

Independent Contractors and Nontraditional Workers: Implications for the Child Support Program

Research Brief

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The rise of online platform work through companies such as Uber, Care.com, and TaskRabbit has increased the visibility of alternative work arrangements. This has sparked interest among researchers, policymakers, and program administrators in the “gig economy” and its implications for labor markets, worker protections, and access to benefits. For child support programs, the emergence of the gig economy presents a new dimension to the longstanding challenge of establishing and enforcing child support orders for noncustodial parents working outside traditional salaried employment—in jobs that are often temporary, part-time, and contingent.

Nontraditional work arrangements provide individuals with opportunities to generate income with greater flexibility to choose work hours and tasks. However, they often do not provide the same level of economic security as traditional arrangements. Independent workers are less likely to be covered by labor and employment laws, such as a minimum wage, overtime compensation, and unemployment compensation. Moreover, while nontraditional work arrangements may allow workers additional avenues to earn income, certain employee-based benefits and subsidies such as health insurance, retirement benefits, and life insurance are typically not as available as through traditional work arrangements. In recent years, the growth of the gig economy, where workers’ participation is more transitory than in traditional independent contract work, has contributed to an increase in nontraditional work.¹

Key Findings

Three key findings emerged from our examination of independent contractors’ and nontraditional workers’ growing presence in the child support program:

1. Recent trends toward income instability and an increasing number of nontraditional workers may result in less consistent payments for custodial parents and more work for child support programs.
2. Existing automated income withholding methods may have limited effectiveness for collecting nontraditional workers’ income.
3. While it requires more intensive casework, and likely increased costs, outreach to employers, noncustodial parents, and custodial parents remain critical tools in collecting support payments from nontraditional workers, as do one-time collection techniques.

The diversity of these work arrangements amplifies the challenges that child support programs, which are tasked with collecting money from noncustodial parents to meet their child support obligations, face in collecting on cases where the noncustodial parent has a nontraditional work arrangement. These work arrangements necessitate creative approaches to enforcement that are not solely reliant on automated income withholding orders.

Child support programs have long contended with the challenges of nontraditional work arrangements. In this brief, we examine these issues over time and in the context of the growing gig economy. We begin with a description of the emerging literature on the prevalence of nontraditional work arrangements and the labor market experiences of nontraditional workers. We then discuss the implications of nontraditional work on the enforcement of child support orders and child support payments for families, as well as how child support programs currently approach collecting support from noncustodial parents engaged in independent work.

The child support program must constantly evolve and change its practices in response to economic shifts and policy changes. While some of these changes occur at the national level, state, county, and tribal child support programs are continually devising ways to map their approaches to their local context. The expansion of nontraditional work is the latest change with which child support programs are grappling.

The Child Support Program²

Since 1975, the federal child support program has partnered with states, localities, and tribes to establish paternity, enforce child support orders, and facilitate child support payments. The Office of Child Support Enforcement helps states fund and operate their programs, which serve millions of parents and their children across the country.

The Rise of Nontraditional Work Arrangements

The increase in nontraditional work arrangements has encouraged child support programs to develop a more comprehensive understanding of how to operate in a changing economy. This section provides an overview of nontraditional work arrangements' distinct features, their growth in recent years, and their relationship with income instability.

Nontraditional work arrangements range from conventional notions of independent contracting to recent developments like online platform work. Workers within these arrangements are diverse, ranging from highly-paid and skilled workers to those supplementing their income with temporary or informal side jobs.

When examining nontraditional work, it is crucial to remember that not all nontraditional workers are the same, and that each kind of nontraditional work arrangement may affect child support payments and a child support program's enforcement approach differently.

Compared to traditional employees, nontraditional workers have different payment procedures and labor protections.

Nontraditional work arrangements encompass a variety of worker classifications, including:

- Independent contractors (sometimes referred to as contingent workers);
- Seasonal workers (employees performing work on a seasonal basis);⁴
- People with part-time jobs;
- People working multiple jobs;⁵ and
- People working informally, under the table, or for barter.

The definitions of nontraditional work and its subgroups are widely debated, especially in recent state legislation aiming to recategorize independent contractors as employees.⁶ Independent contractors and contingent

Differences between Employees and Non-Employees³

Employees:

- Covered by federal and state employment and labor laws
- Tax-year earnings reported on a W-2 form
- Reports for state and federal Unemployment Insurance
- Pay periods must remain the same unless formally changed

Non-Employees:

- Not covered by employment and labor laws
- Calendar-year earnings of \$600 or more reported on a 1099-MISC form
- May receive 1099-K (return for third party payment processes) for total payments exceeding \$20,000
- Does not report for state and federal Unemployment Insurance
- Duration of employment is temporary and/or pay is received after an invoice

workers are also not considered employees, which means they lack unemployment insurance coverage, they do not accumulate Social Security credits, and they are not covered by federal, state, and local labor laws (see box).

