

# Nontraditional Worker Study



A Report pursuant to SB 6168 Section 127(74)

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# Executive Summary

## Authorizing Legislation

In 2020, the legislature passed SB 6168 Section 127(74) which included a budget proviso as follows:

(74) \$80,000 of the general fund—state appropriation for fiscal year 2021 is provided solely for the department to facilitate research on nontraditional workers across the regulatory continuum, including convening cross-agency partners. The purpose of the research is to recommend policies and practices regarding the state's worker and small business programs, address changes in the labor market, and continue work initiated by the independent contractor employment study funded in section 127(47), chapter 299, Laws of 2018. The department must submit a report of its findings to the governor by November 1, 2020.

## Overview

Nontraditional workers are a broad and diverse group. Often, these workers have complex and varied work arrangements that lack streamlined access to social safety benefits, or in some cases, no access at all. State and federal social safety net systems were not developed to support these workforce arrangements, and it is difficult to determine the best remedy for benefit shortfalls. Regulations and requirements, such as those for the tax code, are designed for typical employer-employee relationships — those of wage and salary earners in steady long-term employment as described in Figure 1. Data collection for nontraditional working relationships varies across agencies, is often incomplete, or is not universally applicable to the myriad of employment scenarios for nontraditional workers.

This report considers Washington's current legal and statutory framework for accessing benefits by work arrangement. The report looks at ways nontraditional workers can access state and federal services, the services and benefits available to nontraditional workers, and efficiencies and gaps in these systems.

Traditional work arrangements are categorized by their ability to access benefits, state services, and labor protections that are robust across all state and federal agency benefit platforms. Nontraditional work arrangements defined within this report are categorized by their relative limitations and restrictions from accessing benefits, state services, and labor protections.

## Key Findings

### ○ **State agencies experience multi-layered challenges interacting with nontraditional workers.**

Agencies face both technical and philosophical challenges in serving nontraditional workers. Agencies face an external perception challenge when their compliance role interferes with community outreach. Members of some communities inherently distrust the government and can perceive agencies' compliance measures as punitive.

### ○ **Occupational and industry realities create challenges in government systems for both the worker and the employer.**

Capacity, in relation particularly to knowledge, finances, and time, is a notable constraint of both workers and employers. A worker's income, and the strength of their community network, affects whether they can access technical assistance to comply with state and federal requirements. Certain industries and occupations are

primarily project based, putting workers at a financial disadvantage because of lack of access to steady or long-term employment.

- **Communication and community partnerships can be inconsistent across cultural and geographical communities, which creates challenges in building relationships, trust, and access.**

Some of Washington's diverse cultural communities and geographies have distinct disadvantages interacting with government agencies. Immigration status, in particular, creates barriers to some state agency programs. Communities lack information from trusted or known sources, whether that is within a cultural community or an occupational or industry community. In some communities, there is noted inaccessibility in language interpretation, digital literacy, and broadband service, which inhibits outreach methods and delivery of benefits.

- **The pandemic exacerbated existing conditions, including inconsistent access to broadband, disparities in technical fluency, and underfunded or understaffed outreach efforts.**

Policy changes implemented in response to the pandemic enabled state agencies to successfully shift services and, in some cases, reach more Washingtonians. Agencies also found digital efficiencies administering some services. However, being able to continue certain services without additional emergency-related flexibility and funding will be challenging. While all state agencies desire an equitable and resilient recovery, the pandemic highlighted demographic, age, and occupational discrepancies inherent within the state's platforms delivering benefits. The current capacity of state systems makes it difficult for Washington's diverse nontraditional worker population to have equal access to relief and rebuilding opportunities.

## Recommendation

- **Create and fund an interagency workgroup on independent workers.**

Nontraditional work is here to stay and is likely increasing.<sup>1</sup> Labor force characteristics are complex, unequal, and rapidly changing, signifying that benefits, access and other labor protections need to be evaluated, prioritizing equity for the 21st century workforce.<sup>2</sup> The current narrative of work and labor needs to adapt to evolving business employment strategies and work arrangements.<sup>3</sup>

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<sup>1</sup> Department of Commerce, "2019 Independent Contractor Study," (2019), <https://www.commerce.wa.gov/about-us/research-services/independent-contractor-employment-in-washington-state/>

<sup>2</sup> Krueger, Alan, "Independent Workers: What Role for Public Policy," (December 2017), <https://doi.org/10.1177/0002716217741109>

<sup>3</sup> National Academies of Sciences, Engineering, and Medicine, "Measuring Alternative Work Arrangements for Research and Policy," (2020), <https://doi.org/10.17226/25822>

# Introduction

This report considers Washington's current legal and statutory framework for accessing benefits by work arrangement. The report looks at ways nontraditional workers can access state and federal services, the services and benefits available to nontraditional workers, and efficiencies and gaps in these systems.

Workforce arrangements are complex because of legal and statutory frameworks. Because nontraditional work arrangements often are not full-time, year-long employment, workers face specific challenges accessing the full range of social safety net benefits the state offers. Themes and policy and program recommendations were developed through analysis of previous work published by the Department of Commerce in 2019. Consultation with state agency representatives focused on the challenges and opportunities for nontraditional workers. The report highlights an analysis of qualitative research with two distinct groups in Washington: the creative sector and immigrant communities.

The COVID-19 global pandemic is negatively affecting nontraditional workers. The creative sector was one of the first industries to shut down, and it has still not reopened across the state. Immigrants are disproportionately impacted by the pandemic, working in industries more susceptible to higher rates of disease or economic closures and who, as a group, have increasing barriers to health insurance.<sup>4</sup> Without established relationships or state agencies understanding industry-specific challenges, it is difficult for certain groups to bounce back. The full impacts and implications of the COVID-19 pandemic on Washington's workforce have yet to be realized.<sup>5</sup> The pandemic could increase the number of people participating and depending on nontraditional work.<sup>6</sup>

## 2019 Independent Contractor Study

In 2018, the Washington Legislature directed Commerce to provide information about independent contractor employment in the state.<sup>7</sup> The resulting report, [The 2019 Independent Contractor Study](#), presented research findings about the needs of workers who earn income as independent contractors.<sup>8</sup> It included information about independent contractor sources of income, work arrangements, business expenses, and access to benefits and health insurance coverage. The study presented conservative estimates about independent contractor employment in Washington. These estimates were based on a custom analysis of existing federal household surveys and aggregated state tax records.

A key finding of the report is that both federal and state data systems do not sufficiently capture data about independent contractors. Tax records, in particular, can give researchers a pathway to understand this group, but data-sharing and privacy agreements limit this approach. One of the only ways to identify workers in nontraditional workforce arrangements within the state's administrative data is by looking at the tax returns that are associated with nontraditional work and illustrate the relationship of the worker with their payer or employer, such as through paystubs, W-2s, 1099-MISCs, 1040-SRs, and 1040-C returns. The type of tax

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<sup>4</sup> Capps, Randy, Batalova, Jeanne, Gelatt, Julia, Migration Policy Institute, "COVID-19 and Unemployment: Assessing the Early Fallout for Immigrants and Other U.S. Workers," (June 2020), <https://www.migrationpolicy.org/research/covid-19-unemployment-immigrants-other-us-workers>

<sup>5</sup> Roberts, Paul, The Seattle Times, "It could take years for Washington state's economy to rebound from coronavirus crash," (May 2020), <https://www.seattletimes.com/business/economy/no-more-v-shaped-recovery-economists-expect-washington-could-take-years-to-get-over-the-coronavirus-crash/>

<sup>6</sup> Berliner, NPR, "Jobs In The Pandemic: More Are Freelance And May Stay That Way," (September 2020), <https://www.npr.org/2020/09/16/912744566/jobs-in-the-pandemic-more-are-freelance-and-may-stay-that-way-forever>

<sup>7</sup> Substitute Senate Bill 6032, Section 127 (47 (a-b)), (2018), <http://leap.leg.wa.gov/leap/budget/lbns/2018Omni6032-S.SL.pdf>

<sup>8</sup> Department of Commerce, "Independent Contractor Study," (2019), <https://www.commerce.wa.gov/wp-content/uploads/2019/07/Leg-Report-Independent-Contractor-Study-2019.pdf>

document also shows if an individual pays all state and federal taxes themselves or if the employer partially pays state and federal taxes. For more information on state agency use of tax return data and data collection limitations, see Appendix C: Data Collection Processes.

Federal data is often compiled through survey data. Current survey definitions do not reflect the changing nature of work arrangements in the labor market, and efforts are underway to capture more information about nontraditional sources of work in survey questionnaires. Additionally, many workers do not correctly self identify their employment arrangement in surveys because of confusion about the category.

Additionally, the 2019 Independent Contractor Study found:<sup>9</sup>

- 9.1% (320,020) of Washington's workforce primarily earn their income as independent contractors.
- Independent contracting is more prevalent and growing faster in Washington compared with the country as a whole.
- Sectors with the highest proportion of independent contractors in Washington are:
  - professional, scientific and technical services
  - real estate and rental leasing
  - retail trade and other services
- Sectors experiencing the most growth of independent contracting arrangements are:
  - transportation and warehousing
  - educational services
  - accommodation and food services

## Methodology

Research for this report was primarily conducted from July 2020 through September 2020. Time and budget were major factors that defined the research approach of state agency consultation and individual one-time interviews. This report focused on the legal and statutory state and federal framework in place to determine access to social safety nets for nontraditional workers. Our approach included:

### Agency Roundtables

Two state agency roundtables were held to learn more about specific challenges and opportunities agencies experience in serving nontraditional workers and specific responses or adjustments resulting from the COVID-19 pandemic to differently serve or address the needs of nontraditional workers.

### Sector-specific Interviews

Sixteen interviews were conducted with people identified as working in organizations that serve the creative sector or in community-based organizations that work with the immigrant communities. This report also supplemented direct qualitative research with media sources and literature reviews.

This report uses the term "creative sector" as a broad term for a section of the economy in which workers add value to society in one or more ways through the provision of goods and/or services. The term "immigrant

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<sup>9</sup> Point-in-time estimates calculated by MEF Associates based on self-reported survey responses to the Contingent Worker Survey (CWS) published by the Bureau of Labor Statistics for May 2017 include respondents who reported performing online work. Estimates are at a 90% confidence interval, meaning the error is quantified as either plus or minus 33,019 workers. The certainty of the estimates are impacted also by likely undercounting based on the definition as the primary source of income and from respondents who do not self-identify their work status in accordance with the bureau's definitions.

communities" is used to describe workers who have migrated to the U.S. for work opportunities and are either documented or undocumented. The term includes second-generation immigrants whose wages and education levels closely correlate with those of their first-generation parents.<sup>10</sup>

### **Survey data**

Research findings quoted in this report from the [2019 Independent Contractor Study](#) about the size and prevalence of the independent contractor workforce are conservative estimates calculated from several federal surveys including the Contingent Worker Survey, the Current Population Survey, and the Nonemployer Statistics Survey. Qualitative findings from the 2019 Study are based on the Independent Contractor Online Pilot Survey conducted for one month from March to April 2019. The Pilot Survey collected 2,941 responses from individuals with an active sole proprietorship license from the Department of Revenue, and held four focus groups – two in Seattle and two in Spokane, with 31 participants. Qualitative findings from survey respondents and focus group participants do not represent the entire population of independent contract workers in the state, nor the full diversity of Washington's workforce.

### **Tax Data**

This report uses tax data, obtained through the Department of Revenue. In-depth analysis of administrative data was outside the scope of this report.

### **Occupational Data Analysis**

This report intended to offer a deeper occupational analysis of the fastest-growing sectors for independent contractors, as recommended in the 2019 Independent Contractor Study. Due to budget constraints, a consultant was not engaged to conduct this analysis.

