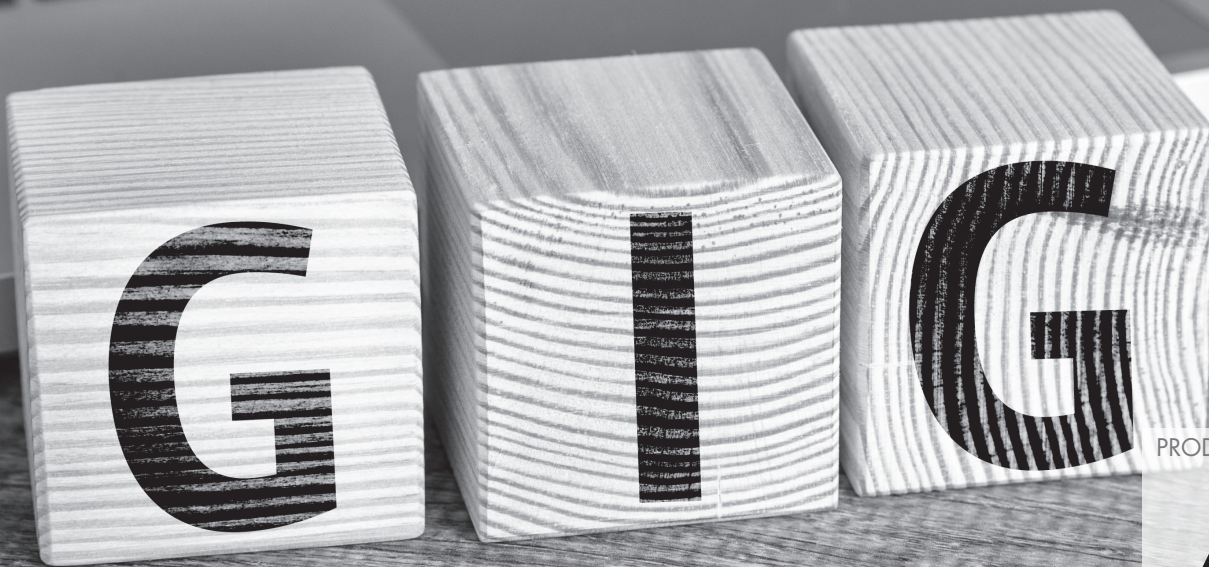


THE NEW GIG ECONOMY —WHAT'S AT STAKE?

Couple collaborative freelancer technology with risk mitigation
and get a big competitive advantage



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ABSTRACT

This white paper provides a high-level overview of the Gig Economy and the variables that have given rise to a new way of engaging independent workers. It examines the competitive advantages companies are gaining from adopting this new talent acquisition model and explains how to identify—and mitigate—the legal risks associated with worker misclassification.

INTRODUCTION

The term “Gig Economy” refers to recent developments in on-demand hiring, especially in the consumer space. “On-demand” technology (usually mobile) matches consumers with independent workers (also referred to as freelancers or gig workers) to address an immediate need. The on-demand provider supplies the technology and facilitates the financial transaction. Uber, Lyft and TaskRabbit are some of the best-known examples of on-demand providers practicing in the Gig Economy today.

Here is how the transaction model works: The consumer sends out a notice they would like to purchase services, and a gig worker offers an immediate reply. The consumer then selects a gig worker to perform the service. This environment benefits the consumer by greatly increasing access to services and offers immediate opportunity to complete their tasks.

Like consumers, companies are seeking to adapt and apply this transaction model to the business-to-business (B2B) space. They want broader, faster access to talent than offered by traditional contingent-labor staffing. It is a model and a technology in the B2B space with a lot of promise. Many business executives are excited by the opportunities, although they are concerned about the risks associated with consumer “gig” business models. Most important, the technology and the “gig” model are still nascent, creating a competitive advantage to companies that can most quickly master this new space.

Within this white paper we provide a high-level overview of the Gig Economy and explore the benefits and risks for companies and gig workers. Finally, we examine what to look for when selecting on-demand providers.

I. THE VIEW FROM THE SKY



Some experts estimate that there are currently 53 million independent workers or freelancers in America today. Furthermore, by the year 2020, 50-percent of the American workforce will be freelancers, participating in the Gig Economy.¹

What is the Gig Economy?

