
ERICSA
2022
Jazzin' It Up
for Children
and Families
59TH ANNUAL
TRAINING CONFERENCE
& EXPOSITION
New Orleans
May 22 – 26, 2022

Preserving the Ability to Pay with Appropriate Support Orders – Lessons from Preservation Hall

Marching Our Way to Preservation Hall

- Focusing on individuals where we've already determined ability (ability to pay/earn)
- Determining income from tax forms
- Figuring self-employed income
- Understanding the Gig/Non-W2 economy: what it is and what to look for
- What if you find nothing? Imputing income and lifestyle analysis
- Economic and other considerations

Overview of Tax Schedules and Forms

Most people: if filing, file 1040

- Claim the standard deduction since 2017 tax law changes

Common Schedules/Attachments

- W2
- CTC – Form 8812 – Additional Child Tax Credit
- CDCC – Form 2441
- Schedule 1
- Schedule C
- 1099's – there's more than one type

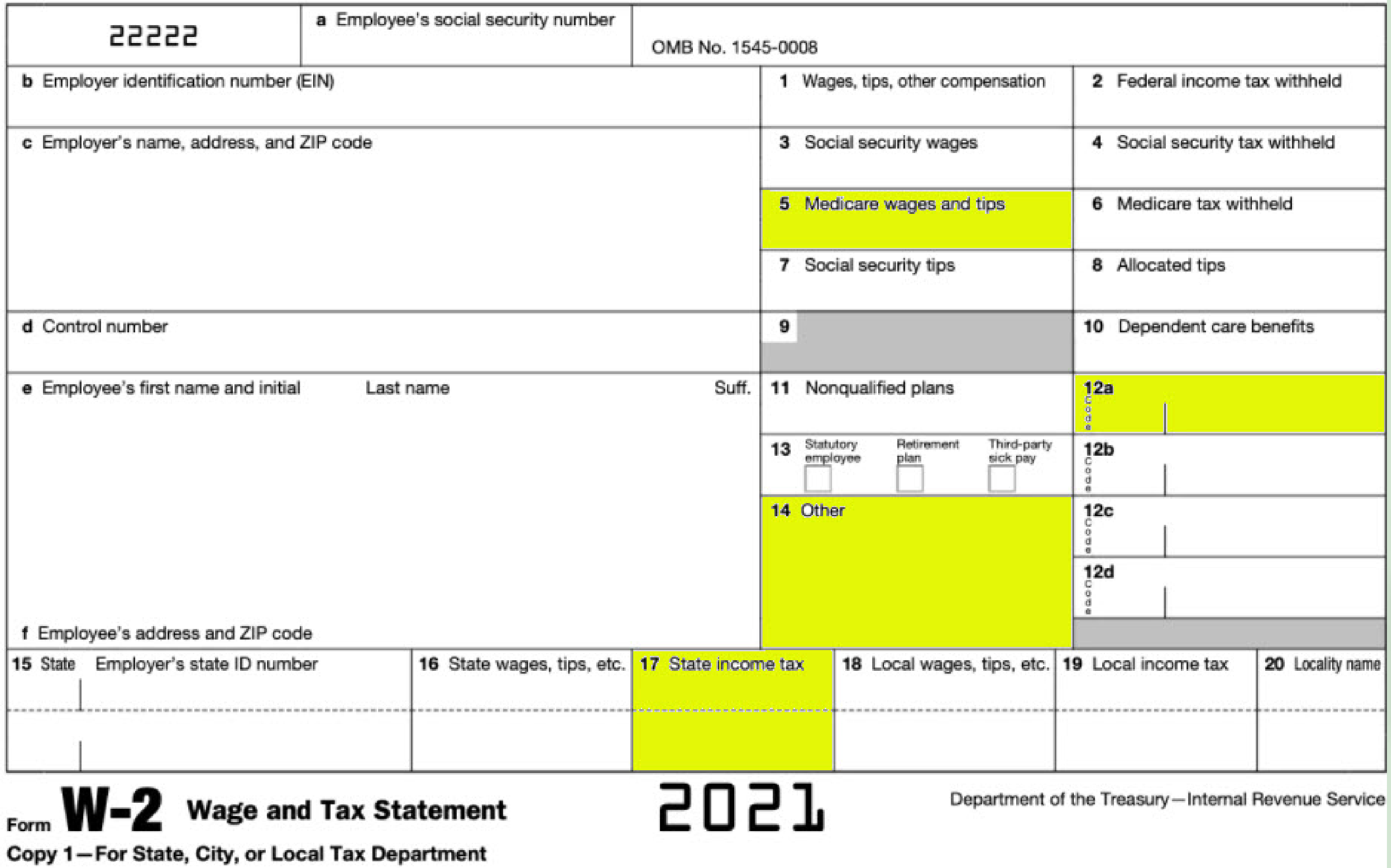
What to look for in self-employed/rental

- Lots of places to hide income on these forms.
- An IRS deduction does not always equal a deduction of available income for the purpose of calculating child support.

W2 Income Information

Key Items

- Box 5
- Box 12
  - DD
  - W
  - D
- Box 14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a Employee's social security number

OMB No. 1545-0008

b Employer identification number (EIN)

1 Wages, tips, other compensation

2 Federal income tax withheld

c Employer's name, address, and ZIP code

3 Social security wages

4 Social security tax withheld

5 Medicare wages and tips

6 Medicare tax withheld

7 Social security tips

8 Allocated tips

d Control number

9

10 Dependent care benefits

e Employee's first name and initial Last name Suff.