## **Services and Benefits for Nontraditional Workers**

### **Who are we talking about?**

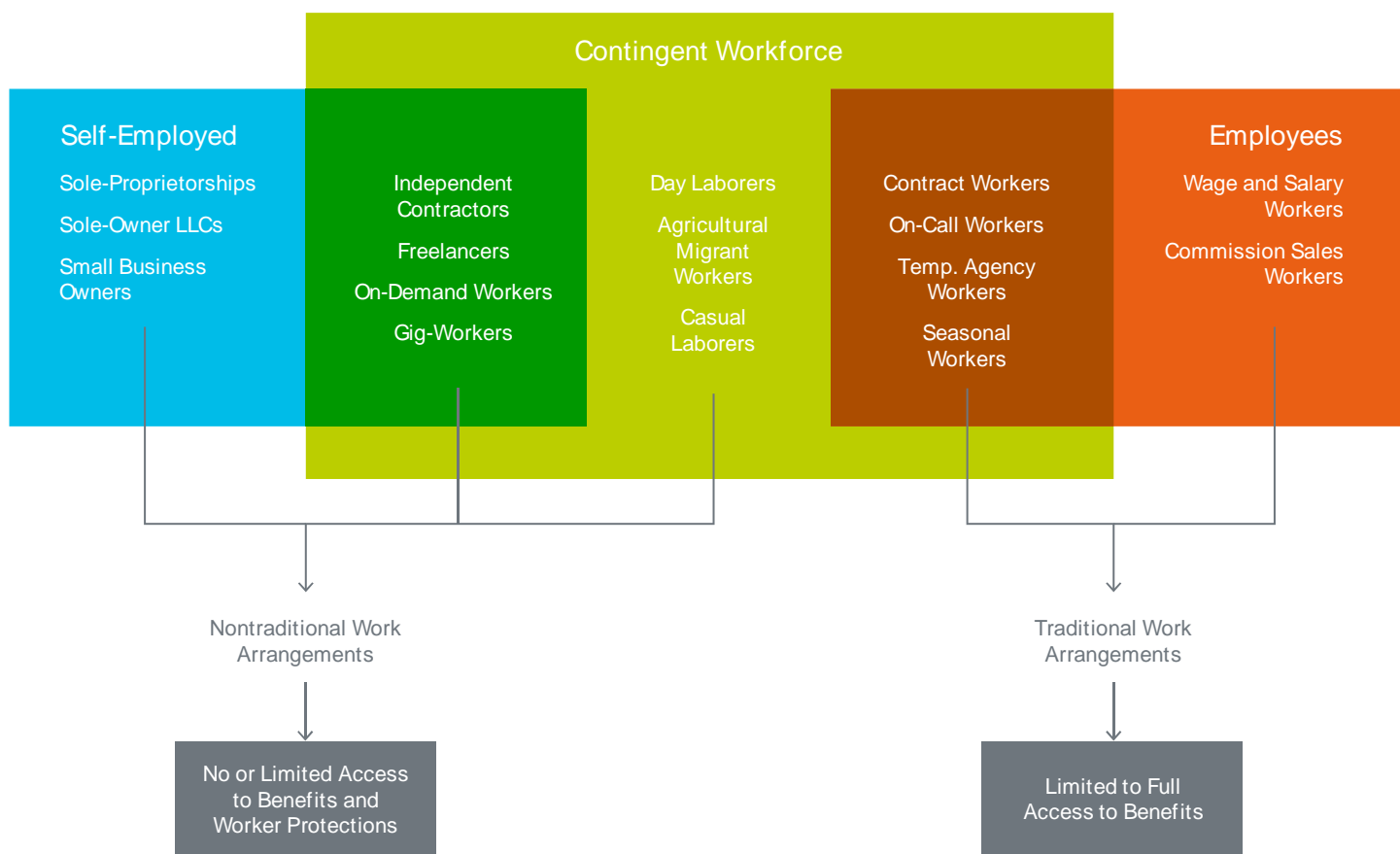
For the purposes of this report, we created a categorization of traditional and nontraditional work arrangements by analyzing agency definitions between tax reporting institutions – the Internal Revenue Service (IRS) and the Washington State Department of Revenue (DOR) – and agencies that provide worker protections, the Washington State Employment Security Department (ESD) and the Washington State Department of Labor & Industries (LNI). The classifications in Figure 1 conform to these agency definitions, as well as the tax recording documents that the IRS and DOR require from them, which make them distinct along the employment spectrum. The Bureau of Labor Statistics and the U.S. Department of Labor (DOL) provided additional definitions of workforce participants that satisfied "traditional workforce arrangements," which also qualify for state and federal benefits and worker protections. This report departs from the definitions used in the 2019 Independent Contractor Study for the purposes of creating a broader regulatory inventory.

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<sup>10</sup> The Pew Charitable Trusts, The Economic Mobility Project, "Economic Mobility of Immigrants in the United States," (2016), [https://www.brookings.edu/wp-content/uploads/2016/06/07useconomics\\_haskins.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/07useconomics_haskins.pdf)



Figure 1: Nontraditional and Traditional Work Arrangements



Definitions and tests vary among state and federal agencies because each has a specific administrative function to determine benefit eligibility and/or compliance. State and federal laws mandate an employer to provide benefits and labor protection based on a worker's classification. These classifications also help determine benefit eligibility if a worker becomes unemployed, has an occupational injury, or requests paid time off for medical and family leave. To add to the complexity of these work arrangements, there may be disconnect between what a worker perceives their work arrangement to be and how a state or federal agency defines their work arrangement.<sup>11</sup> See Appendix A for a summary of state and federal definitions and Appendix B for a summary of independent contractor tests.

A "traditional worker" includes wage and salary workers, contract workers, on-call workers, temporary agency workers, and seasonal workers. The worker classifications in these arrangements are categorized by their ability to access benefits, state services, and labor protections that are robust across all state and federal agency benefit platforms. It is important to note that some of the members of the traditional workforce may not always have access to a full suite of benefits. These workers may have their benefit eligibility limited by duration of employment or through agency-determined benefit application or enrollment determination.

<sup>11</sup> National Academies of Sciences, Engineering, and Medicine, "Measuring Alternative Work Arrangements for Research and Policy," (2020), <https://doi.org/10.17226/25822>

periods. They may experience similar challenges in accessing state benefits as the nontraditional workforce. See Appendix A for definitions of worker classifications.

This report uses "nontraditional work" to include the self-employed, small business owners having four or less employees<sup>12</sup>, independent contractors, gig workers, freelancers, on-demand workers, day laborers, agricultural migrant laborers, and casual laborers. The broader "self-employed" category is composed of small business owners, sole-owned proprietorships and limited liability corporations, as well as independent contractors. Independent contractors can include subset categories, such as gig-workers, freelancers, and on-demand workers; however, these sub-categories cannot be applied as substitute terms for the independent contractor category.

The emergence of "on-demand" and "gig" workers has spurred analysis within government agencies and academic institutions to understand who these workers are and what work they perform. At present, there are no widely accepted definitions or tests to determine who is an "on-demand" or "gig" worker, and how they are distinct from independent contractors. All of the worker classifications in nontraditional arrangements are categorized by their relative limitations and restrictions from accessing benefits, state services, and labor protections. See Appendix A for Definitions for Worker Classifications.

**What benefits and services are available to nontraditional workers?**

Worker classifications largely determine what benefits may be accessible to a worker. The benefits matrix (Table 1) below provides a broad view of worker classification and benefit eligibility for state and federal social safety net benefits. These include benefits established by labor law and fringe benefits not explicitly required through labor laws but provided by the employer or by the state. The self-employed, as described in Figure 1, are grouped together into a single category within the table, based on how these classifications pay into state and federal benefit systems. Similarly, worker classifications in traditional work arrangements as seen in Figure 1 are grouped together in the benefits matrix. These groupings are not meant to imply that these classifications are synonymous. Table 1 shows that workers in traditional work arrangements have greater access to social safety net benefits than those in nontraditional arrangements.

Table 1

Benefits Matrix

Access to Benefits

Limited or Restricted Access to Benefits

No Access to Benefits

Worker Classification and Service/Benefits	Self-Employed/ Indt Contractors	Day Laborers	Agricultural Migrant Workers	Casual Laborers	Seasonal Workers	Traditional Work Arrangements
Apple Healthcare for Individuals and Households	<div></div>	<div></div>	<div></div>	<div></div>	<div></div>	<div></div>
Apple Healthcare for Children	<div></div>	<div></div>	<div></div>	<div></div>	<div></div>	<div></div>

<sup>12</sup> The U.S. Census use nonemployer statistics to describe the number of establishments and the number of employees per establishment. The lowest grouping in these statistics is employers with 0-4 employees at the mid-March pay period. A business may retain up to four employees throughout the year but have none at the point-in-time when recorded. An example of this type of arrangement are seasonal-based businesses.



































































Worker Classification and Service/Benefits	Self-Employed/ Indt Contractors	Day Laborers	Agricultural Migrant Workers	Casual Laborers	Seasonal Workers	Traditional Work Arrangements
Apple Healthcare for Undocumented Immigrants						
Private Healthcare Coverage						
Workers' Compensation						
Unemployment Insurance						
Long-term Disability Insurance						
Paid Sick Leave						
Paid Family and Medical Leave						
Paid Vacation Time						
Life Insurance and Accidental Death and Dismemberment						
Retirement Benefits						
Working Connections Child Care Subsidies						
Seasonal Child Care Subsidies						

Table 2 details the type of social safety net benefits offered by state and federal support systems. The information was developed through coordination with the administering agencies, review of statutory documents, and a detailed examination of programmatic services from publicly available sources.

Table 2 shows that within each agency, workers in nontraditional work arrangements have to contend with a complex set of requirements to be eligible for social safety net benefits. Most of these requirements center on how much income a worker makes, whether that income falls within a benefits threshold, and on the worker's ability to prove their income to the agency responsible for benefits delivery. These issues can be challenging

for nontraditional workers to track and document because they may not work for a singular employer or in employment structured to last longer than a year. A nontraditional worker is also often solely responsible for navigating their eligibility. Their traditional worker counterparts may not share these same obstacles and may be better equipped to engage in the state and federal benefits system, in part because employers must adhere to certain federal and state requirements, and because employment arrangements are less nuanced.

When building a complete list of available benefits for each worker classification, the report authors observed that information was presented in ways that made it difficult to discern benefits availability and eligibility. In most cases, information for nontraditional workers was not readily apparent to the end user.