Gig Economy is a trend that is taking place in today's workforce that involves workers either leaving traditional employment or supplementing full-time employment with part-time work or "side gigs." When coupled with technology, which connects independent workers with buyers, an on-demand workforce is born, thus creating the Gig Economy.

Agile•1's Evan O'Connor, technology subject-matter expert, cites four trends that led to this point:

1. The changing economy. The global recession of 2008 through 2010 triggered massive, corporate downsizing, and hiring stalled for several years. People were out of work and turned to gigs and

contracts to earn wages. In addition, as the economy slowly recovered, companies saw the use of independent workers as a way of controlling costs and keeping the workforce scalable in the face of uncertainty.

Globalization is another contributing economic factor that has allowed individuals in emerging economies to compete for gigs in more developed economies. People can now connect with others around the world, and pay and receive payments through inexpensive, online services.

2. The changing workforce. When it comes to work, Millennials and "Gen Z" have different priorities than previous generations.

¹ <http://www.forbes.com/sites/brianrashid/2016/01/26/the-rise-of-the-freelancer-economy/#6307ede2379a>

Rather than finding a company where they can gradually climb the corporate ladder, Millennials yearn for things like work-life balance, experiencing new challenges and finding meaning in their work. Not to mention, many of them entered the workforce in the worst economy since the Great Depression, and traditional jobs were hard to come by. Millennials tend to be more motivated by maintaining control of their career paths by developing skills on project assignments.

Baby Boomers are also flocking to the Gig Economy. They comprise the second largest percentage of gig workers. “Whether it’s because their career hit a premature end during the recession, or they simply aren’t ready to retire, Baby Boomers have decades of expertise to bring to the table,” says O’Connor.

3. Policy. The Affordable Care Act is helping to separate health insurance from employers, providing a new safety net for independent workers. It has also raised employment costs for employers, and has pushed companies to use independent workers to avoid many of the costs and regulatory concerns associated with the Affordable Care Act.

4. Advances in technology. If the volatile economy, the changing workforce, and new employment policies were the kindling, technology

was the match that caused the explosion of the Gig Economy. Streamlined communications, secure online payments, and most important, real-time mobile apps, all created vast opportunities for new business models. Quite simply, technology is pulling more people into self-employment by making it easier and cheaper than ever to be successful as an independent worker.

Online tools have lowered the costs of running payroll and managing benefits. New marketplaces use mobile technology to connect buyers with sellers instantly. Customers have the ability to browse resumes and sample past work. Technology brings transparency to the market and makes it a much more appetizing option.

Advances in communication technology have also enabled employees to work remotely and on their own time. This allows for people, commonly referred to as moonlighters, to supplement their income and work multiple jobs once they get home from their traditional employment.

BOTTOM LINE:

These trends have opened the doors for traditional workers, Baby Boomers, full-time freelancers, and young workers seeking to cultivate their professional experience and expand employment options.

II. ENTER THE FMS

Here is the industry-standard definition of a freelancer management system:

A freelancer management system (FMS) is a category of contingent workforce management technology that enables enterprises to self-manage their engagements with independent workers and freelancers. To fall within the FMS category, a solution provider must provide a complete, end-to-end technology system that can allow users in an organization to search for and find a particular worker and activate, complete, and pay for the work engagement within the system.²

What are the benefits companies can gain from sourcing talent through an FMS?

David Lewis, Senior Vice President of Product Development at Agile•1, offers the following insights:

- **Deeper access to talent pools—another bite at the apple.** An FMS gives companies access to an on-demand talent pool. It allows them to post a need, search for qualified talent, and manage the process without a third party.

Often, larger Fortune 1000 companies have a managed services provider (MSP) managing contingent labor staffing, and within this model, a talent-acquisition team may be in place. The gig opportunities, through

an FMS, provide an additional channel to identify new sources of talent.

- **Increased access to Millennials and Gen Z.** This group has an increasing expectation of project-based work. They want to control their careers and their engagements in a way that builds their knowledge base and makes them more professionally marketable. They are seeking opportunities to come into an organization at a project-level and manage their careers from there.
- **Improved engagement at the time of need.** At the heart of the Gig Economy is the ability to engage talent when you need it. Engineering, IT, and other professional organizations know they need to shift the way they do business. FMS technologies provide visibility into a worker's status and availability so that companies can connect to freelancer talent in a deliberate fashion at the time of need.

