



# The Future of Gig Working As A Dynamic Economic Alternative

David Craddock, Founder & Director, David Craddock Consultancy Services

Tuesday, 25 January 2022, 16:00 GMT



## A Word From Today's Chairman

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# Today's Agenda

- 16:00 – 16:05 Chairman's Introduction
- 16:05 – 16:25 Keynote Presentation – David Craddock
- 16:25 – 16:45 Question & Answer



## Today's Speaker

**David Craddock**  
Founder & Director  
David Craddock Consultancy  
Services



# DAVID CRADDOCK CONSULTANCY SERVICES

Specialist in Employee Share Ownership and Reward Management,  
Share Valuation, Management Buyouts,  
Employee Ownership Trusts (EOT)  
& Investment Education

Founder, Principal and Director:  
David Craddock, MA(Oxon)  
Consultant and Lecturer

Author of *“Tolley’s Guide to Employee Share Schemes”*

★ *Expertise and Experience* ★

**A Webinar Presentation on**

**The Future of Gig Working as a  
Dynamic Economic Alternative  
for  
The ESOP Centre and The FS Club  
by  
David Craddock, MA(Oxon)**

**Specialist in  
Employee Share Ownership  
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**Tuesday, 25<sup>th</sup> January, 2022**





## The Future of Gig Working as a Dynamic Economic Alternative

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### **What is the Gig Economy?**

#### **Publicised by the BBC for a documentary**

“The gig economy is a labour market characterised by the prevalence of short-term or freelance work, as opposed to permanent jobs. It is work that does not have the characteristics of employment such as pension arrangements or holiday pay or sick pay”

#### **Developed jointly by the Institute of Employment Studies and the Department of Business, Energy and Industrial Strategy of the British Government**

“The gig economy involves exchange of labour for money between individuals or companies via digital platforms that actively facilitate matching between providers and customers, on a short-term and payment by task basis”

#### **Taken from the Gig Economy Statistics UK 2021 Industry Report**

“The gig economy is a large and growing section of the working population where short-term flexible workers are paid on completion of tasks (known as gigs) instead of being paid for the amount of time they work“

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### The Key Statistics that Support the Gig Economy in the UK

Based on historic population and 2022 demographic projection figures from the UK Office of National Statistics:

- ❖ There were 2.3 million gig workers in the UK in 2016.
- ❖ There were 4.7 million gig workers in the UK in 2019.
- ❖ There is projected to be 7.5 million gig workers in the UK in 2022.

Gig-based freelancers contribute £20 billion to the UK economy.

48% of gig workers in the UK also have a full-time job and for 71.5% of them gig work makes up less than half of their income.

16.5% of the UK's male population are gig workers which compares with 14.1% of the UK's female population.

31.5% of the UK's gig workers are aged 16 to 24 while some 16.4% are aged 25 to 34; gig working is found in all age groups although the gig working phenomenon is driven mainly by younger people.

74% of gig workers who work full-time and see their work as significant are satisfied with the situation although that tapers to 48% for those operating more casually as gig workers.

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### The Key Statistics that Support the Gig Economy in the USA

The Gallup Statista research has established that around 36% of US workers are part of the gig economy either as a primary job and as a secondary job.

The statistics from the US Bureau of Labor indicate that there were 55 million US gig workers in 2017 while the most recent Gallup poll on the gig economy indicates 57.3 million gig workers before the start of the pandemic.

The latest data from the Gig Economy Index indicates that around 40% of US workers generate 40% of their income from freelancing, some choosing to opt for the gig working lifestyle while others are forced into gig working to supplement income from their regular work.

The survey conducted by Upwork entitled “Freelancing in America” indicates that 86% of all independent workers in the US believe that the gig economy has a bright future while 90% of freelancers share the same sentiment.

If the gig economy keeps growing at its current rate in the USA, then more than 50% of the US workforce will be participating in the gig economy by 2027, a position that is reinforced by the Intuit 2020 report on the future of gig working that indicates that more than 80% of large companies plan to change their recruitment strategies to utilise more non-traditional working methods.

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### The Key Economic Interpretation of the US Statistics

The gig economy in the US, broadly similar to the UK, comprises three key elements: 1. Freelancing, 2. Part-time working, 3. Independent contracting

All three elements are on the rise, especially through the major gig economy employers: Uber, Lyft, DoorDash, Instacart, Postmates, Turo, Fiverr, et al, such that there is both an upward demand for gig working jobs and an upward supply of gig working jobs. How the demand compares with the supply will determine the price that gig workers can charge and hence the wealth-earning potential of gig working. However, for the gig workers, lifestyle factors are as important as the price they can command for their work while for the companies potentially they can offer a higher price in the context of savings that are available on employment on-costs.