**Table 2**  
**Benefits Gaps and Access**

Agency Benefit/Service	Agency or Access Point (Source)	Workforce Arrangement Access Points and Access Gaps
Apple Healthcare Coverage for Individuals and Households	The Health Care Authority (HCA)	<p><b>Access:</b></p> <ul style="list-style-type: none"> <li>• Coverage available through HCA</li> <li>• Coverage eligibility dependent on: <ul style="list-style-type: none"> <li>-- Household size</li> <li>-- Annual income</li> <li>-- Citizenship status (if applicable)</li> </ul> </li> </ul> <p><b>Gaps:</b></p> <ul style="list-style-type: none"> <li>• If eligible, coverage is available from the HCA year-round.</li> <li>• Workers can lose coverage through increased annual household income while also being unable to afford private coverage through the Exchange, private sources, or COBRA insurance plans.</li> </ul>
Apple Healthcare Coverage for Children	The Healthcare Authority (HCA)	<p><b>Access:</b></p> <ul style="list-style-type: none"> <li>• Coverage available through HCA</li> <li>• Coverage eligibility dependent on: <ul style="list-style-type: none"> <li>-- Household size</li> <li>-- Annual income</li> <li>-- Citizenship status (if applicable)</li> </ul> </li> </ul> <p><b>Gaps:</b></p> <ul style="list-style-type: none"> <li>• If eligible, coverage is available from the HCA year-round.</li> <li>• Workers can lose coverage through increased annual household income while also being unable to afford private coverage through the Exchange, private sources, or COBRA insurance plans.</li> </ul>
Apple Healthcare Coverage for Undocumented Immigrants	The Healthcare Authority (HCA)	<p><b>Access:</b></p> <ul style="list-style-type: none"> <li>• Coverage available through HCA</li> <li>• Coverage eligibility dependent on: <ul style="list-style-type: none"> <li>-- Household size</li> <li>-- Annual income</li> <li>-- Citizenship status</li> </ul> </li> </ul> <p><b>Gaps:</b></p> <ul style="list-style-type: none"> <li>• If eligible, coverage is available from the HCA year-round.</li> <li>• Workers can lose coverage through increased annual household income while also being unable to afford private coverage</li> </ul>

Agency Benefit/Service	Agency or Access Point (Source)	Workforce Arrangement Access Points and Access Gaps
Private Healthcare Coverage	<p>The Healthcare Authority (HCA)</p> <p>The Health Benefits Exchange (Exchange)</p> <p>Private Healthcare Market</p>	<p><b>Access:</b></p> <ul style="list-style-type: none"> <li>• Must elect for coverage through the WA Healthcare Exchange to receive subsidized health insurance coverage.</li> <li>• Reduced premiums available depending on annual income (up to 400% Federal Poverty Line).</li> <li>• Can elect for private coverage outside of the Exchange without subsidies</li> <li>• Coverage eligibility dependent on: <ul style="list-style-type: none"> <li>-- Household size</li> <li>-- Annual income</li> </ul> </li> <li>• COBRA coverage allows displaced workers to remain on their employer's plan until additional health insurance coverage can be obtained.</li> </ul> <p><b>Gaps:</b></p> <ul style="list-style-type: none"> <li>• Coverage for subsidized private insurance is typically available during the "open enrollment period," from Nov. 1 through Dec. 15.</li> <li>• 60-Day Special Enrollment Period in the Exchange available during "Life Event" (before or after event).</li> <li>• Private insurance begins subject to terms and conditions of coverage.</li> <li>• Coverage through the Exchange or private brokers may be cost prohibitive if annual household income decreases; qualifying annual income requirements may exceed income threshold for Apple Health eligibility.</li> <li>• COBRA coverage may be cost prohibitive for displaced workers.</li> </ul>
Workers' Compensation	Washington State Department of Labor & Industry (LNI)	<p><b>Access:</b></p> <ul style="list-style-type: none"> <li>• Can elect for self-employed coverage through LNI when eligibility prerequisites are complete: <ul style="list-style-type: none"> <li>-- Must file articles of organization with Secretary of State.</li> <li>-- Must register business license with Department of Revenue.</li> <li>-- Must register business license with city, where business is located.</li> </ul> </li> <li>• Day laborers and casual laborers are considered covered workers.</li> <li>• Independent contractor are required to elect for coverage if they retain employees.</li> <li>• Required quarterly tax payments to maintain coverage.</li> </ul> <p><b>Gaps:</b></p> <ul style="list-style-type: none"> <li>• Industrial insurance cannot be purchased by workers on the private market.</li> <li>• Nontraditional workforce arrangements have access to this benefit only if they fulfill eligibility requirements.</li> <li>• Coverage begins the day after LNI's office receives the workers' compensation application request.</li> </ul>

Agency Benefit/Service	Agency or Access Point (Source)	Workforce Arrangement Access Points and Access Gaps
Unemployment Insurance (UI)	Washington State Employment Security Department (ESD)	<p><b>Access:</b></p> <ul style="list-style-type: none"> <li>• Coverage available through ESD for independent contractors and day laborers.</li> <li>• Temporary helpers are considered covered workers.</li> <li>• Agricultural migrant workers are ineligible.</li> <li>• Eligibility depends on work history               <ul style="list-style-type: none"> <li>– At least 680 recorded hours worked in the last 15-18 months required for eligibility.</li> <li>– At least some wages must have been earned in Washington.</li> </ul> </li> <li>• Independent contractors are required to get coverage for workers they retain as employees.</li> <li>• Restrictions that typically barred nontraditional workers from UI were temporarily lifted through provisions of the Federal CARES Act in March 2020.</li> </ul> <p><b>Gaps:</b></p> <ul style="list-style-type: none"> <li>• There are no UI plans available for purchase on the private market.</li> <li>• Numerous exemptions for various professions and nontraditional workers.</li> <li>• Administrative delays on UI distribution               <ul style="list-style-type: none"> <li>– ESD must verify hours worked with each employer a worker cites.</li> <li>– Receiving benefits depends on verification of work history by ESD.</li> </ul> </li> <li>• Pandemic Unemployment Assistance (PUA) benefits are scheduled to expire at the end of 2020.</li> </ul>
Long-Term Disability Benefits	<p>Social Security Administration (SSA)</p> <p>Washington State Department of Social and Health Services (DSHS)</p> <p>The Health Care Authority (HCA)</p> <p>Private Health Care Market</p>	<p><b>Access:</b></p> <ul style="list-style-type: none"> <li>• Can elect for private insurance coverage.</li> <li>• Federal benefits available from the SSA are mediated through DSHS.</li> <li>• Federal benefits eligibility dependent on payments into SSA credits system and disability status.</li> <li>• Benefits can be from the private/public partnership and mediated by:               <ul style="list-style-type: none"> <li>– DSHS</li> <li>– HCA</li> <li>– Private insurance marketplace</li> </ul> </li> <li>• Agricultural migrant laborers are not eligible for SSA benefits due to tax recording procedures that do not require them to pay FICA taxes.</li> </ul> <p><b>Gaps:</b></p> <ul style="list-style-type: none"> <li>• Navigating the administrative requirements can be a multi-year process creating gaps when these workers need benefits or income but are unable to work.</li> <li>• Private long-term disability insurance is unsubsidized and may be cost prohibitive</li> <li>• Other benefits can cover the initial gaps before receiving LTD benefits from state or federal sources including:               <ul style="list-style-type: none"> <li>– Paid Family and Medical Leave (if elected to coverage).</li> <li>– Workers' compensation (if elected to coverage and injury or illness occurs at/on worksite).</li> </ul> </li> </ul>

Agency Benefit/Service	Agency or Access Point (Source)	Workforce Arrangement Access Points and Access Gaps
Paid Sick Leave	Washington State Department of Labor & Industries (LNI)	<p><b>Access:</b></p> <ul style="list-style-type: none"> <li>• Independent contractors, day laborers, and casual laborers are not entitled to paid sick leave.</li> <li>• The only mandated benefit afforded to nontraditional workers in Washington is paid sick leave to agricultural migrant workers who hold a valid H-2A visa from the U.S. Customs and Immigration Service.</li> </ul> <p><b>Gaps:</b></p> <ul style="list-style-type: none"> <li>• There are no available private options to supplement lost wages when these workers need time off.</li> </ul>
Paid Family and Medical Leave	Washington State Employment Security Department (ESD)	<p><b>Access:</b></p> <ul style="list-style-type: none"> <li>• Nontraditional workers can elect to enroll through ESD as self-employed workers (with necessary requirements) for a three-year enrollment period, annual enrollment for subsequent years. <ul style="list-style-type: none"> <li>– Must file articles of organization with Secretary of State.</li> <li>– Must register business license with Department of Revenue.</li> <li>– Must register business license with city, where business is located.</li> </ul> </li> <li>• Casual laborers and agricultural migrant workers are covered by their employer.</li> </ul> <p><b>Gaps:</b></p> <ul style="list-style-type: none"> <li>• Must work at least 820 hours in Washington during "qualifying period" before benefit is accessible</li> <li>• Worker must be experiencing, or will experience, a "qualifying event."</li> </ul>
Paid Vacation Time	U.S. Department of Labor	<p><b>Access:</b></p> <ul style="list-style-type: none"> <li>• No eligibility for nontraditional workers.</li> </ul> <p><b>Gaps:</b></p> <ul style="list-style-type: none"> <li>• There are no private market solutions for nontraditional workers to engage this benefit.</li> </ul>
Life Insurance and Accidental Death and Dismemberment	Social Security Administration, (SSA)	<p><b>Access:</b></p> <ul style="list-style-type: none"> <li>• Survivor benefits are available from the SSA, if payment requirements into the program are satisfied.</li> <li>• The nontraditional workforce can elect for private coverage.</li> <li>• Agricultural migrant laborers are not eligible for SSA benefits due to tax recording procedures that do not require them to pay FICA taxes.</li> </ul> <p><b>Gaps:</b></p> <ul style="list-style-type: none"> <li>• Navigating the administrative requirements can be difficult.</li> </ul>

Agency Benefit/Service	Agency or Access Point (Source)	Workforce Arrangement Access Points and Access Gaps
Retirement Benefits	<p>Social Security Administration (SSA)</p> <p>Washington State Department of Commerce (Commerce)</p> <p>Private Retirement Investments</p>	<p><b>Access:</b></p> <ul style="list-style-type: none"> <li>• Nearly all workers are able to engage in the Social Security (SS) program for retirement income benefits given certain payment conditions are met.</li> <li>• Agricultural migrant workers are not required to pay into the SS program with their wages.</li> <li>• There are available private retirement options.</li> <li>• Commerce developed the Retirement Marketplace to make choosing retirement plans for self-employed and businesses easier for consumers.</li> <li>• Nontraditional workers to pay quarterly taxes into the SS program through self-employed taxes to the IRS.</li> </ul> <p><b>Gaps:</b></p> <ul style="list-style-type: none"> <li>• Workers may face difficulties determining the most appropriate investment vehicles and require assistance from a retirement investment professional.</li> <li>• Workers must be capable of setting aside capital for investments in addition to paying for monthly expenses.</li> </ul>
Child Care Benefits	<p>Washington State Department of Children, Youth, &amp; Families (DCYF)</p>	<p><b>Access:</b></p> <ul style="list-style-type: none"> <li>• There are two types of child care subsidies available to Washington workers: <ul style="list-style-type: none"> <li>--Working Connections Child Care (WCCC)</li> <li>--Seasonal Child Care (SCC) benefits, meant to support the seasonal agricultural workforce.</li> </ul> </li> <li>• Subsidies through DCYF are dependent on household income threshold.</li> </ul> <p><b>Gaps:</b></p> <ul style="list-style-type: none"> <li>• Annual income threshold is the primary restriction in access to these benefits.</li> <li>• There are limited licensed child care providers in Washington.</li> </ul>



# Key Findings

State agencies experience multi-layered challenges interacting with nontraditional workers.