11 Nonqualified plans

12a Code

13 Statutory employee Retirement plan Third-party sick pay

12b Code

14 Other

12c Code

12d Code

f Employee's address and ZIP code

15 State Employer's state ID number

16 State wages, tips, etc.

17 State income tax

18 Local wages, tips, etc.

19 Local income tax

20 Locality name

Form **W-2** Wage and Tax Statement

2021

Department of the Treasury—Internal Revenue Service

Copy 1—For State, City, or Local Tax Department

How will I know if there is any business income?

- *Line 8 of 1040
  – Schedule 1

SCHEDULE 1 (Form 1040) Department of the Treasury Internal Revenue Service

Additional Income and Adjustments to Income

► Attach to Form 1040, 1040-SR, or 1040-NR.
► Go to www.irs.gov/Form1040 for instructions and the latest information.

OMB No. 1 | 202 | Attachment Sequence

Name(s) shown on Form 1040, 1040-SR, or 1040-NR | **Your social security**

Part I Additional Income

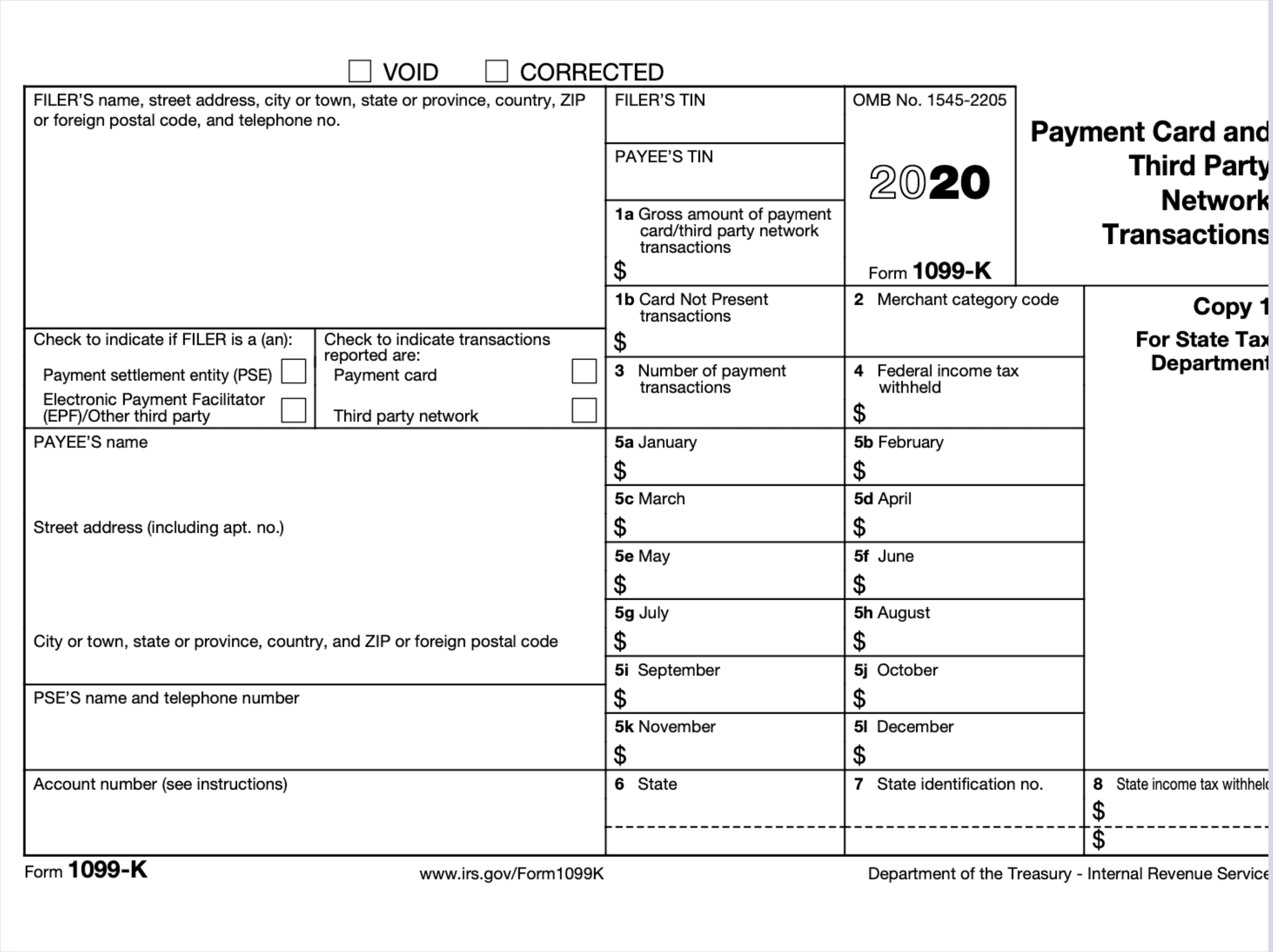
1	Taxable refunds, credits, or offsets of state and local income taxes		1
2a	Alimony received		2a
b	Date of original divorce or separation agreement (see instructions) ►		
3	Business income or (loss). Attach Schedule C		3
4	Other gains or (losses). Attach Form 4797		4
5	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E		5
6	Farm income or (loss). Attach Schedule F		6
7	Unemployment compensation		7
8	Other income:		
a	Net operating loss	8a ( )	
b	Gambling income	8b	
c	Cancellation of debt	8c	
d	Foreign earned income exclusion from Form 2555	8d ( )	
e	Taxable Health Savings Account distribution	8e	
f	Alaska Permanent Fund dividends	8f	
g	Jury duty pay	8g	
h	Prizes and awards	8h	
i	Activity not engaged in for profit income	8i	
j	Stock options	8j	
k	Income from the rental of personal property if you engaged in the rental for profit but were not in the business of renting such property	8k	
l	Olympic and Paralympic medals and USOC prize money (see instructions)	8l	
m	Section 951(a) inclusion (see instructions)	8m	
n	Section 951A(a) inclusion (see instructions)	8n	
o	Section 461(l) excess business loss adjustment	8o	
p	Taxable distributions from an ABLE account (see instructions)	8p	
z	Other income. List type and amount ►	8z	
9	Total other income. Add lines 8a through 8z		9
10	Combine lines 1 through 7 and 9. Enter here and on Form 1040, 1040-SR, or 1040-NR, line 8		10