"It is going to be more efficient and more effective to engage talent pools at the time of need to get the specific elements of work completed, delivered and paid for, without having to make commitments to length of assignment or length of engagement," says Lewis.

BOTTOM LINE:

With FMS technologies, companies have deeper access to talent pools to bring additional expertise into their organization. Most important, Gig Economy technology allows companies to engage these individuals as close to the moment of need as possible.

²Staffing Industry Analysts' report: "The Rise of the Freelancer Management System," Oct. 17, 2014.

III. IF IT WERE ONLY THAT EASY: COPING WITH MISCLASSIFICATION RISKS



The risk component for hiring independent workers is huge. The Gig Economy is not changing this fact. If anything, it is making risks murkier. At the heart of the confusion is the legal distinction between independent contractors, independent workers, and employees.

Uber Technologies, for example, lost a 2015 case in which the California Labor Commission said one driver was indeed an employee.³ However, in 2016 Uber settled two class-action lawsuits, one in Massachusetts and the other in California, allowing the company to continue classifying its drivers as independent contractors. Uber agreed to pay up to \$100 million to 385,000 drivers in the two states. It also made other concessions, such as allowing “drivers’ associations” in the two states.⁴ Given that at least one Uber driver has garnered a ruling favorable to drivers, litigation will likely continue.

Where did Uber go wrong? Companies seeking to navigate the Gig Economy will have to cope with the legal risks associated with worker misclassification. Cristin Monnich, Director of Independent Contractor Solutions for Agile•1, leads a team of experts who provide classification guidance to Agile•1 clients.

“In the eyes of the government, you are either an independent contractor or an employee,” says Monnich. “With this Uber case—and with the Gig Economy and freelancer management portals—many people consider themselves to be in this in-between cusp. So there has been a movement to have the government revisit the status and come up with a new term and new classification for what they consider independent workers or dependent contractors. But currently, there has been no change in the requirements or the tax designations of workers.”

There is no obvious question to determine if someone qualifies as an independent contractor. It is important to analyze a number of factors, including the agreement between the parties and the true nature of the intended relationship. Based on these factors, classification is sometimes clear, and other times it is ambiguous, requiring leaders to make a judgment call.

There is some movement to create a legal category such as “independent worker,” which would be an in-between category of contractors who serve one company, such as Uber drivers. But, until then, the independent contractor or employee dichotomy stands.

State laws vary, and the IRS and the Department of Labor have their own tests. However, at a high level there are three categories of issues:

- **Behavioral and methodological control:**

Who determines the hours worked? Is there a set time companies require workers to come into the office? Does the company tell people how to do the work? Do they have to follow specific procedures and processes to complete it? Is training provided?

Independent contractors are in business for themselves because of their legitimate knowledge or areas of expertise, and as such should be able to complete services without being micro-managed. Therefore, any controls should be “outcome-focused.”

- **Financial control:** Is there an opportunity for profit or loss to the contractor? Who controls the business model? Has the independent contractor made an investment in their business? Have they formed a corporation or purchased tools or equipment? How are companies paying contractors?

“With independent contractors, we generally want to see risk for profit or loss. They should be paid for the output as defined in a statement of work. Milestone-based, deliverable-based, and project-based payments are appropriate,” says Monnich.

- **Relationship between the parties:** How long have the two been working together? How permanent is the relationship? Look at the written agreement between the two parties and examine the language to get a good picture of the services being provided. It should reflect a clear project with an end-goal, not a position with general tasks and duties or a job title.

How integral to the business are the services being provided? “Looking at a company like Uber, the drivers are as integral as you get to who Uber is as a company,” explains Monnich. “When the services being performed are a key aspect of the business, it is more likely to be seen as an indication of employment relationship.”

BOTTOM LINE:

Companies seeking to avail themselves of on-demand talent will need some expert assistance in designing policies and procedures to correctly classify workers.

³ Berwick v. Uber, <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1988&context=historical>

⁴ <https://newsroom.uber.com/growing-and-growing-up/?version=meter+at+3&module=meter-Links&pgtype=article&contentId=&mediaId=&referrer=http%3A%2F%2Fwww.theverge.com%2F2016%2F4%2F21%2F11485424%2Fuber-suit-california-Massachusetts-drivers-employee-contractor&priority=true&action=click&contentCollection=meter-links-click>

IV. HOW IT PLAYS OUT: THE COMPETITIVE ADVANTAGES



What are companies gaining from this new sourcing method—especially when the risks are fully understood and effectively managed? Peter Carvalho, President of Agile•1, offers some insights, starting with this: gig-sourcing through an FMS will allow companies to achieve their overall hiring goals.