## State agencies struggle with accommodating nontraditional complex work arrangements

Most government offices are accessible from 8 a.m. to 5 p.m., during what is considered standard operating hours. The Department of Children, Youth and Families reported attempting to serve communities during nonstandard hours, however, there was a challenge finding state-employed staff to work those hours. Further, Louisa Erickson, Workforce Development and Policy Administrator at DSHS, notes the majority of residents accessing state services fall into traditional worker categories. This means that there may be a consequence that the frontline worker may not have the specific resources or knowledge to assist the needs of nontraditional workers. DSHS also reports high turnover or promotion of frontline workers, making it uncommon for a frontline state worker to have the opportunity to build a skill set delivering services to nontraditional workers.<sup>13</sup>

## Agency systems are designed for traditional work arrangements

Most state systems are designed to support workers and employers that engage in steady, long-term employment. Some agencies do provide a pathway to benefits to the self-employed, if they are small business owners and hold a Unified Business Identifier number (UBI) that authorizes business practice in Washington State. In some cases, an independent contractor may elect to obtain a UBI number. However, some independent contractors do not elect to obtain UBI numbers because of immigration status or due to unsatisfactory qualification requirements.<sup>14</sup> For example, a person without legal immigration status can apply for a business license but a Social Security number is required if the person applying for the license is going to hire employees and the requirement of a Social Security Number may serve as a deterrent.<sup>15</sup> Acquiring a UBI number requires a knowledge base as to its purpose, and an understanding of what the tax and documentation responsibilities entail. Lacking the knowledge or ability to get a UBI number can have a cascading affects through the state benefits system for workers who are in nontraditional arrangements. Without a UBI number, a worker would be ineligible for any state service that requires them, such as electing into Workers' Compensation or the Paid Family and Medical Leave programs.<sup>16</sup>

Federally funded unemployment insurance, provided through the Employment Security Department (ESD), does not serve undocumented workers, due to federal constraints. State statute additionally does not allow certain other groups to access state unemployment insurance, including H2A workers.<sup>17</sup> Because individuals need to have worked 680 hours during a 12-month period in order to qualify for benefits, workers who do not have long-term employment, steady employment, those that work variable or unusual hours, or those who have gaps

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<sup>13</sup> State Agency Roundtables on nontraditional work, September 15 and September 22, 2020. Agencies with representatives in attendance: COM, DCYF, DOR, DSHS ESD, HCA, LNI, WTECB and interviews conducted between September 24-28, 2020

<sup>14</sup> Department of Revenue, "Apply for a business license," (2020), <https://dor.wa.gov/open-business/apply-business-license>

<sup>15</sup> Ginatta, Antonio, personal communication, October, 15, 2020

<sup>16</sup> Washington Paid Family and Medical Leave, (2020), <https://paidleave.wa.gov/>

<sup>17</sup> The H-2A temporary agricultural program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature authorized in Section 218 of the Immigration and Nationality Act, <https://www.dol.gov/agencies/whd/agriculture/h2a>

in employment may have a difficult time qualifying for benefits. The independent contractor, by definition in state and federal statute, controls their own work and can hold multiple clients at one time. Therefore, the loss of any one job is perceived as less consequential than for a worker who loses their job through their loss of partial income, due to the expectation that an individual can seek additional work or clients to fill the gap.

State and federal payroll taxes also favor work arrangements that are steady and long-term. If an employer has intermittent and varied staffing needs, they may have many shorter-term employees that they retain year-to-year or project-to-project. With more recorded employees, no matter the duration or longevity of the work relationship, these employers will bear higher tax rates, a factor that their operations must be prepared to support.<sup>18</sup>

## Nontraditional work has associated stigmas

Agencies noted that there is a systemic stigma of what constitutes work, and the value placed on certain occupations and not others, that needs to be overcome. Interviewees from the performing arts sector reported that the creative sector is viewed as a secondary workforce, a product of what they called "creative romanticism."<sup>19</sup> Louisa Erickson of DSHS summarizes, "We have picture of what a worker is and what work is. There are challenges around creating strong pathways, because the outcomes are less easily described. There is less experience in supporting people along these pathways. There needs to be a change to how we view workers as the ways that workers engage in the workforce is changing."

## Compliance and enforcement mechanisms have unequal impacts

Some state agencies require compliance and enforce penalties, and this role presents interconnected challenges. Some state agencies reported awareness of companies that continually do not comply with labor and employment requirements. These companies are often repeat compliance offenders and are a cost burden to the state, in legal fees and through staff time and capacities. Agencies reported that some companies pay the penalty fines but then continue to engage in noncompliant employment practices.<sup>20</sup>

*"The nuts and bolts is that these are individual and existential philosophical debates – what people believe about other people, what makes a "real job" and how there are values put on one job versus another, or one industry versus another. It's the curse of individualism that gets in the way of progress."*

Anonymous, Film Industry

Interviewees in both the creative sector and immigrant communities reported knowledge of the abuse of large companies or employers misclassifying workers. There is a potential disincentive in some cases for less consistent and stable workers to be classified correctly by employers because of the additional cost on the employer in federal and state payroll taxes to classify them correctly.<sup>21</sup> Shellea Allen of SAG-AFTRA, a union representing screen actors and television and radio artists, commented on the practice of how companies respond to Request for Proposals. For example, Allen notes that large companies competitively selecting the lowest-bid projects for projects in areas such as corporate education take part in the practice of misclassifying subcontractors of a project in order to have lower bids.

<sup>18</sup> State Agency Roundtables on nontraditional work, September 15 and September 22, 2020. Agencies with representatives in attendance: COM, DCYF, DOR, DSHS ESD, HCA, LNI, WTECB and interviews conducted between September 24-28, 2020

<sup>19</sup> Creative Sector and Immigrant-Focused Organization interviews conducted between this July 8, and August 10, 2020

<sup>20</sup> State Agency Roundtables on nontraditional work, September 15 and September 22, 2020. Agencies with representatives in attendance: COM, DCYF, DOR, DSHS ESD, HCA, LNI, WTECB

<sup>21</sup> Creative Sector and Immigrant-Focused Organization interviews conducted between this July 8, and August 10, 2020

According to the Migration Policy Institute report, "Strategic Leverage: Use of State and Local Laws to Enforce Labor Standards in Immigrant-Dense Occupations," misclassification is more common in industries with seasonal employment, dangerous work conditions, and low wages. The report highlights that misclassification significantly lowers a company's payroll cost, removes the wage floor, and sidesteps paying into the worker's safety net and contributing to taxes. More responsibility and liability is shifted onto the worker. Workers generally lack intermediaries and resources to access assistance, like unions and worker-led groups or in filing complaints or getting retaliation protection. Additionally, workers would otherwise potentially lose the immediacy of a paycheck, should they not accept available work.<sup>22</sup>

Penalties and other measures can be viewed as punitive by businesses or individuals being audited. Some employers are struggling to understand their obligations, not to evade compliance, but to fulfil their missions and to be able to provide opportunities to the workers they employ. In these instances, there can be an inherent distrust in agencies that monitor compliance and a perceived risk on the part of the employer to interact with state agencies.<sup>23</sup> Some organizations are struggling operationally, due to a variety of circumstances, and are making choices based on financial thresholds and information that they think are legal within a system that subjects them to penalties, even if noncompliance was inadvertent.<sup>24</sup>

## Challenges for Nontraditional Workers

### Nontraditional workers can face unique occupational realities

Occupations and industries create different challenges for government systems for both the worker and the employer. Certain industries, such as the creative sector, are primarily project-based. Projects require specific skills for defined durations to fulfil project specifications. Workers in particular industries or occupations may have seasonal employment with various employers.

There is evidence that some workers choose nontraditional work because it offers them flexibility, freedom and variety.<sup>25</sup> This however, comes at a cost of organizational ties and income stability.<sup>26</sup> Scott Michael, Legal Services Coordination Manager at ESD, perceives this tradeoff from his position working in unemployment insurance. Michael is aware of instances in which workers are offered flexibility and potentially

*"We had five to six core staff at any given time. Sometimes, payroll could have as many as 40 people on it. An employee is a significant added cost. We always had to pay attention to the thresholds, and employment distinctions, whether an employee or a contractor. There are real hardships to trying to fill all these gaps, for arts organizations, for the workers, for other public institutions. We were always doing our best to fill needs in the community but there was a push and pull with regards to capacity and money. The theater is always trying to do more with less – and I was working for a theater that was resourced with a very high fundraising capacity!"*

Anonymous, Performing Arts Organization

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<sup>22</sup> Migration Policy Institute, Andre Elmore and Muzaffar Chishti, "Strategic Leverage: Use of State and Local Laws to Enforce Labor Standards in Immigrant-Dense Occupations," (March 2018), <https://www.migrationpolicy.org/research/strategic-leverage-use-state-and-local-laws-enforce-labor-standards-immigrant>

<sup>23</sup> State Agency Roundtables on nontraditional work, September 15 and September 22, 2020. Agencies with representatives in attendance: COM, DCYF, DOR, DSHS ESD, HCA, LNI, WTECB

<sup>24</sup> Creative Sector and Immigrant-Focused Organization interviews conducted between this July 8, and August 10, 2020

<sup>25</sup> Department of Commerce, 2019 Independent Contractor Study;

<sup>26</sup> Berliner, Uri, NPR, "Jobs In The Pandemic: More Are Freelance And May Stay That Way," (September 2020), <https://www.npr.org/2020/09/16/912744566/jobs-in-the-pandemic-more-are-freelance-and-may-stay-that-way-forever>

higher wages in exchange for agreeing to be classified as contractors. These workers may then believe they are not entitled to worker protections and benefits, such as unemployment insurance, when in fact, entitlement to these protections and benefits is based on state law and not an agreement the worker signed. Melissa Purcell with IATSE Local 488, a union for production technicians, also commented that there is a time in a worker's early career where they may be less knowledgeable on their rights and are looking to develop in their profession, so the absence of a safety net may feel less vital.

## Workers can lack power within their employment arrangements

Employers are responsible for correctly classifying their workers. In some cases, the worker does not have knowledge of their employment status. Purcell commented on the lack of power that workers had in situations when they knew they were misclassified, saying that if the worker needed income immediately, speaking up could prove to be too big of a risk.

For both the creative sector and immigrant communities, one's employment arrangement – traditional or nontraditional worker – was often not a choice, but a reality shaped by a worker's particular skill set, knowledge, access, or opportunity to a certain job or industry.<sup>27</sup> For example, María Sigüenza Director of the Washington State Commission on Hispanic Affairs (CHA) discusses that language access providers are generally nontraditional workers because agencies do not perceive a need for these positions to be steady, long-term positions. These positions have relatively low barriers to entry, but are not without challenges. Interpreters frequently need to travel to various worksites in a single day. It takes a long time to establish credibility with communities for whom an interpreter works with. The job is location dependent; a worker needs to be where there are populations that require communication in the target language.

## Nontraditional workers have capacity limitations

A worker's knowledge, finances, and time can limit their compliance with independent contractor or small business requirements in both sectors.<sup>28</sup> A worker's income can determine whether they are able to seek outside assistance for technical information, including state and local requirements. If earnings are high enough, a worker may be able to hire technical professionals such accountants or lawyers.<sup>29</sup> Amy Lillard, executive director of Whipsmart notes, "It is difficult for nontraditional workers to find the technical assistance they need from state agencies. When creatives try to seek help, state agencies often don't have the time,

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<sup>27</sup> Creative Sector and Immigrant-Focused Organization interviews conducted between this July 8, and August 10, 2020

<sup>28</sup> Ibid

<sup>29</sup> Ibid

bandwidth or industry expertise to be helpful. This is exacerbated by the fact that creatives don't know what they qualify for and the state doesn't understand creative work. So when they engage, it's like they don't speak the same language. That's one of the reasons why Whipsmart needs to exist, to be the bridge and facilitate communication."

Interviews suggest that companies hiring independent contractors, specifically government agencies, private businesses or corporations, do not actively play a role in educating or assisting contractors in understanding their employment classification or responsibilities for subcontracting. One interviewee commented that they had to hire their own mentor to manage their professional growth and advance their skills and knowledge.