Schedule C, E, F

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 71479F Schedule 1 (Form

So many 1099s!

- Two dozen types of 1099
- Most Common
  - 1099-MISC
  - 1099 - NEC
  - 1099-G
  - 1099-K
  - 1099- R



☐ VOID ☐ CORRECTED

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.

FILER'S TIN

PAYEE'S TIN

OMB No. 1545-2205

2020

Form 1099-K

Payment Card and Third Party Network Transactions

1a Gross amount of payment card/third party network transactions
$

1b Card Not Present transactions
$

2 Merchant category code

Copy 1
For State Tax Department

Check to indicate if FILER is a (an):
Payment settlement entity (PSE) ☐
Electronic Payment Facilitator (EPF)/Other third party ☐

Check to indicate transactions reported are:
Payment card ☐
Third party network ☐

3 Number of payment transactions

4 Federal income tax withheld
$

PAYEE'S name

Street address (including apt. no.)

City or town, state or province, country, and ZIP or foreign postal code

PSE'S name and telephone number

Account number (see instructions)

5a January $	5b February $
5c March $	5d April $
5e May $	5f June $
5g July $	5h August $
5i September $	5j October $
5k November $	5l December $

6 State	7 State identification no.	8 State income tax withheld
		$
		$

Form 1099-K www.irs.gov/Form1099K Department of the Treasury - Internal Revenue Service

How self-employment income differs from employer income

- Allowable deductions from income
- Self-Employed persons pay SE tax
  - For 2022 SE FICA rate is 15.3% on the first $147,000 of net income plus 0.9% of net in excess of $200,000 single or $250,000 MFJ
- Due to the increased taxes paid there is a difference in the calculation of child support.

Example

- Louie and his wife, Nola, have one child together. Louie plays his

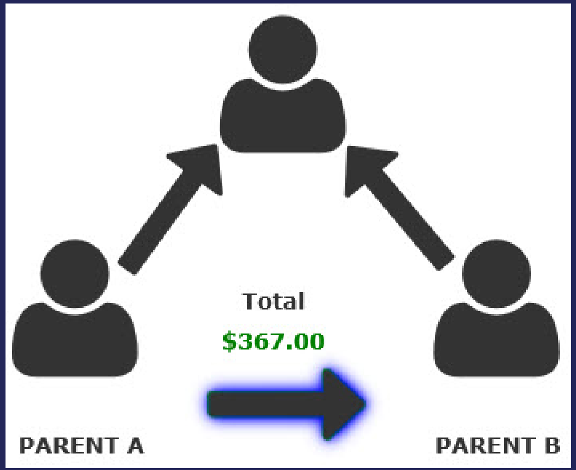
trumpet for a living, earning approximately $2,088/mo. His wife works for an off shore wind company earning exactly the same monthly.

- Louie and Nola eventually split due to their given professions pulling both in different directions.
- As a part of their dissolution, child support is set for Louie to pay Nola.

How does self-employed vs. having an employer impact support?

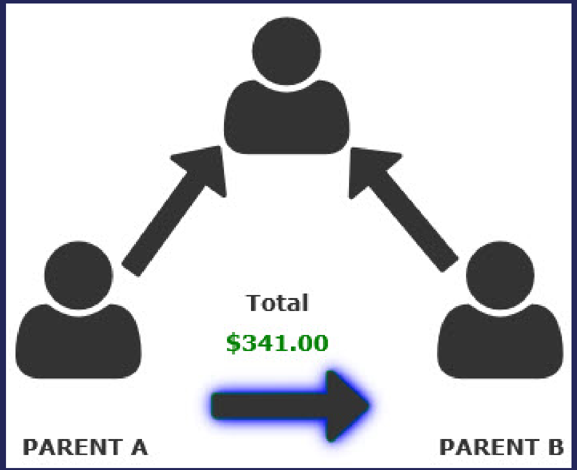
Employer Income VS Self Employed Income

EMPLOYER WAGES



	PARENT A
Total Monthly Gross Income	$2,088.00
Filing Status	Single
Tax Exemptions	1
Child Tax Credit Children Claimed Every Year	
Child Tax Credit Children Claimed Alternating Years	
FICA Tax	$159.73
Federal Tax	$103.94
State Tax	$71.92

SELF EMPLOYED WAGES



	PARENT A
Total Monthly Gross Income	$2,088.00
Filing Status	Single
Tax Exemptions	1
Child Tax Credit Children Claimed Every Year	
Child Tax Credit Children Claimed Alternating Years	
FICA Tax	$295.03
Federal Tax	$103.94
State Tax	$71.92

- Both in Ohio and Michigan the outcome due to the amount paid in FICA tax would result in the self-employed payor having a lower child support order as compared to a payor with an employer.

