



# Does Gig Work Disqualify Workers From Unemployment Benefits? State Supreme Court Agrees To Answer Question

Insights

12.27.18

The Pennsylvania Supreme Court just agreed to weigh in on a question that could prove critical to the growth—or stagnation—of the gig work labor pool: does performing gig work in between full-time jobs disqualify a worker from receiving unemployment benefits? By accepting the case of *Lowman v. Unemployment Compensation Board of Review* for review yesterday, the state's high court has decided that 2019 will be the year that it enters the fray on this crucial question.

We originally wrote about this case back in January 2018. The facts of the case are rather simple and straight-forward. Donald Lowman worked as a behavioral health specialist until he lost his job in June 2015. He filed a claim for unemployment benefits, and while he was looking for a steady job and waiting a determination about his eligibility for benefits, he decided to work as a rideshare driver through Uber. He earned about \$350 per week as an Uber driver to help tide him over during his period of unemployment. Unfortunately, the state Unemployment Compensation Service Center told Lowman that his work with Uber rendered him ineligible to receive unemployment benefits. After an administrative hearing, it concluded that his gig work was a form of “self-employment” and that he was an “independently established commercial driver.” This disqualified him from UI benefits because the law is not intended to protect those with failed business ventures, nor does it offer payment to people who are taking positive steps to establishing their own independent business. The UC Board of Review concluded that Lowman was “self-employed and not just trying to earn some extra money on the side.”

On January 24, 2018, the state appellate court stepped in and overruled the decision, applying a healthy dose of logic to the situation. “Claimants who are receiving unemployment compensation benefits after separating from employment often engage in temporary assignments to supplement their income or to assist them in finding a full-time employer,” the court said in its 11-page ruling. “These assignments do not render a claimant ineligible for unemployment benefits.” It cited an earlier case from 2011 where it had ruled that “short-term work, including self-employment, in which a claimant engages after losing his job, does not render the claimant ineligible for unemployment compensation benefits,” and applied that standard to modern gig work. According to an attorney assisting Lowman, this is the first time that the Pennsylvania appellate court had addressed whether drivers for ridesharing companies could do gig work and still remain eligible for UI benefits.



We are hopeful that the Pennsylvania Supreme Court will apply this same standard when it issues its decision on the matter. After all, the gig economy works because it solves the problem of idle capacity – when a person has the free time to handle a certain task, and willing consumers are out there in the marketplace with a need for just that kind of task. If the system tells people who are unemployed that they cannot fill this idle capacity with work, they would hamper the economy and the individual’s desire (and need) to earn some extra money to help them through a transition period. As long as the worker continues to look for full-time work, and remains available to accept full-time work if offered to them (which gig jobs permit given they are completely flexible), freelancing jobs through a gig economy platform should not block a worker’s right to unemployment benefits.

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**Richard R. Meneghello**  
Chief Content Officer  
503.205.8044  
[Email](#)