

As gig economy expands into temporary staffing, worker protections retreat

By [Katie Johnston](#) Globe Staff, November 14, 2019, 8:38 p.m.



Massachusetts Attorney General Maura Healey recently settled with Boston gig economy company Stynt. STEVEN SENNE/ASSOCIATED PRESS/FILE/ASSOCIATED PRESS

Massachusetts Attorney General Maura Healey has reached what her office is hailing as a landmark settlement with a Boston gig economy company: As of Jan. 1, health care workers who use the digital platform Stynt to find shifts will become employees instead of independent contractors — an agreement Healey believes could serve as a model as gig opportunities expand in a more professional direction.

But it could also stifle some of this flexibility — and potentially drive employers out of business, gig economy advocates say.

So far, the debate over gig work has largely been focused on the employment status of those in lower-skilled jobs: driving passengers, delivering packages, and shopping for groceries. But the gig economy is multiplying rapidly, infiltrating the realm of staffing agencies and placing all kinds of workers — from cooks and cleaners to nurses and financial analysts — in temporary jobs.

Temp work has surged in the past decade, growing [4.4 times faster](#) than the number of overall jobs since the end of the Great Recession, according to the National Employment Law Project. These jobs often leave workers in precarious positions, technically employed by a temp agency but under the control of another employer, making it easier for workers to be exploited.

Now, with gig companies getting into the staffing game, temp work could become even more unstable. Instead of classifying workers as employees like traditional staffing agencies do — requiring W-2 forms, taking out payroll taxes, and providing workplace protections such as overtime, sick pay, and workers' compensation — app-based staffing companies often consider them independent contractors, without safeguards or benefits.

A few states, including [Massachusetts](#), have strict definitions of whom can be an independent contractor: workers who are not under the direct control of an employer, perform jobs outside a company's "usual course" of business, and have their own independent practice doing similar work. California recently passed a similar law, and several other states are considering them.

At the same time, eight states have adopted laws exempting gig companies from labor standards and payroll tax obligations, according to the [National Employment Law Project](#). And the Coalition for Workforce Innovation, which counts Lyft and TaskRabbit among its members, is seeking to update labor laws to make "independent work . . . applicable across all positions, platforms, and industries."

Expect more litigation as the struggle escalates, especially as companies increasingly have to deal with different laws in different states, said Michael J. Lotito, the Washington D.C., cochair of the Littler Workplace Policy Institute, an employer advocacy group and member of the Coalition for Workforce Innovation.

Another likely impact: less money from investors. "At least until the whole issue is clarified, they're not going to make any more investments," Lotito said. "And if you don't make investments, that's a big problem. So watch what you wish for."

Uber is often blamed for launching the gig economy as we know it, upending not just the transportation industry, but the entire employment landscape by loosening the traditional obligations of employers. Uber actually just jumped into the staffing business itself with [Uber Works](#), which matches cooks and cleaners and warehouse workers with shifts, but bypassed the independent contractor debate by partnering

with staffing agencies that bring on workers as W-2 employees and handle their pay and benefits.

But Uber's bread and butter, its vast network of independent drivers, remains the gold standard for gig companies.

"We are seeing a growing wave of companies that are using essentially Uber's business model, everything from hairstyling to dogwalking to professional medical services," said Shannon Liss-Riordan, a Boston labor lawyer who is suing Uber, Lyft, Amazon, and other companies that employ workers via digital platforms. "If we don't address this problem now, I am convinced that employment as we know it won't exist in the coming decades."

Stynt, the company targeted by Healey, didn't offer dental and other health care workers who used its platform any such protections because they considered them independent contractors, in violation of state law. The settlement will force Synt, which helped place more than 400 workers in 2018, to substantially change its business model, bringing in a third-party company to handle payroll, make unemployment and workers' compensation contributions, and act as a joint employer along with the client company. The two employers share responsibility for ensuring that workers are provided with the protections and benefits they are entitled to.

"The gig economy can offer workers more freedom and flexibility, but it also presents real risks, particularly when companies are more focused on making profits than on respecting the rights of workers," Healey said in a statement. "By misclassifying their employees as independent contractors, Synt denied them important job protections. My office will take action when companies don't play by the rules."

Healey's office said it was investigating at least one other gig staffing company potentially violating state law, and is on the lookout for others. One new addition to the local landscape: [Instawork](#), a restaurant staffing firm that lets workers decide if they want to be contractors or W-2 employees. The attorney general's office declined to say if it had an eye on Instawork, noting only that it is the employers' responsibility to classify workers correctly, and the presumption is that they are employees unless they pass the three-prong independent contractor test.

Stynt declined to answer questions about the settlement. But gig economy advocates said this type of agreement could hinder businesses by upping their tax contributions, driving up liability insurance costs, and requiring extra benefits and protections, such as overtime, sick pay, and family leave. As employees, workers may be required to work more set schedules, they note, and end up having fewer flexible work arrangements to choose from.

But worker advocates say it provides a way forward in an employment landscape that has been radically altered by technology over the last decade, leading to workers with far fewer protections and, in some cases, no true employer.

This has implications not just for workers but for the public, especially when it comes to the health care sector, said David Weil, dean of the Heller School for Social Policy and Management at Brandeis University and former head of the Wage and Hour Division at the US Department of Labor under former President Obama. Attracting high-quality workers means providing employee protections, he said; there is no “magic dust” in a digital platform that eliminates that dynamic.

“The fact that Stynt agreed to this shows they understand that, at some basic level, this is important for their business model too, to provide these assurances,” he said.

IntelyCare, a Quincy-based company that matches nurses and nursing assistants with shifts at nursing homes and assisted living facilities, considered going the contractor route before it launched in 2016.

It would have saved the company money and attracted more investors, said cofounder and chief executive David Coppins. But he decided he wanted to build long-term relationships with the workers and made them W-2 employees instead. IntelyCare bills the client companies by the hour and pays the workers directly, handling taxes, insurance, and all other aspects of employment.

“The contractor model, really when you think about it, makes it seem like we don’t really care about [the workers], we care about margins,” he said.

Health care has a great need for more temporary staffing, Coppins said, noting his company has 4,000 employees who can work in 125 facilities across Massachusetts, and also has employees in eight other states.

Before long, he predicted, all temporary health care staffing will be done through digital platforms. And that doesn’t have to be a bad thing.

“We have this tendency to demonize the concept of the gig economy, but the concept itself is really needed,” he said. “The demonization of it is because the companies have treated [workers] like an asset, or a tool, not like people.”