Imputation Terminology

- **Actual Income =** Hidden, unreported, or underreported income.
  - Determining a value for income that someone earns but fails to accurately report or hides is not imputation.
  - Underground Economy
  - Cash, Trade, Perks
  - Gifts, Lifestyle, Occupational Wage Estimates.

- ***Potential Income =*** unearned or under-earned, but capacity (ability) exists.

- *Imputation factors only apply when imputing income.*

When To Impute

We know we can impute when information is not provided

- Does this mean we have to?
- Does it mean we don’t have to consider anything else?

What needs to be shown?

- Do we have to prove ability?
- Is it enough to screen out inability?
- What about the amount and changes to minimum wage?

https://www.bls.gov/opub/reports/minimum-wage/2020/home.htm

When to Impute

- No direct documentation
  - From parties, from documents, from system
- Reported underemployment
  - Bring up to a full level of employment, as appropriate in the case

STEPS TO IMPUTE POTENTIAL INCOME

Use this infographic to explain the step-by-step procedure of an idea or a concept.

STEP 1. IDENTIFY THAT THE INDIVIDUAL IS AT LEAST ONE OF:

- Voluntarily Unemployed
- Voluntarily Underemployed
- Has an unexercised ability to earn

STEP 2. APPLY THE FACTS TO THE MCSF FACTORS

Analyze all applicable factors from the MCSF 2.01(G)

STEP 3. DETERMINE THE AMOUNT OF INCOME

Use system, parties, case file, social media, online resources (e.g., Labor Statistics), and any other relevant source to assign a value of income.

STEP 4. DOCUMENT THE FINDINGS AND APPLICATION OF THE FACTORS

- the amount the parent could earn if not waived or voluntarily reduced and
- that the parent has an actual ability and likelihood of earning.

REMINDER:

- Imputation is *individual* specific and should be narrowly tailored to their history and life experiences
- When imputing, apply MCSF 2.01(G)

STEPS TO FIGURE AMOUNT OF ACTUAL INCOME

STEP 1. IDENTIFY THAT THE INDIVIDUAL HAS CASHFLOW

Determine that the individual has not reported income, but has actual hidden income (cashflow).

STEP 2. DETERMINE THE AMOUNT OF INCOME

Use system, party, case file, social media, online resources (e.g., Labor Statistics), and any other relevant source to assign a value of income.

STEP 3. DOCUMENT THE FINDINGS

Use system, parties, case file, social media, online resources (e.g., Labor Statistics), and any other relevant source to assign a value of income.

REMINDER:

- Determining the appropriate income amount will be similar in valuing actual income and imputing potential income.
- It is important to record and document what was used and why to clearly explain to the parties and the court and to assist with future case management.

Example

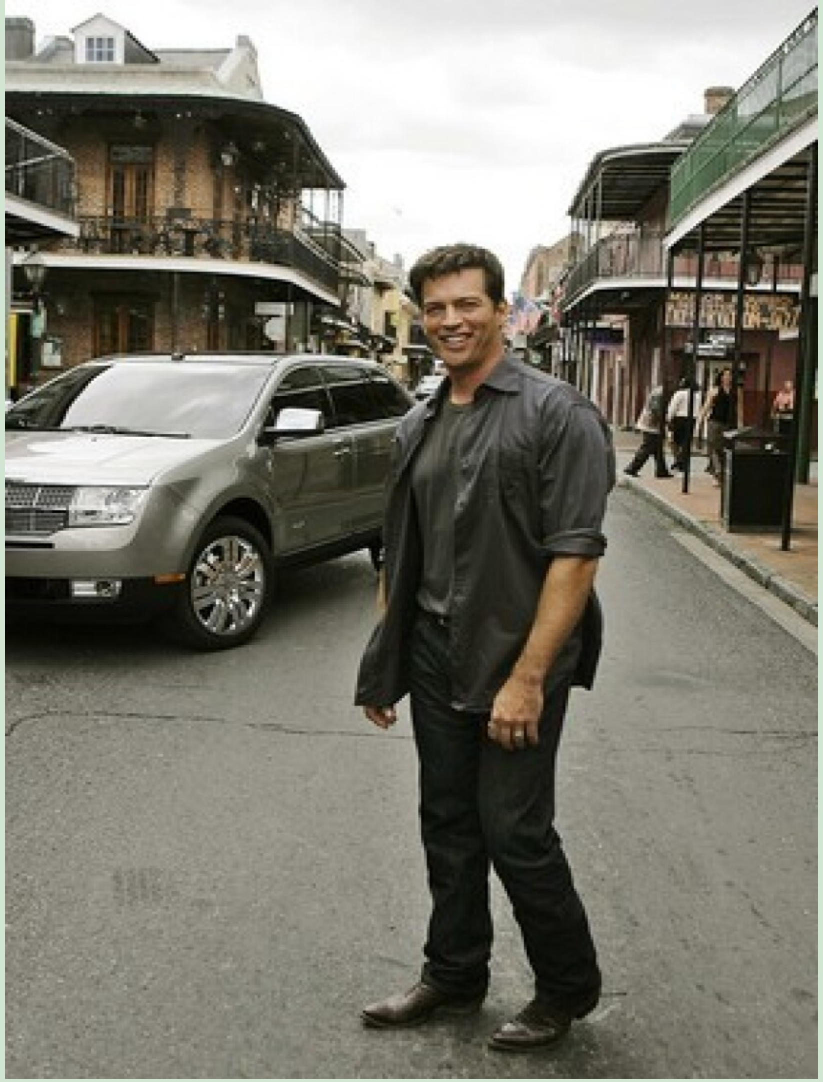
- Hailing from New Orleans, Reese Witherspoon, married her childhood sweetheart, Mack. They had two children together. Mack has worked as an electrician and general handyman. Most of his jobs are picked up online or through word of mouth. No documentation was provided in the support review process, and there is no Quarterly Wage data. It has been one year since the prior order was entered (this review is due to a change in Reese's income). Payments were consistently made (voluntarily, not through a wage withholding) until about 7 months ago.

