For example, how do traditional civil rights laws figure in?

Technically, Title VII and other employment laws apply only to employees and not independent contractors. But is society comfortable with denying a growing sector of the workforce these antidiscrimination protections?

Like many issues in the gig economy, immigration compliance is a growing concern. If gig workers are not true employees, and the company therefore has no reason to know whether those performing its work lack valid U.S. work authorization, immigration compliance rules and penalties will not apply. But in order to avoid the costly penalties associated with noncompliance, companies must be abundantly cautious in determining a worker's status and documenting which workers are independent contractor.

To round out your legal department's headache, there are also questions that have not been sufficiently answered regarding benefits, trade secrets, and workplace safety as applied to those working in the gig economy.

Because we lack concrete answers to myriad legal questions arising in the gig economy context, healthcare employers seeking to take advantage of the gig economy's benefits should carefully weigh the pros and cons before taking drastic action. The bright side is that given the gig economy's pace of growth, these questions demand an answer in the relatively short term.

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