Independent contracting represents one significant segment of the nontraditional workforce. According to the Internal Revenue Service, an individual is an independent contractor if the business they work for only controls the result of their work, not what or how that work will be done.⁷ Independent contractors' earnings are typically reported to the IRS by the businesses that pay them using a 1099 tax form and can reflect a variety of work arrangements. For example, these earnings may include relatively steady and predictable payments from a single client, one-time payment for work performed, or irregular payments from multiple clients over the course of a year.

Participation in nontraditional work arrangements increased in the past decade.

Recent studies suggest that nontraditional work comprises a growing portion of the national labor market. However, different statistical measures of nontraditional work participation lead to varied estimates of the number of people in these economic arrangements and how much they earn.⁸ This can make it difficult to accurately quantify the size of the nontraditional workforce and the number of noncustodial parents participating in it.

Research suggests that the number of independent contractors, temporary help agency workers, and on-call workers in 2015 increased by one to two percentage points, depending on the survey methodology used, from just under 11 percent of all workers in 2005. However, other estimates of the magnitude of this increase vary.⁹ Moreover, one study suggests the growth in independent contract and other temporary employment made up 94 percent of net employment growth between 2005 and 2015.¹⁰

The rise in the number of nontraditional workers and the extent of income instability within the labor force has begun to challenge the concept of having one full-time job as a labor market norm. Forty percent of American adults in households with one or two adults held more than one job in 2013.¹¹ Meanwhile, researchers estimated that in 2017, more than three in 10 Americans received at least some income from self-employment or independent contract work.¹²

Instability of earnings is widespread.

These increasingly common nontraditional work arrangements are often characterized by unpredictable schedules with similarly variable earnings across pay periods. Although nontraditional workers may have more control over the number of hours they work, they experience more income instability than traditional workers.¹³ Income instability is present in both traditional and nontraditional work and is especially common among young and low-income workers. Most people aged 18 to 24, along with most people living in the lowest income quintile, undergo more than a 30 percent monthly change in income.¹⁴ Such instability compounds financial difficulties; in 2017, one-third of workers with varying incomes struggled to pay bills at least once specifically because of their volatile paychecks.¹⁵ While such income inconsistency is increasing, the income workers receive from these positions may or may not comprise a large portion of their net income.

Actual earnings of many of the individuals earning money as independent contractors, especially those using online platforms, are relatively low. A 2016 study of 260,000 JP Morgan account holders who received income through an online work platform earned \$533 monthly, on average, in platform labor.¹⁶

Given the scope of these changes to the labor force, it is increasingly important for child support programs to consider how nontraditional work and income instability (in both traditional and nontraditional arrangements) may affect their business practices. While there is little research on the number of noncustodial parents who are nontraditional workers, child support programs have consistently indicated a need to address this issue and continue to grapple with the appropriate response to these trends.

What the Increase in Nontraditional Work Means for Child Support Programs

Shifts in labor force dynamics pose challenges that require child support programs to develop new approaches to collecting support from nontraditional workers. In this section we describe the implications of the rise in nontraditional work arrangements and shifts in labor market participation for state child support programs; we also explore how some states are responding.

This discussion is largely based on conversations with state child support staff in three states: New Hampshire, New York, and Texas. While not representative of all states, the policy and economic environments in these three states vary along several important dimensions that add depth and diversity to the perspectives we heard. For example, two of the states, New Hampshire and Texas, have current laws mandating that employers report 1099 workers to their state Directory of New Hires databases.¹⁷ However, the state Directory of New Hires databases in New Hampshire and Texas do not differentiate whether the individual is an employee or a 1099 worker.¹⁸

Table 1: Child Support Characteristics of Interviewed States

State	1099 Employer Reporting Mandate	Child Support Caseload Size (2016) ¹⁹
New Hampshire	Yes	38,509
New York	No ²⁰	856,038
Texas	Yes	1,548,329

New Hires Reporting and Income Withholding²¹

Federal law mandates that employers provide basic information about individuals that they have hired to states. This information, collected in a State Directory of New Hires and forwarded to a National Directory of New Hires, helps identify noncustodial parents who are recently employed and may owe child support. The New Hires reporting and data matching process is one of the main ways that child support programs implement income withholding orders to collect child support from noncustodial parents.