The rise of gig working is facilitated by the advances in technology and the trend of working remotely as “digital nomads” and the flexibility that this work status enables. The gig economy is a free-market system that allows immediate responses by both the gig workers and the companies to work requirements. This contributes to reducing the distortions in the US labour market, eliminating wasted time and energy and reinforcing the US high capacity for mobility of labour.

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### **The Factors in the US for a “Win-Win” for Workers, Companies and Government**

#### **For the Gig Workers**

The workers of all ages but especially the younger generation prefer freelancing over full-time employment as it offers flexibility and independence, allowing them to choose where, when and for whom they work.

#### **For the Companies**

The companies also benefit from a flexible workforce, saving on the costs of training and recruitment, avoiding having to pay for medical coverage and finding ease in being able to replace their workforce.

#### **For the US Government**

The constant and continual turnover of completed jobs together with the impact on the velocity of circulation of money has the potential to increase the tax revenues of the government, provided the disciplines for tax collection are strong. Furthermore, the US gig working economy has momentum at a level that cannot be halted through punitive taxes or regulations without significantly dislocating the US economy. The effect of the pandemic has only been to accelerate the growth in the freelance market such that if current trends are allowed to develop unabated then the gig economy will overtake the traditional job market.



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### **The UK Supreme Court Decision in Uber BV & Ors v Aslam & Ors [2021] UKSC 5**

On 19<sup>th</sup> February 2021, the UK Supreme Court ruled that Uber drivers in the UK should be classified as workers, not independent contractors, thereby giving eligibility to various employment protections, notably the minimum wage, paid annual leave and whistle-blower protections from retaliation.

The UK Supreme Court was influenced by the judgement in the case of Autoclenz Limited v Belcher [2011] UKSC 41 under which it was established that agreements must reflect reality. Even when the signed contract might contain the badges of self-employment, due regard must be given to the commercial reality of the relationship between the parties when determining the employment status. The UK Supreme Court in the Uber case made reference to the level of control that Uber exercised over its drivers: Uber setting the fare, Uber unilaterally setting the terms of the working arrangement, Uber punishing drivers for non-compliance of Uber policies and Uber dictating the subject matter that drivers could talk about with passengers.

On 16<sup>th</sup> March 2021, Uber stated that it intended to violate the Supreme Court ruling by only paying drivers the minimum wage while driving and not when available for work.

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### **The California Supreme Court Decision in Dynamex v Superior Court of Los Angeles 2018**

The judgement in the Dynamex case stated that a California worker would be presumed to be an employee unless the employer could prove the following:

- The worker was free from employer control as to the performance of the work.
- The worker performed tasks that were outside the usual course of the employer's business.
- The worker was normally engaged in a line of work that was the same as the work being done for the employer

These conditions represented a worker-friendly test and if applied many gig workers of the major gig companies, Uber et al, would be considered employees under California law with the right to the traditional employee benefits.

Furthermore, in 2019 the California legislature passed Assembly Bill 5, the law known as AB5, which codified the three-fold test from the Dynamex case into California law. The major companies who contract with gig workers chose to ignore AB5.

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### The 2020 California Proposition 22 as the Response to AB5

It was in response to AB5 that the app-based ride-sharing and delivery companies – Uber, Lyft, DoorDash, Instacart and Postmates – created a ballot initiative known as “The 2020 California Proposition 22” that went far beyond simply asking for an exemption to AB5 in that it also provided various benefits to gig workers although short of the full set of employment benefits.

“The 2020 California Proposition 22” was successful by winning more than 57% of the vote and exempted the companies from providing the full set of mandated employee benefits but instead provided the drivers with new protections:

- Guaranteed minimum earnings for periods when actively working (not waiting)
- Stipend to assist in the payment of health insurance
- Medical costs and some lost income for drivers hurt while driving or waiting
- Protection against workplace discrimination and sexual harassment
- Reimbursement for vehicle expenses provided on a per-mile basis

The outcome of Proposition 22 is that AB5 can no longer prevent companies from classifying workers as independent contractors rather than employees.