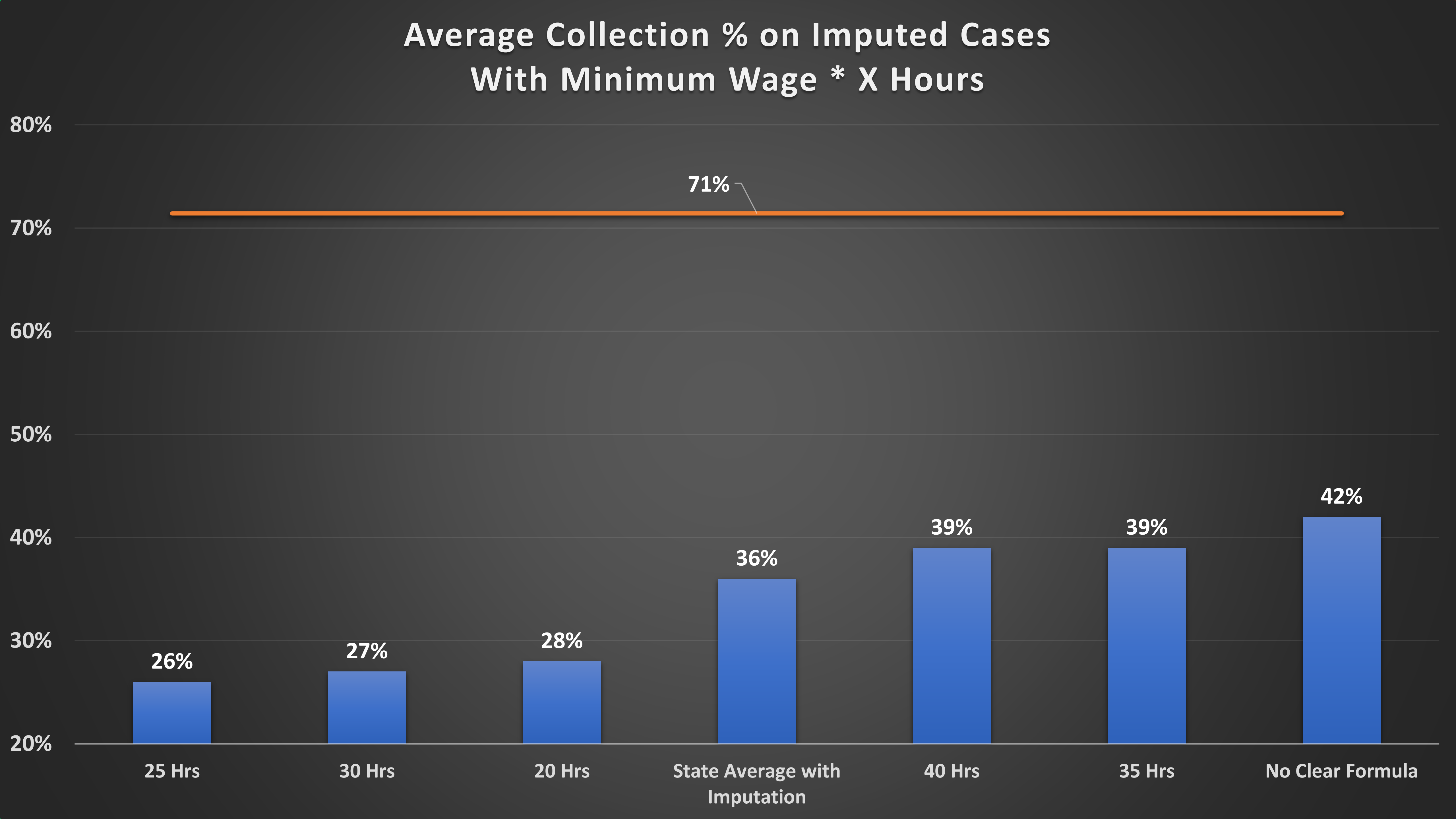
- Where do you look? What do you look for?