New York and Texas have large and diverse economies. Both states also have large urban metro areas as well as more rural communities. Texas and New York child support staff described how the nontraditional workforce in their states ranges from low-income, sporadic gig workers to higher-paid independent contractors with more consistent earnings. By comparison, New Hampshire has few large cities and an economy that is heavily reliant on the tourism industry. New Hampshire child support staff emphasized that much of the nontraditional workforce in their state was made up of low-wage, seasonal employment.

Automated income withholding remains a critical collections tool for state child support programs.

State child support programs are heavily reliant on income withholding to collect support for families. In 2017, 75 percent of collections, nationally, came from income withholding.²² This approach has multiple benefits for families. For noncustodial parents with steady employment arrangements, it increases the consistency with which families receive their support. Moreover, it is relatively automated, and the transfer of funds is not dependent on the noncustodial parent remembering to submit a payment each month. Finally, it is not overly labor intensive for the child support program. Once the income withholding order is in place, the case requires relatively little attention unless the noncustodial parent's employment situation or monthly order amount changes.

Income reporting processes for independent contractors differ from those for employees.

Sixteen states mandate that employers report the income of independent contractors.²³ The specific requirements of this legislation vary, including income thresholds, whether these positions are identified differently than traditional W-2 employment in states' Directory of New Hires, and whether the requirement only applies to certain employers.²⁴

For traditional, W-2 employees, this reporting occurs at the point when an individual is hired, after which the child support agency can access quarterly earnings of that individual through the agency administering the state's unemployment insurance program. For independent contractors, this reporting occurs not at the point of hire (as there is no effective hire date) but instead when the first payment for contracted work is made. This challenge is made more difficult by the fact that many states that mandate reporting do not differentiate independent contractors from other workers. This creates barriers associated with understanding whether, for example, a new report to the New Hires databases indicates a switch in jobs or an additional job.

Current automated enforcement methods have limited effectiveness, even in states with mandated reporting of independent contractors.

States that mandate employer reporting of independent contractor income still face challenges in implementing income withholding. These automated systems are less reliable for segments of the workforce with less consistent employment arrangements or for workers whose employment status is not captured through the state Directory of New Hires database. For those workers who work for multiple employers and switch employers frequently, the administrative data available to child support programs that often serves as the basis for both calculating child support owed and collecting this support is inadequate.

These challenges are a function of both the nature of nontraditional work arrangements and the difficulty that these reporting requirements impose on employers.

It is virtually impossible to implement income withholding for one-time payments. In these states, because payments are reported to the child support program once they are issued, there is no way to intercept these funds and apply them to the child support case(s). As such, if a contractor has many clients and rarely does work for them multiple times, the child support program cannot establish an income withholding order for the payments. Moreover, this may result in undue burden on employers who must report this income for multiple one-off contractors.

Employer compliance is low. In those states where employers are required to report earnings by independent contractors, many employers are not aware of the requirements and do not understand how to comply. Conversations with child support staff in one state with these reporting requirements emphasized that there is a constant effort to engage and educate employers to ensure that they understand when and how to make these reports. This challenge is compounded by the fact that payments to independent contractors, especially by larger companies, are often processed through an accounts payable department as opposed to a payroll department. While most payroll departments are familiar with income withholding orders, the staff in accounts payable departments often have far less experience with these systems. Even more concerning, many employers do not consistently provide 1099 forms (which report earnings for people not considered employees) to their independent workers.²⁵ Conversations with state child support staff suggest that these reporting issues may be especially complicated for employers who have contractors in multiple states and have to adhere to multiple and varying reporting requirements.

States often lack guidance on the appropriate amount to withhold from payments to independent contractors. Payments to independent contractors constitute more than just their wages. Because there is no withholding by the payor for these payments, they include any funds the contractor may need for business expenses, along with taxes. For example, independent contractors are responsible for both employer and employee Social Security taxes. The percentage of these payments that is required to

satisfy a contractor's business expenses and tax obligations will vary by contractor and by state. However, garnishment of the payment may imperil the sustainability of the noncustodial parent's business and ability to meet ongoing child support requirements.