Interviewees all discussed reliance on their communities to access information and to find and obtain work.<sup>30</sup> Immigrant communities are quite dependent on community service organizations for technical and professional expertise; and the intentional connection and established trust with these service organizations was essential in their efficacy.<sup>31</sup> However, community-based information can be insular and potentially incomplete and leave vulnerable populations little ability to exit entrenched occupational norms, legal or not.<sup>32</sup> For immigrant communities in particular, there are structural and social barriers to accessing capital and a lack of opportunity for peer mentorship.<sup>33</sup>

This can be true for the nonprofit sector as well, which is reliant on fundraising and philanthropy to operate, in addition to however they earn direct revenue. Often, nonprofits are providing services for the good of a community that are otherwise not supplied through public or private sources. Navigating state agency guidelines requires substantial access to information, professional expertise, and other financial resources.<sup>34</sup> Additionally, they face other resource conundrums when paying into social safety net systems for workers. For example, due to the nature and duration of a worker's employment, the worker and employer both may have short-term, infrequent or one-off work engagements.<sup>35</sup>

*"We work with immigrants, most of whom aren't born in the United States. English can be limited. Technology might only be accessed via cell phones, not computers. The people we work with are mothers and fathers, looking for new avenues for self-employment and resources for their children. Or older individuals who have had no other opportunity to grow their wealth. Housecleaners, janitorial work – those jobs are easy to connect to, to fall into. There is room for exploitation, especially in franchising with significant risk managing client and supplier relationships, fees, etc. When worker protections and accompanying requirements are added, lawmakers need to consider how individuals will navigate added bureaucracy with minimal resources. Also, without the right work permits or social security numbers, you may not be qualified to be a traditional employee. Or you pay taxes into a system, but you'll never be able to access what you put into the system, like unemployment insurance. The safety net isn't there."*

Anonymous, Community Based Service Organization

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<sup>30</sup> Creative Sector and Immigrant-Focused Organization interviews conducted between this July 8, and August 10, 2020

<sup>31</sup> Ibid

<sup>32</sup> Ibid

<sup>33</sup> Wirtz, Ron, Federal Reserve Bank of Minneapolis, "COVID-19: Another strain for minority-, women-, and veteran-owned firms," (May 2020), <https://www.minneapolisfed.org/article/2020/covid-19-another-strain-for-minority-woman-and-veteran-owned-firms>

<sup>34</sup> Creative Sector and Immigrant-Focused Organization interviews conducted between this July 8, and August 10, 2020

<sup>35</sup> Ibid



## Outreach is limited

Communication and outreach are crucial to reaching nontraditional workers so they are aware of their rights and responsibilities, and to ensure that they have access to the benefits that are available to them.<sup>36</sup> Further, employers who hire nontraditional workers need to be educated on their respective responsibilities.<sup>37</sup> Communication and outreach strategies are essential for all state agencies and government programs, whether there is a service to be accessed or education of regulations that require compliance. María Sigüenza, Director with CHA, notes that the agency is frequently called by people in need of other agency referrals to navigate what other agencies; require of them; there is often confusion finding out what needs to be done or who needs to be contacted. There's a need to bridge the knowledge gaps and the best ways for agencies to do that in local communities.<sup>38</sup> Sigüenza comments that there is no one-stop shop for services or workers; municipal- and state-level government outreach needs to be strengthened through interagency coordination to provide workers with information about regulations and their responsibilities.

*"[Regulatory] agencies don't have connections with immigrant populations. There's been neglect, community-based organizations have not been compensated. There's a lack of resources and information. It's more than streamlining communication. Many immigrant contractors rely on their own community members for information and resources... trusted messengers and leaders within those communities to get out information and resources in their own language for those non English speaking folks. They do not use existing organizations for information and resources. Intentional outreach is key."*

Ben Cabildo, AHANA, Spokane

Geographical, cultural and demographic barriers can make communication challenging. JB Bennis, Community Engagement and Outreach Specialist with Commerce, further explains, "When we come up with applications, there are sometimes big hurdles for people to apply. We've heard about cultural divides. For instance in Yakima we've heard that there are misunderstandings that can put people in a vulnerable place. The way that we do business in Olympia, is different than the way work is done in Yakima."

## Washington's diverse cultural communities have distinct disadvantages interacting with government agencies

Tammy Deets, Trades Specialist at Commerce, notes that many communities have an inherent distrust in government established through both direct experience and perception. She continues to say, "While we do have translated versions of materials on websites, if you are not a native English speaker, it makes accessing state systems difficult and daunting to access available benefits or to access technical information."

Interviewees representing immigrant communities reported workers connected to employment through "word of mouth" from family, friends, and/or trusted community members.<sup>39</sup> Interviewees detailed that many immigrants rely on their own community members or community-based organizations that work with trusted messengers and leaders for information. They discussed the great need for resources in their communities' own languages, when English may not be their primary language. The Migration Policy Institute in the article, "Integration: The Role of Communities, Institutions, and the State," supports this, describing the collective level

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<sup>36</sup> Creative Sector and Immigrant-Focused Organization interviews conducted between this July 8, and August 10, 2020

<sup>37</sup> State Agency Roundtables on nontraditional work, September 15 and September 22, 2020. Agencies with representatives in attendance: COM, DCYF, DOR, DSHS ESD, HCA, LNI, WTECB and interviews conducted between September 24-28, 2020

<sup>38</sup> Creative Sector and Immigrant-Focused Organization interviews conducted between this July 8, and August 10, 2020

<sup>39</sup> Ibid

role of immigrants' communities in mobilizing their work, housing, education and other social and cultural adaptations.

Similarly to the creative sector, interviews with community-based organizations for this report discussed that many workers within their communities work three to four jobs across a variety of occupations or industries. Some of those jobs may be traditional work, some work may be contracted, and some jobs may be within a family-owned business. Interviews noted traditional employment often available to immigrants in industries such as hospitality, food services, long-term care, and janitorial services. These jobs offer low wages, are often part-time, and often do not offer benefits.<sup>40</sup>

## The COVID-19 Pandemic and its Impact on the Nontraditional Workforce

The COVID-19 pandemic exacerbated existing disparities in Washington's workforce, including inconsistent broadband access, technical fluency disparities, and outreach efforts that are underfunded or understaffed. Additionally, expanding benefits to serve nontraditional workers outcomes during the pandemic, reinvigorated pre-pandemic challenges of state agencies needing to track outcomes of activities such as training investments and work-search requirements.<sup>41</sup> Agencies agree that the Washingtonians who had adequate capacity and access to resources to allow themselves to pivot, shift and adapt were more successful at receiving support thus far in the pandemic. However, this access was not universal.<sup>42</sup>

*"Primarily, federal and state policies disallow undocumented workers from working lawfully, nor are state systems able to effectively recognize these worker's contributions to the state's economy. It is unlawful to hire a worker who does not have a worker authorization. This is one reason that sometimes undocumented workers work as independent contractors. No other option exists for them, besides working in the informal economy, which, sometimes, is easier.*

*"Working as an independent contractor still poses risks for undocumented workers. Additionally, as independent contractors, workers still pay into the federal social safety nets, such as social security taxes. When the worker becomes eligible to retire, they do not have access to a system they paid into.*

*"Finally, there are benefits for which access by undocumented workers is ambiguous. When programs require social security numbers that creates a significant burden on the individual to access this program, even if technically eligible.*

*There is also the reality, that there is also hesitancy in this population to have any interaction with government agencies. The risk of deportation for these workers or their families is always present."*

Antonio Ginatta, Columbia Legal Services

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<sup>40</sup> Revisit with a different source - for now, from the creative sector interviews

<sup>41</sup> State Agency Roundtables on nontraditional work, September 15 and September 22, 2020. Agencies with representatives in attendance: COM, DCYF, DOR, DSHS ESD, HCA, LNI, WTECB and interviews conducted between September 24-28, 2020

<sup>42</sup> State Agency Roundtables on nontraditional work, September 15 and September 22, 2020. Agencies with representatives in attendance: COM, DCYF, DOR, DSHS ESD, HCA, LNI, WTECB and interviews conducted between September 24-28, 2020

## State and Federal Flexibility

Support expended to nontraditional workers was a result of federal changes or emergency rulemaking. Agencies are considering how to continue to provide services and access, but without additional funding, such as from grants, the “how” looks uncertain.<sup>43</sup>

For example, ESD was able to allow the Workforce Training and Education Board (WTECB) to use Workforce Innovation and Opportunity Act (WIOA) Title 1 funding for food service benefits. The state's youth funds were able to provide food for youth at the state's local one-stop centers because the U.S. Department of Labor (DOL) provided regulatory relief in the WIOA Final Rule allowing food as an allowable expense. ESD was able to communicate the guidance to the WTECB and the flexibility will remain in place as long as DOL continues to allow it.<sup>44</sup> The Healthcare Authority (HCA) was also able to adapt their telehealth services because Governor Inslee declared a public health emergency in the state.<sup>45</sup>

## Broadband Access and Digital Literacy

Agencies rely on digital communication, but there are gaps across the state for digital access and literacy.<sup>46</sup> Eric Wolf, Deputy for Policy and Programs with the WTECB noted, “Digital literacy is among the most important skills that workers need, and will need, in the 21st century.” In the wake of COVID-19, state agencies have found efficiencies in utilizing and amplifying their own digital access tools to save time and money, and allow for expanded access. Some report developing webinars and other web-based tools because they are receiving more industry or community requests. Due to the digital nature of these interactions, agencies are finding that they are reaching groups they never had before, and that the opportunities have higher attendance.<sup>47</sup>

Russ Elliott, Director of the State Broadband Office within Commerce noted, “The pandemic has highlighted how inequitable and inconsistent broadband access is. Online access is not ubiquitous. There are demographic, age, and industry discrepancies.” Access to teleworking jobs that are available during the pandemic require equipment and a level of training and knowledge that individuals may not be equipped for.<sup>48</sup> Individuals who can work online have access to employment, whereas people who are not able to work online have become more reliant on the safety net system.<sup>49</sup> As an example, HCA highlighted the importance of a cohesive broadband strategy for the delivery of telehealth for a variety of medical services.<sup>50</sup>

Commerce is currently conducting a broadband mapping project that will give a clear picture of where there is broadband access across the state. The agency will develop a policy framework structured around four equal components: access, equipment, affordability and training.<sup>51</sup> Tammy Deets with Commerce summarized, “the pandemic highlights cracks in our system, and how nontraditional workers seem to be playing a much larger role than society recognizes. Because of this, we need to look into shoring the up system. Broadband access

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<sup>43</sup> State Agency Roundtables on nontraditional work, September 15 and September 22, 2020. Agencies with representatives in attendance: COM, DCYF, DOR, DSHS ESD, HCA, LNI, WTECB and interviews conducted between September 24-28, 2020

<sup>44</sup> State Agency Roundtables on nontraditional work, September 15 and September 22, 2020. Agencies with representatives in attendance: COM, DCYF, DOR, DSHS ESD, HCA, LNI, WTECB and interviews conducted between September 24-28, 2020 and email communication with Gary Kamimura, ESD, October 13, 2020.

<sup>45</sup> State Agency Roundtables on nontraditional work, September 15 and September 22, 2020. Agencies with representatives in attendance: COM, DCYF, DOR, DSHS ESD, HCA, LNI, WTECB and interviews conducted between September 24-28, 2020

<sup>46</sup> Ibid

<sup>47</sup> Ibid

<sup>48</sup> Ibid

<sup>49</sup> Ibid

<sup>50</sup> State Agency Roundtables on nontraditional work, September 15 and September 22, 2020. Agencies with representatives in attendance: COM, DCYF, DOR, DSHS ESD, HCA, LNI, WTECB and interviews conducted between September 24-28, 2020

<sup>51</sup> Ibid



would help all workers, not just nontraditional workers. These services are becoming like water and power; they are essential."