At this point in the market, companies can successfully benefit from the Gig Economy if they avoid worker misclassification. This is largely a question of using tools from on-demand service providers who can analyze potential misclassification elements. When the risks are appropriately managed, the competitive advantages are numerous,” says Carvalho.

More than ever, companies are focusing on total employee management, which can be defined as managing all areas of employee and non-employee labor. This includes contract, freelance, project-based work, non-employees, part-time or seasonal workers, and full-time employees. Gig technology will give companies immediate access to talent marketplaces and allow for more deliberate hiring.

FMS tools can provide greater efficiency by indicating a contractor’s status and availability along with other relevant details: full-time, part-time, experience with specific kinds of projects, as well as pricing. Gig workers, similarly, are excited about the technology because they like the flexibility, cost-savings and control the tools offer in obtaining new clients.

Gig technology tools also allow for faster hiring, as well as reviews and recommendations of gig employers. Work is transparent; clients rate performance, and prospective clients can view the ratings. Similarly, tools are starting to use talent-matching algorithms to find the best gig providers with the right clients, based on past performance, prices, and past projects.

Finally, the Gig Economy allows opportunities for freelancers to collaborate. Workers can connect online to share knowledge and ideas about each project, regardless of their geographic locations. This will allow for timely completion of projects and for companies to tap into talent around the world.

V. CONCLUSION: WHAT TO LOOK FOR IN AN FMS PROVIDER



When selecting an FMS provider, what elements are crucial to getting the benefits and minimizing the risk? Consider the following suggestions:

- **Know the worker's status and availability.** Does the worker typically work full-time or part-time? Do they have immediate availability? How much notice will they require if you wish to engage them? What kinds of projects do they typically work?
- **Manage talent risks.** Track worker quality through reviews and recommendations. Agile•1's new FMS-product GigSource™, for example, will present recommendations of highly-rated workers based on typical client projects.
- **Look for speed of hire.** The more quickly a client can bring the right person online for the right gig, the more cost-savings will proliferate through the project. Forecast your need and line-up workers in advance, so they will be ready at the moment of need. GigSource™ has talent-matching algorithms for more effective sourcing.

- **Seek out online work collaboration functionality.** Online work collaboration drives efficiency. Workers can be connected to one another through collaboration space, passing work back-and-forth to each other while a project manager (also potentially freelance) manages it. This allows for not only a quicker selection of workers, but also helps them to get to projects more quickly.
- **Manage compliance risk.** None of these benefits accrue without correct classification. Companies must couple technology with appropriate risk mitigation strategies. Agile•1's technology will connect its FMS to risk mitigation providers so a client also has the ability to transfer or eliminate exposure to misclassification elements through GigSource™ technology—should they chose to do so.

Peter Carvalho says of the current opportunities: "Certain verticals are very excited about the potential for competitive advantage including, pharmaceutical sectors and IT outsourcers, which typically take on

very large projects and particularly in the infrastructure area. We're also seeing interest from consumer goods companies, particularly in product marketing, demonstration and sales."

BOTTOM LINE:

Competitors are moving into the Gig Economy in the B2B arena, and seeking the efficiencies and on-demand access to vast talent that spearheaded this consumer revolution. Mitigate risk to reap the benefits, and you will surely remain one step ahead of your competition.



ABOUT AGILE•1

Agile•1 provides solutions to mitigate and streamline how a company hires contingent workers (temporary, contractors, seasonal, project-based) and/or direct workers (full/part-time employees, FTEs). Our proprietary technologies automate the hiring processes across an organization, while our on-site or remote programs manage multiple staffing agencies, named resources, project-based workers, or recruitment processes. Together, our services and technologies improve visibility, decrease liability and overhead, and save you money while effectively managing your workforce.

ABOUT GigSource™

GigSource™, an Agile•1 technology, is an online tool for connecting companies with freelance talent. GigSource™ allows for greater efficiency in sourcing talent by indicating a worker's ongoing status and availability, providing matching-talent algorithms that allow for faster hiring. GigSource™ allows users to connect to appropriate risk mitigation providers in order to transfer or even eliminate exposure to misclassification.