Some states have taken steps to limit withholding on payments to independent contractors to mitigate the potential negative effects. However, the majority of states do not impose statutory limits on the percentage of these payments. A smaller subset of states have more specific limitations on withholding, often setting a maximum of 50 percent of the total payment. Some states refer to guidance in the Consumer Credit Protection Act.²⁶ However, the Act focuses on employer-employee relationships and allowable withholding, and it does not give clear guidance on withholding from payments made to independent contractors.

Inconsistency in worker income makes it difficult to accurately calculate order and income withholding amounts. Child support staff calculate order and income withholding amounts based on estimates of parents' income. For a parent in a traditional salaried job, this is relatively straightforward and predictable. Moreover, if that individual switches to a new employer, the child support agency will learn of the switch and can make the necessary changes. Workers with multiple concurrent employers or income from nontraditional work pose complications. States may issue multiple income withholding orders, each for the full monthly order amount, to noncustodial parents working for multiple employers. This occurs because state Directory of New Hires databases are unable to identify whether noncustodial parents are working a second jobs or simply changing jobs. For an independent contractor, a second report to the New Hires database may not represent a job switch; it may simply reflect a new account for the contractor.

A lack of information, job switching, and payment volatility mean that existing automated reporting mechanisms have limited effectiveness in supporting consistent collections from nontraditional workers. These challenges underscore the need for alternative approaches to collections from this population.

Despite the challenges associated with leveraging mandatory reporting to increase automated collections, state child support staff still emphasized its benefits.

Employer reporting of independent contractors can provide valuable information to state child support programs. For those workers with more consistent income, income withholding orders can generate relatively consistent payments for parents akin to traditional income withholding. For noncustodial parents with more sporadic work arrangements, employer reporting can still help with efforts to locate parents and can give child support workers important information on the parent's income and earnings. Additionally, in states where the data do indicate that the new hire is an independent contractor, it allows the child support program to conduct more targeted outreach to employers and to track shifts in the composition of the workforce. More generally, these data provide broader insight into the composition of the state workforce and the prevalence of independent contracting.

One-time collections techniques remain important tools for enforcing cases where the noncustodial parent is a nontraditional worker.

Sporadic or unpredictable earnings by noncustodial parents increase the likelihood that state child support programs cannot make consistent collections on these cases. Absent voluntary payments from nontraditional workers, state child support programs must rely on one-time, automated collections mechanisms to enforce support orders. Federal tax refund offsets, insurance matching, and seizures of bank account funds identified through the Financial Institution Data Match still represent powerful enforcement tools for child support programs. However, unlike income withholding orders or regular, voluntary payments, collections from these automated approaches lack regularity. These approaches can help collect past-due support, but they provide less predictable payments to families. Consistent child support collections can reduce the financial uncertainty facing custodial parents (especially those who are low-income) and increases the likelihood that these parents have the funds they need to offset the ongoing costs of raising children.²⁷

Outreach and education strategies to noncustodial parents who are nontraditional workers may facilitate increased support payments.

Although child support staff interviewed indicated that they would prefer to set automated withholding orders, they understand that there are limitations to automated tools for workers in nontraditional work arrangements. Especially in these cases, they expressed openness to implementing approaches focused on increasing voluntary compliance with monthly support obligations. These include noncustodial parent outreach and the development of more robust self-pay options.

Along with reports from custodial parents, noncustodial parents themselves can be valuable sources of information on earnings. Increasing interaction with noncustodial parents through a combination of digital means and traditional casework may improve information on noncustodial parent earnings and increase the volume of voluntary payments.

Staff in one state described efforts to enhance their digital customer service portals to provide accessible means to pay on mobile devices. They felt that improved digital interfaces would likely enhance their parental engagement and, subsequently, may allow them to garner more information about parents' employment. More generally, many states have been investing resources in developing online portals and applications for mobile devices that can provide parents with access to case information, options to make payments, and ways to communicate with the child support program beyond phone calls or mail. These may also support the upfront collection of earnings information that is critical to establishing orders that accurately reflect parents' ability to pay.

Little research has explored the effect of more robust outreach to noncustodial parents or the use of digital communication tools to increase payment outcomes. Forthcoming research from the federally-funded "Behavioral Interventions for Child Support Services" grants describes findings from interventions that sought to increase payments on newly-established child support cases. These interventions found mixed results when examining the effect on voluntary payments. In some

interventions there were short-term increases in payments following order establishment, but these effects did not persist in subsequent months. This suggests potential limitations of relying exclusively on voluntary payments from noncustodial parents.²⁸ Additionally, in September 2018 the federal Office of Child Support Enforcement announced that it was awarding funding to 14 states, tribes, and counties as part of its "Using Digital Marketing to Increase Participation in the Child Support Program" grant program.²⁹ These interventions, which include an evaluation component, may also shed light on the effectiveness of different approaches to parent outreach by child support programs.