## The Creative Sector

The Brookings Institute published the study "Measuring COVID-19's devastating impact on America's creative economy" in August 2020. The report highlights that the creative sector is one of the most impacted sectors of the economy during the pandemic crisis. The report estimates that Washington State lost 30.3% of creative sector jobs (a total of 78,402 jobs) between April and July of 2020. The report reinforces that many creative workers are self-employed or freelancers. Many projects in the creative sector are dependent on opened economies and the ability to safely congregate.

A survey jointly administered by Whipsmart and Washington Filmworks reported that workers in the creative sector most frequently tried to access unemployment benefits in the wake of the pandemic. Of those surveyed, nearly half who attempted to access the system didn't understand if they were eligible, and 49% were delayed, rejected, or had repayment demands from claims that ESD had already paid out to applicants. The survey also found some workers gave up trying to access unemployment.

Access to health insurance was the top concern cited following unemployment benefits. Ninety-three percent of respondents reported having access to health insurance in July 2019. That number fell to 66% reporting insurance coverage in July 2020, and 24% of respondents reported their coverage was at risk.<sup>52</sup>

A pre-pandemic 2019 U.S. Bureau of Economic Analysis report found that Washington State's creative sector represents 7.8%, or \$35.6 billion, of the state's GDP. At the time the report was published, Washington had 17,642 business and nearly 70,000 jobs involved in the creation or distribution of the arts.<sup>53</sup> Many workers in the sector were impacted at the beginning of the pandemic in March 2020, and it will likely be one of the last sectors to return to capacity due to social distancing requirements.<sup>54</sup>

Some in the creative sector report feeling like members of a "forgotten workforce." While other industries have received government assistance, the creative sector has been overlooked. IATSE 15, a union for stagehands and other technical professionals in Seattle, reports 90% of their workforce is out of work, with no jobs in sight.<sup>55</sup> Some nontraditional wages have historically been ineligible for unemployment insurance claims, or are so widely perceived as being ineligible for unemployment insurance claims that workers do not apply for benefits. Within the creative sector specifically, a significant portion of the industry are mixed-income workers due to the project-to-project nature of the work. IATSE 15 advocates for long-term assistance and specific consideration of the industry, due to the sustained impacts of pandemic closures.<sup>56</sup>

## Immigrant Communities

Nationally, immigrants make up 17% of the U.S. workforce. As a whole, immigrant populations are twice as likely to work within industries that misclassify workers and violate workplace standards in industries like

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<sup>52</sup> Whipsmart Washington Filmworks, "Social Safety Net Survey, Initial Findings," (September 2020)

<sup>53</sup> Americans for the Arts Action Fund, "Why the Arts Matter in Washington State", (2019)

<sup>54</sup> Washington State Arts Commission, "Summary of Statewide Findings," (2020), <https://www.arts.wa.gov/wp-content/uploads/2020/08/Statewide-Survey-handout-FINAL.pdf>

<sup>55</sup> Sillman, Marcie, KUOW, "Thousands of Seattle-area cultural workers wonder if they'll ever return to work as pandemic drags on," (October 2020), <https://kuow.org/stories/as-the-pandemic-drags-on-thousands-of-seattle-area-cultural-workers-wonder>

<sup>56</sup> Ibid

construction, transportation, cleaning and food preparation.<sup>57</sup> In 2009, OneAmerica published a study on immigrant contributions to the workforce.<sup>58</sup> At the time of that report, immigrants had a higher rate of business formation than native peers nationally, starting 16.7% of all new businesses in the United States. In 2009, approximately 10% of all businesses in the state were immigrant-owned. Also of note, a higher percentage of the immigrant population is of working age compared to the aging population in the country and in Washington State. While there is a general lack of information of country of origin and nationality within specific industries or occupations, the 2009 report notes that Asian workers tend to be the largest immigrant group in management and professional occupations, and Latin American and Asian workers tend to be the largest group of foreign-born workers in service occupations.

According to the Migration Policy Institute report on immigrant workers, immigrants tend to experience conditions that make them more susceptible to COVID-19, including having lower earnings, living within communities with a higher share of people of color who are at higher risk for COVID-19, and facing greater amounts of household overcrowding. The report highlights that immigrant communities face increased barriers to health insurance, particularly due to lack of coverage from employers in the informal or nontraditional industries and occupations or due to ineligibility due to immigration status. During the pandemic, immigrants are experiencing a higher unemployment rate, particularly because of their disproportionate representation in industries most impacted by the pandemic, including retail, leisure and hospitality.<sup>59</sup>

The Community Service Organizations serving immigrants have adapted through emergency measures, such as providing food and other free services. Interviewees with community-based groups frequently commented that state and other government offices lacked timely and relevant communication. Community organizations felt as though there was not access to address the barriers and specifics of their communities and that what was needed were relationships

*"Policy and programs try to work for everybody – that doesn't work. Each community is different. And within specific communities, there is not one voice. There are elders and young people, for example. There's little support from government, city, county or state. The need for support is highlighted in the pandemic. When information comes out, it's English first. Always. Applications with tight turnarounds are only available in English. By the time community support organizations learn about an opportunity and can assist their communities, the support window has closed. It takes hours or days to connect with state agencies. When someone does get through, language support lags, the needed language is unavailable. If the information is available in specific languages, it's only put out online. Some people don't have access to online information. A digital divide really does exist, even in cities like Seattle. Government agencies regularly don't offer community organizations lead time, if there's any allotted at all, and have low levels of consideration and weak attempts at collaboration. Decisions effect people's lives. Departments have to develop relationships and maintain them in times of non-crisis."*

Jamie Lee, Seattle Chinatown International District Preservation and Development Authority, Seattle

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<sup>57</sup> Elmore, Andre, Chishti Muzaffar, Migration Policy Institute, "Strategic Leverage: Use of State and Local Laws to Enforce Labor Standards in Immigrant Dense Occupations," (March 2018), <https://www.migrationpolicy.org/research/strategic-leverage-use-state-and-local-laws-enforce-labor-standards-immigrant>

<sup>58</sup> Jayapal, Pramila, Curry, Sean, OneAmerica, "Building Washington's Future, Immigrant Workers' Contribution to Our State's Economy," (2009), [http://weareoneamerica.org/wp-content/uploads/Immigrant\\_Contributions.pdf](http://weareoneamerica.org/wp-content/uploads/Immigrant_Contributions.pdf)

<sup>59</sup> Capps, Randy, Batalova, Jeanne, Gelatt, Julia, Migration Policy Institute, "COVID-19 and Unemployment: Assessing the Early Fallout for Immigrants and Other U.S. Workers," (June 2020), <https://www.migrationpolicy.org/research/covid-19-unemployment-immigrants-other-us-workers>

maintained and invested in prior to the pandemic, not as an afterthought during. Partnerships require resources, trust, and communication.<sup>60</sup>

All state agencies reported that a resilient and equitable recovery was their goal.<sup>61</sup> However, because the systems, evaluation measures, goals, and programs have not yet developed specific processes for addressing equity with metrics and strategy, it is difficult for Washington's diverse populations to have equal access to relief and rebuilding opportunities.<sup>62</sup> Integrating equity by nature of the process is a long-term effort.<sup>63</sup> For example, many pandemic-related funds provided by state and federal sources were based on competitive procurements.<sup>64</sup> These competitive processes focused on economic output or made provisions for essential services, neither of which fully captured the need or the capabilities of the creative sector or immigrant communities.<sup>65</sup> The shortfall of these processes left many in both of these groups without financial support.<sup>66</sup>

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<sup>60</sup> Creative Sector and Immigrant-Focused Organization interviews conducted between this July 8, and August 10, 2020

<sup>61</sup> State Agency Roundtables on nontraditional work, September 15 and September 22, 2020. Agencies with representatives in attendance: COM, DCYF, DOR, DSHS ESD, HCA, LNI, WTECB and interviews conducted between September 24-28, 2020

<sup>62</sup> Poverty Reduction Workgroup, "Reducing Poverty & Inequality in Washington State, Coordinating Draft," (January 2020), [https://dismantlepovertyinwa.com/wp-content/uploads/2020/02/2020\\_Jan\\_21\\_PRWG\\_10\\_year\\_plan\\_COORDINATING\\_DRAFT.pdf](https://dismantlepovertyinwa.com/wp-content/uploads/2020/02/2020_Jan_21_PRWG_10_year_plan_COORDINATING_DRAFT.pdf)

<sup>63</sup> Penninx, Rinus, Migration Policy Institute, "Integration: The Role of Communities, Institutions, and the State," (2003), <https://www.migrationpolicy.org/article/integration-role-communities-institutions-and-state>

<sup>64</sup> Creative Sector and Community Based Organization interviews conducted between this data and this date, 2020

<sup>65</sup> Poverty Reduction Workgroup, "Reducing Poverty & Inequality in Washington State, Coordinating Draft," (January 2020), [https://dismantlepovertyinwa.com/wp-content/uploads/2020/02/2020\\_Jan\\_21\\_PRWG\\_10\\_year\\_plan\\_COORDINATING\\_DRAFT.pdf](https://dismantlepovertyinwa.com/wp-content/uploads/2020/02/2020_Jan_21_PRWG_10_year_plan_COORDINATING_DRAFT.pdf)

<sup>66</sup> Creative Sector and Community Based Organization interviews conducted between this data and this date, 2020.

## Recommendation

- Agencies expressed strong interest in on-going interagency collaboration and problem solving around challenges and opportunities to better serve and access nontraditional workers. Interviewees within the creative sector and immigrant communities unanimously expressed a variety of challenges when interacting with agencies. **Establish and resource an interagency workgroup to focus on outreach, data sharing, compliance and increasing service accessibility for nontraditional workers.**

## Appendix A: State and Federal Definitions by Worker Classification<sup>67</sup>

Classification	Agency	Definition
<b>Self Employed</b>		
Self-Employed	IRS DOR	Generally, you are self-employed if any of the following apply: You carry on a trade or business as a sole proprietor or an independent contractor. You are a member of a partnership that carries on a trade or business. You are otherwise in business for yourself (including a part-time business)
	US DOL	Workers who earn income directly from one's own business, trade, or profession rather than as a specified salary or wages from an employer.
	LNI	See: LNI's definition of independent contractors
	ESD	See: ESD's definition of independent contractors.
	BLS	Those persons who work for profit or fees in their own business, profession, trade, or farm. Self-employed typically incorporate their businesses in order to receive traditional benefits of the corporate structure, including limited liability, tax considerations, and enhanced opportunity to raise capital through the sale of stocks and bonds.
Small Business Owners	IRS DOR	Size standards vary by industry, and are generally based on the number of employees or the amount of annual receipts the business has. Generally, small businesses are those with less than 500 employees.
	US DOL	A small business could be defined as business with a maximum of 250 employees or a maximum of 1,500 employees. They are privately owned corporations, partnerships, or sole proprietorships.
	LNI	No Definition
	ESD <sup>1</sup>	Employers determined to have one hundred fifty or fewer employees. Or See: WAC 192-560-010 (1)
	ESD <sup>2</sup>	Employers determined to have one hundred fifty or fewer employees. Or See: RCW 50A.24.010 (2)

<sup>67</sup> ESD<sup>1</sup> - Definitions for ESD Unemployment Insurance Program.  
ESD<sup>2</sup> - Definitions for ESD Paid Family Medical Leave Program.

