PARTNERSHIP
for New York City

One Battery Park Plaza, 5th Floor
New York, NY 10004
pfnyc.org

Testimony of the Partnership for New York City

New York State Senate
Standing Committee on Internet and Technology

Examination of the Gig Economy
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The Partnership for New York City represents private sector employers of more than 1.5 million New Yorkers. We work together with government, labor and the nonprofit sector to maintain the city's position as the preeminent global center of commerce, innovation and economic opportunity.

Thank you, Senator Savino, for your thoughtful approach to ensuring that New Yorkers who earn their living through the so-called "Gig Economy" have the protections and benefits they need and deserve. Today, New York state is in a position to craft model legislation for the country that responds to the complexities of how internet platforms are used to connect people to work. Businesses should not be allowed to circumvent the standards that New York sets for treatment of full-time and part-time workers by mischaracterizing them as independent contractors.

We hope that New York will not make the same mistakes that California did in failing to carefully define who is covered in their gig worker legislation. There are several major problems with the California law, starting with an oversimplified "ABC" formula that determines who is a "gig worker" and who should be an employee. It potentially captures many situations where individuals have chosen to work as sole proprietors of small businesses. It also may include people who have decided to supplement their income by taking job assignments that are episodic and allow them to perform work on their own schedule and for multiple clients.

We have canvassed our Partnership members and found that many legitimately hire independent contractors, directly or through intermediaries, to carry out auxiliary functions that require special expertise or extra capacity. A California-type solution would disrupt large numbers of these voluntary business arrangements that are important to breadwinners across the state, as well as to their employers.

California law seeks to limit their interference with legitimate independent contracting arrangements by exempting vocations that are not connected to technology platforms. These exemptions include vocations such as insurance agents, certain health care professionals, securities broker-dealers or investment advisors, and cosmetology services. But many or most of these exempted occupations are likely to gravitate toward technology platforms in the future, so trying to define a gig worker by exception does not make sense in our fast-moving economy.

There are also conventional jobs— such as newspaper delivery—that do not belong in the gig category because they are explicitly designed as a source of supplemental income and not as full-time occupations.

On the other hand, there are many technology platforms that provide a marketplace for independent contractors that should not be covered by "gig worker" protections. Examples range from marketplaces like Etsy, which has more than 80,000 New Yorkers using its site to sell products, to platforms that are connecting global networks of experts, software developers, or providers of other professional services. These workers may be available "on demand," but are clearly not depending on a single client or employer as their source of income and benefits.

As a society, we should be trying to protect gig workers and part-time workers who are not able to protect themselves. On the other hand, we should not be imposing additional costs and regulations that interfere with voluntary business relationships and entrepreneurial activities of New Yorkers who choose to work as independent contractors or sole proprietors.

How do we define a new category of worker who should be protected through legislation? This is a tough question that the legislature has been struggling to address. The broad generalizations and exceptions that the California law put in place are not working. A better approach might be to consider the number of hours worked or on call (occasional versus substantially full-time over an extended period), the nature of work performed (auxiliary or support services versus core business functions), or the nature and rate of compensation (hourly wage below a certain level versus a fixed compensation for product deliverables). Certainly, the law should not apply to those whose hours of work are de minimis (say, less than 20 hours a week) or where the hourly rate of pay is substantially more than minimum wage.

The Bureau of Labor Statistics has estimated about 10% of U.S. workers have alternative arrangements to a typical 9-5 day at one employer as their primary job, including temp agency work, on-call work, contract work, and freelancing. However, of all 881,000 independent contractors statewide, including those with a separate full-time job, 614,000, or 70%, are not on-demand workers. If New York is to take regulatory or legislative action in this area, it should be focused on the remaining 30%.

The Partnership and our member companies are prepared to work with the legislature and interested parties to come with legislation that achieves worker protections while protecting the rights and interests of independent contractors and those who hire them.