



Portable Benefits for Gig Workers

BY ANNA PETRINI

New labor market dynamics and technological innovations are [transforming](#) the way Americans work. By some estimates, over [one-third](#) of U.S. workers now participate in the [gig](#) economy, a term that [resists](#) easy definition but tends toward task-oriented work, which may or may not be electronically mediated. On-demand drivers, dog walkers, event and entertainment workers, freelance writers, and web developers are only a few examples.

Some observers see alternative work arrangements, including online platform work, creating [opportunities](#) for worker flexibility, autonomy, resilience and empowerment. But some labor activists see these changes overwhelming the legal and policy frameworks that have governed the relationship between workers and businesses for decades.

Many observers fear the benefits and protections historically associated with work are increasingly out of reach for a growing segment of the labor force. Others note the limits of those historical protections, especially for marginalized communities. They point, for example, to a widening racial [benefits gap](#) within the employer-provided

benefits regime that characterized much of the last century.

Non-traditional workers, including independent contractors, on-call and temporary workers may have a great need for a benefit safety net, depending, in part, on whether these work arrangements serve as a primary source of income or a supplement. Yet they tend to enjoy considerably [lower rates](#) of workplace [benefit coverage](#).

Gig companies, which hire gig workers and may or may not use online platforms, maintain they cannot offer many types of benefits without risking significant legal liability or adopting business models that threaten the very [flexibility](#) prized by gig workers.

These companies have [resisted](#) classifying workers as [employees](#). Classifying them as contractors instead avoids certain [taxes and obligations](#), including workers' compensation and unemployment insurance coverage, as well as compliance with many federal and state labor laws. The law around worker classification is notoriously complex, dynamic and sometimes blurry, with various multipart tests used to determine whether an individual is an independent contractor or an employee (depending on the type of inquiry and jurisdiction).

Did You Know?

- A [study commissioned by Mastercard](#) expects the flexible economy to grow 17.4% annually, representing \$455 billion in global activity through the end of 2023.
- Non-traditional workers tend to enjoy considerably [lower rates of workplace benefit coverage](#).
- Since 2018, state lawmakers in at least nine states have introduced legislation that would establish portable benefits programs for gig workers, create funds to foster innovative experimentation in this area, or study related issues.

Policymakers, industry innovators, labor organizers and other experts are exploring the [potential](#) of portable benefits, or benefits that are linked to individuals rather than particular employers, as a way to expand worker financial security and drive broader economic prosperity. Portable benefits that follow workers are not a new idea (think COBRA health insurance coverage and even Social Security).

But with today's tectonic shifts in the workforce, state policy makers are weighing which benefits should follow workers from job to job, along with eligibility, funding and administration considerations. Meanwhile, industry leaders are stepping into the breach with new [products](#) that leverage fintech and behavioral economics, and institutional innovators are thinking through [new models](#) for worker organization and [benefit structures](#).

What combination of workers' compensation, unemployment insurance, retirement benefits, paid leave, health insurance, and workforce development opportunities, such as skills training or education, should be deployed to support gig workers? Should benefits be individualized, e.g., stipends to offset health insurance costs; privatized, e.g., occupational hazard insurance; and elective; e.g., requiring workers to opt-in and/or direct funds toward the benefits they value most? Or should they more closely resemble the suite of benefits that has historically characterized employer-employee relationships?

Who exactly should be eligible to receive these benefits? How should worker organizing rights, classification issues, and other legal protections be addressed in this context? And what are the appropriate roles of government actors, businesses, customers and workers in paying for and administering these programs?

State Action

Since 2018, state lawmakers in at least nine states—Alabama, California, Connecticut, Georgia, Massachusetts, New Jersey, New York, Washington and Vermont—have introduced legislation that would establish portable benefits programs for gig workers, create funds to foster innovative experimentation in this area, or study attendant issues.

Beginning in 2017, a series of bills introduced in Washington State proposed portable benefit arrangements in which gig companies would make contributions on behalf of workers to benefit funds administered by nonprofits. The contributions would be based on the number of hours worked or a percentage of the fees collected in consumer transactions. The bills require workers' compensation coverage and solicit worker feedback about additional benefit offerings; health insurance, paid

time off and retirement are among the possibilities. Certain iterations would tackle worker classification issues as well. They have inspired related legislation in other states, including [New Jersey](#) and [Georgia](#).

As noted above, some policymakers have chosen to address the worker classification issues in concert with portable benefits. These conversations often feature calls to think beyond the traditional employer/contractor dichotomy and create an entirely [new class](#) of worker. Bills introduced in [Alabama](#) and California, for example, aimed to pair portable benefits with a “third way” marketplace contractor designation.

In California, the portable benefits policy debate seemed as though it might be coming to a head at the end of 2020, when voters approved a ballot measure known as [Proposition 22](#). Prop. 22 allowed gig economy companies to offer app-based drivers [limited](#) benefits, such as accident insurance, a health care stipend for drivers who exceed a threshold number of hours worked, and a partial “earnings guarantee,” while cementing their status as independent contractors.

Ride-hailing companies backed the measure after [legislation passed](#) in 2019 that would have designated a wide swath of the state's gig workforce as employees. But in August 2021, a California judge ruled portions of Prop. 22 were [unconstitutional](#) and the whole measure was unenforceable, leaving even more uncertainty for states like [Massachusetts](#) and [New York](#), where lawmakers and stakeholders are offering up a barrage of bills, ballot questions and court filings.

Federal Action

The COVID-19 pandemic [exposed](#) a range of risks and vulnerabilities for non-traditional workers. The CARES Act granted them access to state-administered [unemployment insurance](#) programs for the first time, raising questions about whether and to what extent the expansion should be made [permanent](#).

Meanwhile, [bipartisan federal legislation](#) would direct the Department of Labor to award grants to states, local governments or nonprofits in order to support innovative portable benefit pilot projects. The National Labor Relations Board issued a [notice](#) at the end of 2021 inviting briefs on whether the board should reconsider its standard for determining the independent contractor status of workers. But just how much momentum any of these proposals will generate remains uncertain. They continue to create [fissures](#) among policymakers within the same party, industry leaders and worker advocates.

Additional Resources

- [Workers Fit for the Future](#) | NCSL
- [Designing Portable Benefits: A Resource Guide for Policymakers](#) | The Aspen Institute, Future of Work Initiative
- [Legislating the Gig Worker Economy](#) | SUNY Rockefeller Institute of Government
- [We Are All Gig Workers Now: Online Platforms, Freelancers & the Battles Over Employment Status & Rights During the Covid-19 Pandemic](#) | Orly Lobel, San Diego Legal Studies Paper No. 20-475
- [Nontraditional Workers Lack Access to Workplace Retirement Options](#) | The Pew Charitable Trusts
- [The Changing Nature of Work: Amplifying the Voice of the Financially Vulnerable Worker](#) | Commonwealth

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