Employer outreach and education can facilitate more consistent child support payments.

The limitations of mandatory reporting for nontraditional workers underscore the importance of ongoing employer outreach efforts by state child support programs. Conversations with state program staff highlighted the array of approaches that these staff have taken to increasing employer compliance with reporting requirements. Staff talked about communication with payroll associations, direct employer outreach when they know an employer hires non-W-2 employees, and the use of employer-specific web portals to make reporting easier.³⁰ These approaches, intended to spur employer compliance with existing laws and proactive reporting of earnings or work status changes, can increase the speed and accuracy of automated withholding. This outreach can also assist enforcement staff with efforts to locate parents.

Custodial parents remain a critical source for information on noncustodial parent earnings.

Child support staff in all three states emphasized that, for both order establishment and enforcement, communications with custodial parents is often the best source for up-to-date information about noncustodial parents' earnings. Parents often remain in touch with each other, and the custodial parent may have information about where the other parent is working.

This information is essential in establishing an order that reflects the balance child support programs must strike in

assessing parents' ability to pay and the costs of raising the child. For nontraditional workers who may have multiple income sources or unsteady employment, this more nuanced detail, which is often difficult to discern in administrative data, can be critical. Similarly, ongoing communication between child support staff and custodial parents can help ensure that the child support program has updated information on when parents switch jobs, take second jobs, or have fluctuations in their earnings.

Economic shifts and a rising number of nontraditional workers may result in less consistent payments and more work for child support programs.

Child support programs across the country have continued to enhance their automated systems, employer outreach, and staff skill at establishing and enforcing income withholding orders. This approach to collections minimizes the ongoing level of effort for state child support programs to collect current support due. However, shifts in the economy and the increasing prevalence of nontraditional work mean that this approach may not be effective for all workers. As the nature of the workforce shifts, state child support programs may see more cases where the noncustodial parent has an employment arrangement that does not allow for wage withholding. This has the potential to reduce payment consistency and increase the amount of work required to collect on these cases.

Looking Ahead

The effective implementation of income withholding by state, county, and tribal child support programs has been instrumental in securing consistent support for families. For noncustodial parents with steady income and stable employment, this approach to enforcement allows these parents to meet their ongoing child support obligations with limited effort required by them or the child support program.

However, emerging labor market trends have altered the employment landscape. Nontraditional work participation is growing and income instability is widespread. The rise in independent contracting, gig work, and temporary and seasonal work arrangements necessitates child support enforcement approaches that are less reliant exclusively on automated income withholding. In addition, research that describes the work arrangements of noncustodial parents specifically can help clarify the implications of these trends for child support programs.

While states are increasingly requiring employers to report independent contractors through state New Hires databases, these innovations will not always result in steady collections from these parents. Still, for some nontraditional workers with more consistent earnings, these advances may be critical in collecting ongoing support. In other cases, the requirements may support efforts to locate parents and their assets.

The increasing inconsistency of parents' work arrangements underscores the need for a multi-faceted approach to collecting child support from nontraditional workers. This includes continued outreach to custodial and noncustodial parents as well as employer engagement. Future research could explore the effectiveness of these outreach approaches and aim to identify strategies that are most likely to lead to increases in voluntary compliance. Additionally, one-time collections techniques such as federal tax refund offsets, insurance matching, and seizures of bank account funds remain critical enforcement tools for child support programs, yet future research could explore how and under what circumstances they are most effective. Conversations with state child support program staff underscore the need for states to combine existing enforcement techniques with newer approaches to enforcement in response to shifts in the employment landscape.

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Notes

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- ¹⁷ In this paper, the term “employer” refers to a company or organization providing monetary compensation to an individual in return for their labor. This includes organizations paying wages to traditional employees as well as independent contractors with whom the organization contracts.
- ¹⁸ State staff in New York indicated that the proposed legislation in New York at the time of the interview would differentiate independent contractors and employees in the New Hires database.
- ¹⁹ “Child Support Caseload Trend Reports.” Office of Child Support Enforcement, Administration for Children and Families, U.S. Department of Health and Human Services. 2017.
- ²⁰ New York law does not currently require this reporting by employers, but there was pending legislation as of our conversation that was seeking to implement that requirement. As this report was in publication three additional states were considering similar legislation.
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