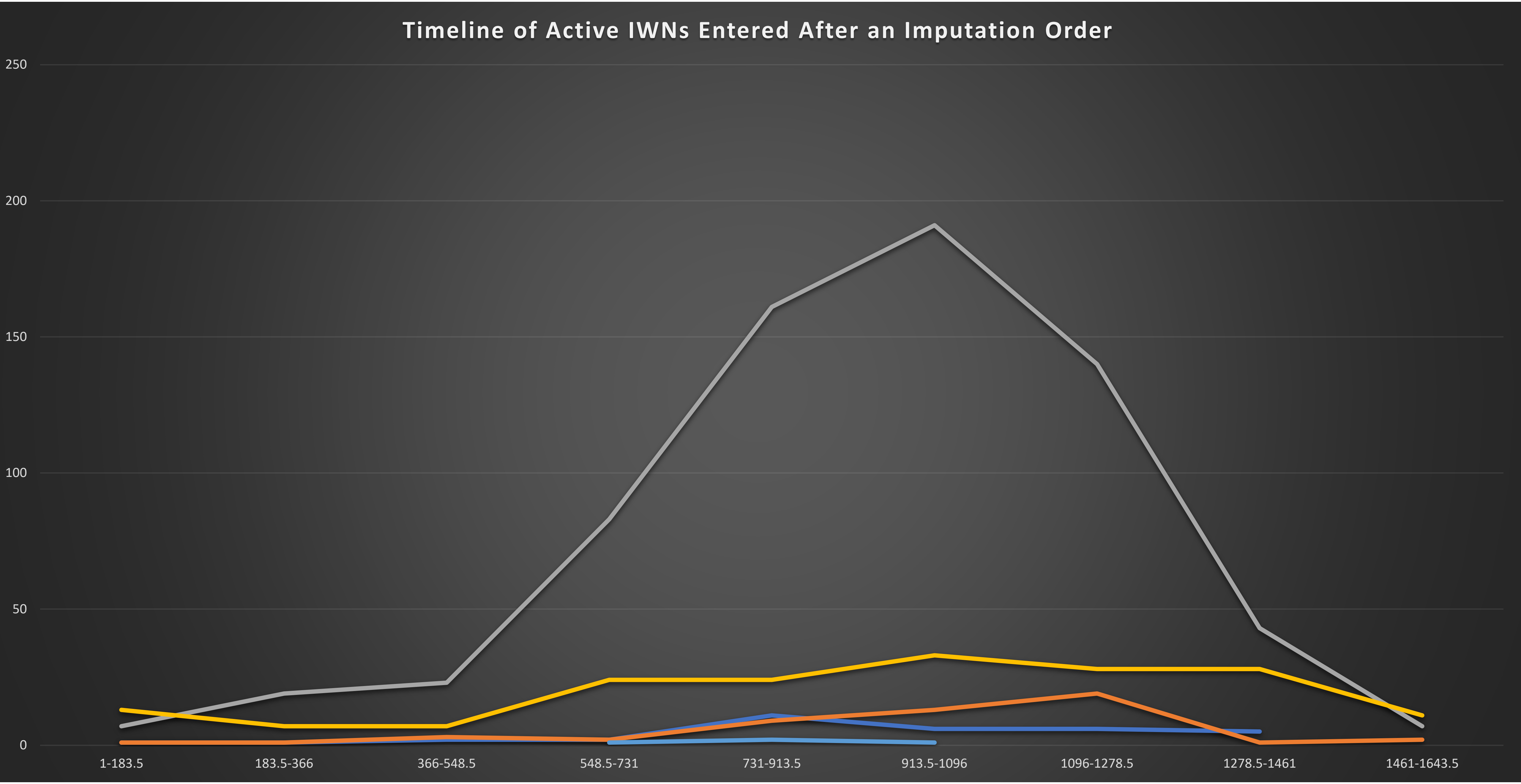
Example

- Harry Connick, Jr. had a short-lived romance that resulted in a baby. Harry ended up with custody. The mom has worked as a ride-share driver and grocery deliverer. No documentation has been provided, but Harry reported that she picks up rides and deliveries to support herself. No data is found in Quarterly Wage or MILR. Mom had previously been employed as a school teacher until the Pandemic. There is a record of Unemployment, but the withholding order has terminated. However, mom continues to make payments at or close to 80% of the current support.

- Where do you look? What do you look for?




Average Collection % on Imputed Cases
With Minimum Wage * X Hours
80%
70%
60%
50%
40%
30%
20%
71%
26%
27%
28%
36%
39%
39%
42%
25 Hrs
30 Hrs
20 Hrs
State Average with Imputation
40 Hrs
35 Hrs
No Clear Formula



Timeline of Active IWNs Entered After an Imputation Order
250
200
150
100
50
0
1-183.5
183.5-366
366-548.5
548.5-731
731-913.5
913.5-1096
1096-1278.5
1278.5-1461
1461-1643.5