Classification	Agency	Definition
	BLS	A small business is defined as a firm with fewer than 500 employees in all of the industries or business locations in which the firm operates (all of the firm's establishments combined).
Sole-Proprietorships	IRS	A sole proprietor is someone who owns an unincorporated business by himself or herself. You also are a sole proprietor for income tax purposes if you are an individual and the sole member of a domestic limited liability company (LLC) unless you elect to have the LLC treated as a corporation.
	DOR	A Sole Proprietorship is one individual or married couple in business alone. Sole proprietorships are the most common form of business structure. However, the business owner is personally liable for all debts incurred by the business.
	US DOL	No Definition
	LNI	See: LNI's definition of self-employed.
	ESD	See: ESD's definition of self-employed.
	BLS	See: BLS' definition of self-employed worker.
Sole-Owner LLCs	IRS DOR	The sole member of a domestic limited liability company (LLC) unless you elect to have the LLC treated as a corporation. Generally, for income tax purposes, a single-member LLC is disregarded as an entity separate from its owner and reports its income and deductions on its owner's federal income tax return.
	US DOL	No Definition
	LNI	See: LNI's definition of self-employed.
	ESD	See: ESD's definition of self-employed.
	BLS	See: BLS' definition of self-employed worker.

Classification	Agency	Definition
	BLS	Workers who are identified as independent contractors, independent consultants, or freelance workers, regardless of whether they are self-employed or wage and salary workers. Independent contractors are a subset of contingent workers.
<b>Contingent Workforce</b>		
Independent contractor	IRSDOR	See: IRS Common-Law Test, IRS Right to Control Test, IRS Reasonable Basis Test-or-The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done.
	USDOL	See Economic Realities Test -or- The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done.
	ESD <sup>1</sup>	See: RCW 50.04.140
	ESD <sup>2</sup>	See: RCW 50A.05.010(8)(b)
	LNI	LNI Independent Contractor Test(s) -or- RCW 51.08.181 & 51.08.195
Freelancers	IRS DOR	Freelancers are defined similar to independent contractors or self-employed workers. They control the work that they do for an employer.
	US DOL	These workers perform temporary, flexible jobs and are paid per service provided or task completed. They are not hourly or salaried employees. Workers doing business on a project or freelance basis will typically be classified as independent contractors rather than employees.
	LNI	No Definition
	ESD	See: ESD's definition of independent contractor.
	BLS	See: BLS' definition of independent contractor.

Classification	Agency	Definition
On-Demand Workers	IRS DOR	On-demand work is certain activity you do to earn income, often mediated through a digital platform, such as websites, apps, or online marketplaces. All tax obligations rest with the individual.
	US DOL	See: US DOL's definition of independent contractor.
	LNI	No Definition
	ESD	No Definition
	BLS	Workers who perform short-term jobs provided through online labor platforms.
Gig-Workers	IRS DOR	Gig work is certain activity you do to earn income, often mediated through a digital platform, such as websites, apps, or online marketplaces. All tax obligations rest with the individual.
	US DOL	See: US DOL's definition of independent contractor.
	LNI	No Definition
	ESD	No Definition
	BLS	The BLS does not have a definition for this term, and there is no generally accepted definition among researchers. Many definitions of gig workers include people in temporary jobs, independent contractors, on-call workers, and day laborers who find work through electronically mediated sources.
Casual Laborer	IRS DOR	Work that does not promote or advance the business of the employer. "Casual Labor" has no real employment tax significance. Work that is performed is subject to common-law definition of an employee or independent contractor to determine tax liability.
	US DOL	Employment may be considered casual in character if the person is employed only occasionally, at comparatively long and irregular intervals, for limited and temporary purposes, or if the hiring in each instance is a matter of special engagement
	LNI	Subject to independent contractor tests to determine relationship between worker and employer; casual labor is intermittent and/or sporadic in duration.
	ESD	See: RCW 50.04.270 "...Labor not in the course of the employer's trade or business (labor which does not promote or advance the trade or business of the employer)."
	BLS	No Definition



Classification	Agency	Definition
Day Laborers	IRS DOR	"Day Labor" has no real employment tax significance. Work that is performed is subject to common-law definition of an employee or independent contractor to determine which party has tax liability.
	US DOL	FLSA covered employers must pay day laborers at least the applicable minimum wage for all hours worked regardless of whether the worker is paid by the hour, the day, or at a piece rate.
	LNI	Considered an employee, even though duration of employment may not be set or defined schedule.
	ESD	No Definition
	BLS	A worker who finds work by waiting at a place where an employer picks up people to do daily jobs.
Agricultural Migrant Worker	USDOL IRS DOR LNI	The H-2A temporary agricultural program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature.
	BLS	The H-2A program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary agricultural jobs.
	ESD <sup>1</sup>	Foreign workers who are hired through the Temporary Agricultural Foreign Labor Certification Program, or the H-2A program
	ESD <sup>2</sup>	No Definition
On-Call Workers	IRS DOR ESD <sup>1</sup> LNI	No Definition
	ESD <sup>2</sup>	For Paid Family and Medical Leave Program See: WAC 192-540-040(12)(b)
	BLS	Workers who are called to work only as needed, although they can be scheduled to work for several days or weeks in a row.

Classification	Agency	Definition
Temporary Help Agency Workers	IRS DOR	When working through a staffing agency, [a worker is] considered an employee of the staffing agency. The business [an individual is] working for is considered a client of the staffing agency, and [the worker is] providing services to the client.
	BLS	Workers who are paid by a temporary help agency, whether or not their job is temporary
	ESD <sup>2</sup> LNI	No Definition
	ESD <sup>1</sup>	See: RCW 50.04.245(4)(a) - "Temporary staffing services company"
	USDOL	Same as US DOL definition of employee under the FLSA.
Workers Provided by Contract Firms	IRS DOR	When working through a contract agency, [a worker is] considered an employee of the contract agency. The business [an individual is] working for is considered a client of the contract agency, and [the worker is] providing services to the client.
	BLS	Workers who are employed by a company that provides them or their services to others under contract, are usually assigned to only one customer, and usually work at the customer's worksite.
	USDOL	Same as US DOL definition of employee under the FLSA.
	ESD <sup>1</sup>	See: RCW 50.04.245(4)(b) - "Services Referral Agency"
	LNI ESD <sup>2</sup>	No Definition
Seasonal Workers	IRS DOR	"Seasonal Work" has no real employment tax significance. Work that is performed is subject to common-law definition of an employee or independent contractor to determine tax liability.
	US DOL	Workers who perform work that is dependent on the time of year for specific business operations or availability of work.
	LNI	No Definition
	ESD	No Definition
	BLS	A worker who is filling a seasonal job that is only available during certain times of the year.
<b>Employees</b>		

Classification	Agency	Definition
Employee	Common Law DOR IRS	Under common-law rules, anyone who performs services for you is your employee if you can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed
	USDOL	[Determined by] the underlying economic reality of the situation and whether the individual is economically dependent on the employer. In general, an employee...is one who "follows the usual path of an employee" and is dependent on the business that [they] serve.
	ESD <sup>1</sup>	See: RCW 50.04.100
	ESD <sup>2</sup>	For Paid Family and Medical Leave Program See: RCW 50A.05.010(5)
	LNI	Common-law definition applies. See: RCW 51.08.180 & 51.08.185
Wage and Salary Earner	IRS DOR USDOL ESD <sup>1</sup> ESD <sup>2</sup> LNI	No Definition
	BLS	Workers who receive wages, salaries, commissions, tips, payment in kind, or piece rates. The group includes employees in both the private and public sectors. Can be used as a surrogate for this type of workforce arrangement
Commission Sales Workers	IRS	An employee is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time. This usually indicates that a worker is an employee, even when the wage or salary is supplemented by a commission.
	US DOL	Commissions are payments for hours worked and must be included in the regular rate. This is true regardless of whether the commission is the sole source of the employee's compensation or is paid in addition to a guaranteed salary or hourly rate, or on some other basis...

Classification	Agency	Definition
	LNI	See: LNI's definition of employees.
	ESD	See: ESD's definition of employees.
	BLS	Those who work on commission, usually earning a base salary and a percentage of total sales that they make.
<b>Other Definitions</b>		
Foreign Born Workers	IRSDOR	Resident aliens; nonresident aliens; dual status aliens; foreign students; and other categories, including athletes and entertainers, agricultural workers, au pairs, dual status aliens, and expatriates.
	BLS	The foreign born include legally-admitted immigrants, refugees, temporary residents such as students and temporary workers, and undocumented immigrants.
	USDOL	The Immigration and Nationality Act (INA) establishes...nonimmigrant classification..."having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country."
	ESD <sup>1</sup>	See: RCW 50.04.205 - "certain nonresident aliens" RCW 50.20.098 - "undocumented aliens"
	LNI	Nonimmigrant worker - Those who have authorization to work in the U.S. through petition for visa status by the U.S. Citizenship and Immigration Service.  Undocumented Worker - Those who do not have authorization to work in the U.S. through petition for visa status by the U.S. Citizenship and Immigration Service.
	ESD <sup>2</sup>	No Definition

# Appendix B: Summary of Agency Contractors' Tests

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## Personal Labor Test (White Test) (LNI)

### Test Elements

A-1. Do they hire crew of their own or are they bringing other employees?

A-2. Or, are they bringing heavy or costly specialized equipment?

## Independent Contractor 6 & 7-Part Test (LNI)

### Test Elements

B-1. Are they free from your supervision, direction or control?

B-2. Is the individual's business different and separate from your own?

B-2(a). Is the individual's service "outside the usual course of business," or in other words, does the contractor do something different from what you do?

B-2(b). Is the individual's service being performed "outside of all of the places of business," or in other words, does the contractor perform the service away from where you perform your services?

B-3. Does the individual have an established independent business that existed before you brought them on – OR – does the individual have a principal place of business that qualifies for an IRS business deduction?

B-3(a). Do you have evidence to demonstrate that the individual has an established business?

B-3(b). Does the individual have a principal place of business that qualifies for an IRS business deduction? Do you have evidence to demonstrate it?

B-4. Is the individual responsible for filing a schedule of expenses with the IRS, such as would be part of a business tax return?

B-5. Does the individual have all required registrations and licenses for their business?

B-6. Does the individual maintain his/her own set of books and records that reflect all income and expenses of the business?

B-7. This question is for construction contractors only: Is the individual a properly registered contractor?

## Independent Contractor/All Other Industries Test (ESD)

### Test Elements

1. The individual is free from direction and control over the performance of the service; and

2. The service is either performed:

a. Outside of the usual course of business for which the service is performed, or

b. Outside of all the places of business of the enterprise for which the service is performed; and

3. The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in service contract.

## Independent Contractor (ESD)

### Test Elements

1. The individual is free from direction and control over the performance of the service; and
2. The service is either performed:
  - 2.a. Outside of the usual course of business for which the service is performed, or
  - 2.b. Outside of all the places of business of the enterprise for which the service is performed; or
  - 2.c. The individual has a principal place of business and is responsible for the costs; and
3. The individual:
  - 3.a. Is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service contract, or
  - 3.b. Has a principal place of business that is eligible for a federal income tax business deduction; and
4. On the effective date of the contract of service, the individual is responsible for filing a schedule of expenses with the Internal Revenue Service; and
5. On the effective date of the contract or within a reasonable period after the effective date of the contract, the individual has an:
  - 5.a. Active account with the Department of Revenue,
  - 5.b. Active account with any other state agency, and
  - 5.c. A Unified Business Identifier (UBI) number and
6. On the effective date of contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business that the individual is conducting; and

## Independent Contractor/Construction Test (ESD)

### Test Elements

1. The individual is free from direction and control over the performance of the service; and
2. The service is either performed:
  - 2.a. Outside of the usual course of business for which the service is performed, or
  - 2.b. Outside of all the places of business of the enterprise for which the service is performed; or
  - 2.c. The individual has a principal place of business and is responsible for the costs; and
3. The individual:
  - 3.a. Is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service contract, or
  - 3.b. Has a principal place of business that is eligible for a federal income tax business deduction; and
4. On the effective date of the contract of service, the individual is responsible for filing a schedule of expenses with the Internal Revenue Service; and
5. On the effective date of the contract or within a reasonable period after the effective date of the contract, the individual has an:

- 5.a. Active account with the Department of Revenue,
  - 5.b. Active account with any other state agency, and
  - 5.c. A Unified Business Identifier (UBI) number and
6. On the effective date of contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business that the individual is conducting; and
7. On the effective date of the contract, the individual has a valid contractor registration under RCW 18.27 or an electrical contractor license under RCW 19.28 if the work requires a registration or license.