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### The Lessons to be learnt from Proposition 22

The key lesson from Proposition 22 in the US is that it creates a compromise which is often the nature of American politics:

- The companies can still benefit through the cost savings that derive from their workers being classified as independent contractors rather than employees.
- The gig workers are given some additional benefits although not as significant as if they were employed by the company.
- The original case was about employee status for purpose of employee benefits. Important to recognise that the gig workers retain their flexibility and independence.
- In practice, the companies are passing the additional costs arising from Proposition 22 on to their customers.

### **Question: Could a federal AB5 be introduced to force the companies to reclassify their workers as employees?**

In the US it would seem unlikely that a federal AB5 would be introduced as the expectation would be that states, companies and business groups would challenge its constitutionality and take the matter to the US Supreme Court where current political and judicial commentary indicates an absence of support for a federal AB5.

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### The Summary of the Current Legal Position for Gig Workers in the UK and the US

- In the UK, the outcome of the Uber case is to decide in favour of employment status for that type of worker whereas in the US the effect of the Proposition 22 response to the Dynamex case and AB5 has been to create a compromise in the form of a hybrid status for purposes of rights and benefits attaching to the role of independent contractor.
- Although effective at state level only, the significance of the Dynamex case is that it originates in California which has an economy that is bigger than the UK and makes a monumental contribution to the US economy. The Proposition 22 compromise outcome is, therefore, in legal precedent terms significant for the US although not for the UK which develops its own legal precedents.
- Remember: the gig economy contains the freelancer and one-off gig worker who may operate with multiple customers. The UK Uber case and the US Dynamex case concerned multiple jobs for a single company rather than multiple jobs for multiple companies. The cultural context generates different issues for the two different categories: for the Uber-type of gig worker, the potential advantages of formal employment from the large companies compared with, for the independent gig-worker, the desire for the capitalist freedom lifestyle where there is no potential for significant employee benefits.



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### The Entrepreneurial Energy, the Capitalist Narrative and the Freedom Culture

- The gig worker is typically a motivated energetic individual who has mastered to varying degrees, depending on the individual, the integration that is necessary to run “a one-person one-owned business”, solving their own problems and managing their own business finances. If the gig worker is running the business through a small company, then the argument can be made that the share capital of the gig worker’s own small company is the gig worker’s share scheme.
- The motivation for the gig worker is to grow the value of his/her own company and to invest its profits in credible investments that will prepare for his/her future. The question then becomes the following: what is the best way to support the gig worker who has found personal freedom in running his/her own company? The answer in most cases is: “a gig worker profit-sharing scheme”
- The gig worker’s energy and motivation is usually harnessed to an efficiency and a discipline that the company also needs to see in its employed workforce. The gig worker is an entrepreneur, and respect shown by the company’s senior management to the gig worker can be a powerful element to bind the gig worker to the company, even without offering a share scheme arrangement.

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### **When will a Share Scheme be suitable for a Gig Worker?**

The key question to ask is the following: is the primary relationship of the gig worker with the customers or with the supplier?

#### **The Customer-Focused Gig Worker – “The captain of his/her own ship”**

By “customer-based” is meant that the gig worker is serving a multiplicity of customers from the base of his/her own operation. For example, the gig worker has set up a self-employed business providing book-keeping accounting services from home, primarily on a virtual basis. The gig worker will not expect to be involved in a share scheme with his customers although in some circumstances this type of worker is invited to participate in a share scheme arrangement.

#### **The Supplier-Focused Gig Worker – Dependence on one supplier for work**

By “supplier-focused” is meant that the gig worker is focused and dependent on one major supplier for their work. In these circumstances, there is a propensity for a natural sense of identification with the one supplier company, thereby potentially making some form of share scheme a natural fit. Examples of this type of relationship are with Uber Technologies, Inc. and Deliveroo Holdings Plc, both of which are quoted companies with shares that have a daily public display of their share movement.

## Employee Share Schemes

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All Best Wishes for Your Business Initiative

from David Craddock MA(Oxon)  
Consultant, Lecturer, Author  
and Specialist in Employee Share Schemes  
and Reward Management,  
Share Valuation, Management Buyouts,  
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## Forthcoming Events

- Wed, 26 Jan (15:00-15:45) An Update On EU Financial Services Legislation & Associated Initiatives
- Wed, 2 Feb (11:00-11:45) Natural Climate Solutions: Seeing The Wood For The Trees
- Thu, 3 Feb (10:00-10:45) National Audit Office Good Practice Guide For Managing The Commercial Lifecycle & Insights On Government Commercial Activity
- Tue, 8 Feb (10:00-10:45) The Future Of Finance: How The Next Generation Builds Tomorrow

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