



# Does Gig Work Block Unemployment Benefits? Pennsylvania Supreme Court On Verge Of Deciding Issue

Insights

4.15.20

We wrote about this issue several times in 2018, and now we may be about to get answer to 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? The Pennsylvania Supreme Court is about to become the first state high court to decide this issue, and the country waits with bated breath to hear the answer.

## The Facts

Donald Lowman was a behavioral health specialist until he lost his job in 2015. He filed a claim for unemployment benefits, but while looking for a steady job, he picked up a gig job as a rideshare driver. He earned about \$350 per week to help tide him over during his period of unemployment.

Unfortunately, the state Unemployment Compensation Service Center told Lowman that his gig work 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.”

## The Legal Proceedings To Date

In 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.

But the state wasn’t satisfied and pressed on with the appeal. The state Supreme Court heard arguments on the case on September 11, 2019, and as Bloomberg’s Robert Iafolla just reported, the court “is poised to decide” the case “and could rule any day” on the issue.

## **What's Next – And What Will It Mean?**

As we wrote in 2018, we are hopeful that the Pennsylvania Supreme Court agrees with the lower court and permits workers to maintain unemployment eligibility despite picking up gig work assignments. 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.

This is especially true given the current COVID-19 crisis, *Iafolla* writes, and the resulting surge in unemployment claims that we have seen in the past month. The “enormous spike in claims will likely mean people who qualify for unemployment benefits will have to wait more than two or three weeks before they start collecting checks,” he writes, which will inevitably lead people to performing gig jobs to make ends meet.

We will continue to monitor this case and report back when we have a decision.

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