## Economic Realities Test (US Dept. of Labor, Fair Labor Standards Act (FLSA))

### Test Elements

Is the Work an Integral Part of the Employer's Business?

Does the Worker's Managerial Skill Affect the Worker's Opportunity for Profit or Loss?

How Does the Worker's Relative Investment Compare to the Employer's Investment?

Does the Work Performed Require Special Skill and Initiative?

Is the Relationship between the Worker and the Employer Permanent or Indefinite?

What are the nature and degree of control the company exercises over the worker?

## Common Law Rules (Three Categories Test (IRS))

### Test Elements

Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?

Financial: Are the business aspects of the worker's job controlled by the payer? (These include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)

Type of Relationship: Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

## IRS Common Law Definition (Right to Control Test)

### Test Elements

Amount of training. Requesting workers to undergo company-provided training suggests an employment relationship since the company is directing the methods by which work is accomplished.

Degree of business integration. Workers whose services are integrated into business operations or significantly affect business success are likely to be considered employees.

Extent of personal services. Companies that insist on a particular person performing the work assert a degree of control that suggests an employment relationship. In contrast, independent contractors typically are free to assign work to anyone.

Control of assistants. If a company hires, supervises, and pays a worker's assistants, this control indicates a possible employment relationship. If the worker retains control over hiring, supervising, and paying helpers, this arrangement suggests an independent contractor relationship.

Continuity of relationship. A continuous relationship between a company and a worker indicates a possible employment relationship. However, an independent 1 contractor arrangement can involve an ongoing relationship for multiple, sequential projects.

Flexibility of schedule. People whose hours or days of work are dictated by a company are apt to qualify as its employees.

Demands for full-time work. Full-time work gives a company control over most of a person's time, which supports a finding of an employment relationship.

Need for on-site services. Requiring someone to work on company premises— particularly if the work can be performed elsewhere—indicates a possible employment relationship.

Sequence of work. If a company requires work to be performed in specific order or sequence, this control suggests an employment relationship.

Requirements for reports. If a worker regularly must provide written or oral reports on the status of a project, this arrangement indicates a possible employment relationship.

Method of payment. Hourly, weekly, or monthly pay schedules are characteristic of employment relationships, unless the payments simply are a convenient way of distributing a lump-sum fee. Payment on commission or project completion is more characteristic of independent contractor relationships.

Payment of business or travel expenses. Independent contractors typically bear the cost of travel or business expenses, and most contractors set their fees high enough to cover these costs. Direct reimbursement of travel and other business costs by a company suggests an employment relationship.

Provision of tools and materials. Workers who perform most of their work using company-provided equipment, tools, and materials are more likely to be considered employees. Work largely done using independently obtained supplies or tools supports an independent contractor finding.

Investment in facilities. Independent contractors typically invest in and maintain their own work facilities. In contrast, most employees rely on their employer to provide work facilities.

Realization of profit or loss. Workers who receive predetermined earnings and have little chance to realize significant profit or loss through their work generally are employees.

## IRS Reasonable Basis Test

### Test Elements

A court ruling in favor of treating workers in similar circumstances as non-employees; a ruling by the IRS (usually a Revenue Ruling) stating that similar workers are not employees subject to employment taxes;

An IRS Technical Advice Memorandum or Private Letter Ruling issued to your company, indicating that the particular worker isn't an employee;

A past IRS payroll audit that didn't find workers in similar positions at your company to be employees;

A longstanding, widely recognized practice in your industry of treating similar workers as independent contractors.

## Employment ABC Test (Various States, Legal Precedent)

### Test Elements

A. Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact.

B. Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed.



C. Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service.

## Appendix C: Data Collection Processes

Among the most fundamental documents used to provide social safety net benefits are workers' individual tax returns. Agencies rely on these tax documents to identify if a worker is within the threshold for benefits eligibility. Tax returns help illustrate the relationship of the worker with their payer or employer, such as through paystubs, W-2s, 1099-MISCs, 1040-SRs, and 1040-C returns. The type of tax document also shows if a person pays all state and federal taxes themselves or if the employer partially pays state and federal taxes.

### State agencies use tax returns in the following ways:

Agency	Tax Report Document Use
HCA	Uses tax returns and verifiable income statements to determine Apple Health eligibility
DCYF	Uses tax returns and verifiable income statements to determine childcare subsidy eligibility
ESD	<ul style="list-style-type: none"><li>• Unemployment insurance from ESD requires quarterly reports of gross wages from employers to help determine if a worker is eligible for benefits.</li><li>• If an employer does not file quarterly reports, ESD will need verifiable income statements from the worker to determine benefit eligibility.</li><li>• Paid Medical and Family Leave requires quarterly premium payments that depend on gross annual wages to maintain benefits.</li></ul>
LNI	Workers' compensation requires premium payments that depend on risk assessment by industry to maintain benefits eligibility.
SSA	Requires Federal Insurance Contributions Act (FICA) tax payments into the Administration's credits system for a certain amount of a person's work history

A worker's relationship to their employer, and which party is responsible for employment-related taxes, are reference points that could identify nontraditional workers to determine benefits eligibility. However, agency representatives observed that Washington data systems do not capture the information needed to determine whether a worker is in a nontraditional work arrangement and receives social safety net benefits. At best, the state's administrative data can describe only the participation of self-employed workers within the benefit systems. This is due to:

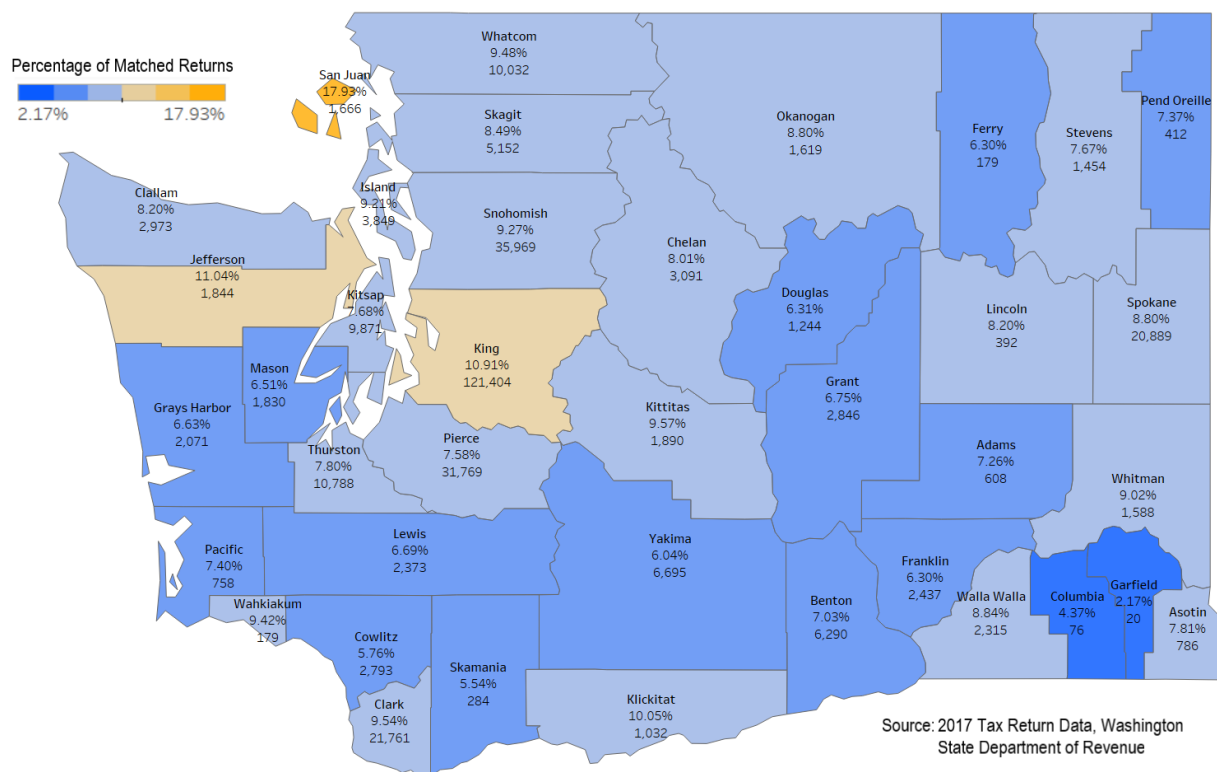
- Program requirements established through federal guidelines
- Limited agency resources to broaden information gathering
- Data-privacy and security controls which differ between state and federal agencies
- Limitations on data-sharing agreements
- Outreach methods that do not identify members of nontraditional workforce arrangements
- A combination of these issues.

The confluence of these factors restricts the processes that agencies can use to identify those who has limited access to state benefits, as well as the best way deliver benefits to them. If agencies that had access

to data that could identify nontraditional workers were given legislative authority to record and track nontraditional workers, it could assist in benefit outreach and benefit delivery methods.

As it currently stands, one of the only ways to identify workers in nontraditional workforce arrangements within the state's administrative data is by looking at the tax returns associated with nontraditional work. For the purposes of this report, DOR's Research and Fiscal Analysis Division provided tabulation of 1099-MISCs and 1040 Schedule Cs by matching the nonemployee compensation amount from the 1099-MISC data and corresponding Social Security number, to the Form 1040 dataset. These returns were from the 2017 tax year and stratified by county. DOR's data was used to assess where matched filers were located and their prevalence to all individual returns within each county, as displayed in the following map. The 2019 Independent Contractor Study determined that in May 2017, a lower-bound estimate of independent contractors in the state in May 2017 was 320,030, or 9.1%, of Washington's workforce.<sup>68</sup> Calculating the prevalence of nontraditional workers with tax returns can create a point-in-time approximation, not a complete picture of the nontraditional workforce. Agencies, and their access to applicable data, could create a more complete illustration if they were directed to capture pertinent data when determining benefit eligibility.

To further explore state tax data, should the Legislature request deeper analysis, this report recommends that DOR be funded to conduct the research, as there are legal state and federal limitations as to what data can be shared with other state agencies and for research purposes.



Incorporating the state's recording instruments into strategies to assist nontraditional workers has its own set of challenges. While tax documents can tell agencies specific information about a worker, agencies contacted during the report's roundtable meetings discussed and acknowledged that nontraditional workers struggle to

<sup>68</sup> Department of Commerce, "Independent Contractor Study," (2019), <https://www.commerce.wa.gov/wp-content/uploads/2019/07/Leg-Report-Independent-Contractor-Study-2019.pdf>

provide these documents, at the point of benefits eligibility determination. Jason Ramynke from DCYF stated that, "documentation is our biggest challenge in providing services," to nontraditional workers. Representatives from the HCA expressed similar struggles when providing services for Apple Health. Tax returns could provide an approximate number of workers in nontraditional roles as well as who is using state services, but additional data capturing methods are necessary to get the full picture. A collaborative interagency approach could determine what works well, what does not, and how to combine effective recording methods to monitor the conditions of nontraditional workers accessing state social safety net benefits.