Income: Self-Employed and "Gig" Economy

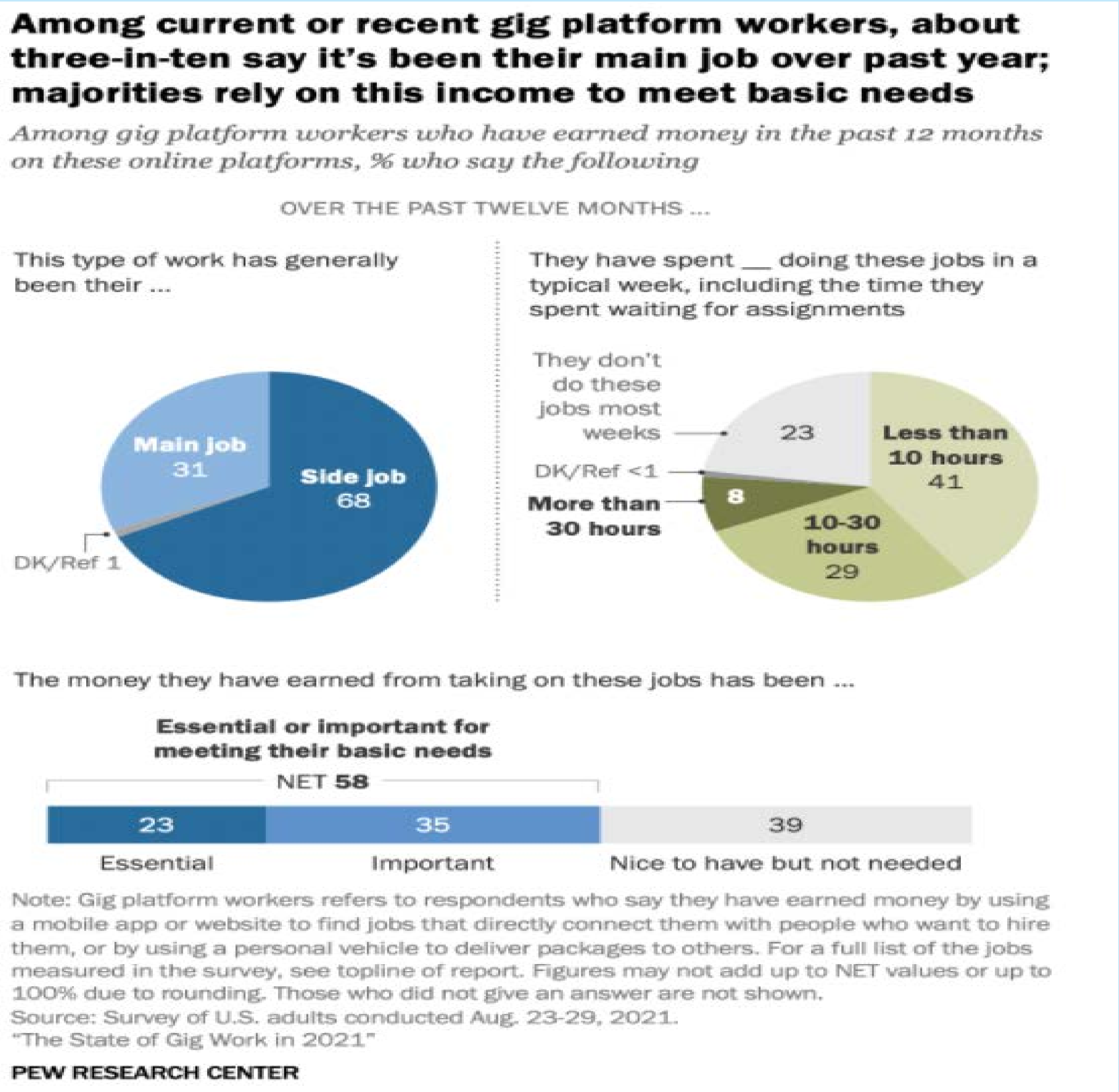
What is the Gig Economy?

- Definition: prevalence of short-term contracts or freelance work as opposed to permanent jobs.
  - Used more as cash economy
  - Secondary jobs
  - Not held long, or bounce around

[Independent Contractors and Nontraditional Workers: Implications for the Child Support Program, by Asaph Glosser and Justin Germain, March 2019.]

Changes because of the pandemic

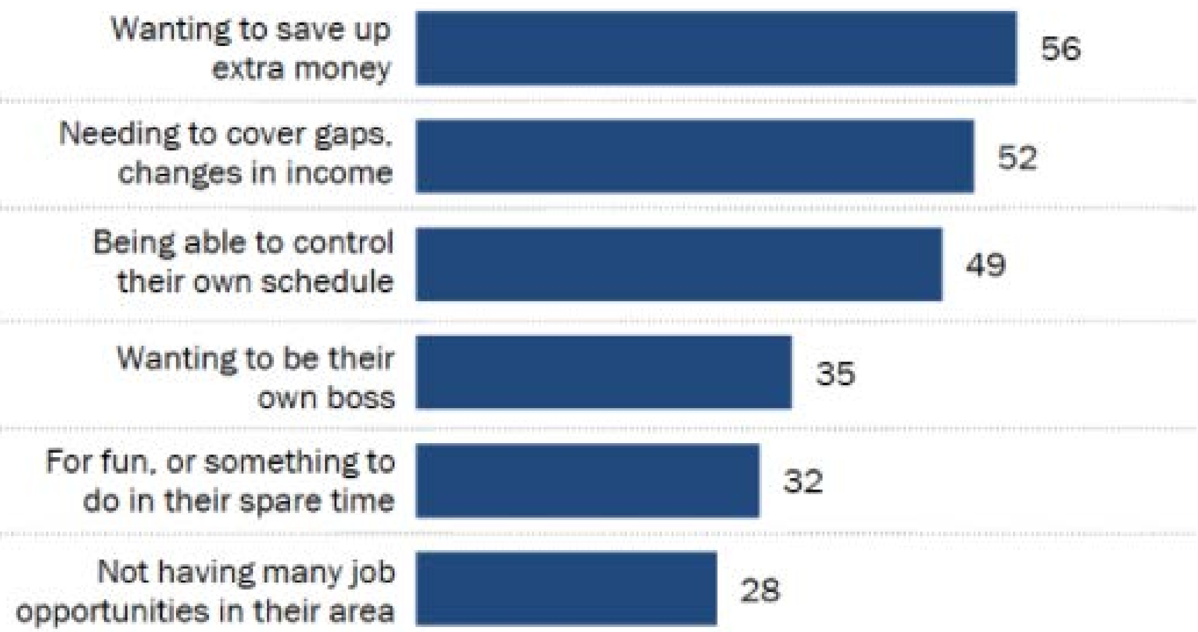
- https://finance.yahoo.com/news/desire-side-hustle-changed-2021-000001351.html
- Spike in applications to the Small Business Association
- In 2020, just over 25% used income to cover monthly bills; in 2021, that spiked to 41%.
- Increase in income: the percentage of people earning $1500 or more per month more than doubled in 2021.
- Correlation with Great Resignation
- Pew Research – https://www.pewresearch.org/internet/2021/12/08/the-state-of-gig-work-in-2021/



https://www.pewresearch.org/internet/2021/12/08/the-state-of-gig-work-in-2021/

Saving up, covering gaps in income, flexible schedules top reasons current or recent gig platform workers cite for taking on these jobs over the past year

Among gig platform workers who have earned money in the past 12 months on these online platforms, % who say each of the following is a ***major reason*** *why they have taken on these jobs over the past 12 months*



Note: Gig platform workers refers to respondents who say they have earned money by using a mobile app or website to find jobs that directly connect them with people who want to hire them, or by using a personal vehicle to deliver packages to others. For a full list of the jobs measured in this survey, see topline of report. Those who did not give an answer or who gave other responses are not shown.
Source: Survey of U.S. adults conducted Aug. 23-29, 2021.
"The State of Gig Work in 2021"

PEW RESEARCH CENTER

https://www.pewresearch.org/internet/2021/12/08/the-state-of-gig-work-in-2021/

How to Gather Information

- Ask the party to produce documentation
- Use system generated information
  - Unemployment info
- Online/Social Media
- Licensing and Property Records

Income: Self-Employed and "Gig" Economy – Potential Options for Case Management

- Resources concerns – think of all the cases you have…
  - You could dive in and investigate the case, spending hours, or you could set it for the hearing and have the referee/judge decide
- Set for hearing for fact finding
- FIGs/Joint Meetings
- Seasonal work
- Lifestyle Analysis (especially at hearing)
  - Included in Handouts
- What are other options to use?

Works full time and gets a 2nd job… Is it income?

Example

- After souring on the music business, Lil Wayne, decides to pursue his dream of going to law school. He graduates and passes the LA. Bar.
- Soon thereafter, he becomes employed by the N.O. District Attorney for a salary of $56,000 per year.
- However, he soon discovers that he cannot keep affording his high-priced tastes. So he starts a part-time job as a bartender at a music club in the French District. He is paid $2.13 an hour for ten hours a week plus tips.
- A former girlfriend applies for child support services and wants an order set.

What do you use as income???

- If we count the bartending wages, are we “making” him work 40+ hours just to pay the child support?
- MCSF provisions:
  - Don’t do when imputing (MCSF 2.01(G)(1))
  - MCSF 2.02(A) – where income varies, use 3 year average
  - 2.02(C) – evidence showing that OT, 2nd jobs, etc. will vary in the future may be considered
- In Ohio, Revised Code 3119.01 (12)(e) states that “gross income” does not include “Nonrecurring or unsustainable income or cash flow items”
- Ultimately, no bright line rule.
  - Why are they doing it? Are they saving? Are they paying off expenses/debts? Is it to help pay a 2nd child support order?
  - Case by case decisions where discretion will control.
  - If room for discussion/grey areas in your state’s approach: Have the conversations with your Bench – know what the expectation is. Saves time, objections, and costs.

<u>Other Considerations</u>

Minimum wage vs. living wage (market wage)

- Jobs available but not going back to work
- Increased wage = higher support
- Subsistence needs – how do you balance parents' need with child's?
- What about accessibility to jobs? Urban vs. rural settings

Collecting information/connecting parents to services

- Building capacity, i.e., job skills, in parents as opposed to low orders
- Impact of Parenting Time?

Expectation setting

Income: Impact of Pandemic and “Just Not Back To Work”

- Lifestyle Analysis – IRS Collection Financial Standards
  - https://www.irs.gov/pub/irs-utl/national_standards.pdf
  - https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards
  - https://www.irs.gov/businesses/small-businesses-self-employed/national-standards-food-clothing-and-other-items
- https://www.bls.gov/regions/midwest/michigan.htm

Thank you!