

PORTABLE BENEFITS FOR SELF-EMPLOYED AND INDEPENDENT WORKERS IN ONTARIO

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Chair McArthur and members of the Portable Benefits Advisory Panel, thank you for inviting me here today to comment on designing and implementing a portable benefits program for workers across Ontario who do not have access to employer-provided benefits. My name is Liya Palagashvili, and I am a senior research fellow at the Mercatus Center at George Mason University, where I research the gig economy and broader independent workforce, entrepreneurs, and labor policy.

Across both the United States and Canada, governments are grappling with how to approach the challenges caused by a growing independent, gig, or self-employed workforce. In Canada, about three million workers are self-employed as their main job, representing about 15 percent of total employment, and this number is expected to grow in the next decade.¹ Portable benefits are increasingly becoming the best solution for workers to maintain their nontraditional work arrangements while also being able to access work-related benefits.

Though there are a multitude of ways to design and implement a portable benefits program, I provide three principles that can guide policymakers in the approach:

1. The program should be voluntary for all participants, and it should eliminate the legal barriers that currently stand in the way of organizations, businesses, and other individuals from voluntarily providing benefits for independent contractors.
2. The program should allow contributions from a variety of sources: customers, organizations and businesses, and the workers themselves.
3. The program should be treated as an experimental approach and be evaluated two to three years after implementation.

1. Lahouaria Yssaad and Vincent Ferrao, "Self-Employed Canadians: Who and Why?," Statistics Canada, May 28, 2019, <https://www150.statcan.gc.ca/n1/pub/71-222-x/71-222-x2019002-eng.htm>.

These three principles are important because they eliminate the barriers for independent contractors and self-employed individuals to access benefits without causing excessive burden on taxpayers and organizations (especially small businesses and nonprofit organizations) as sole contributors who must fund the benefits and because it allows for policymakers to evaluate the effectiveness of the program after implementation.

PRINCIPLE 1: THE PROGRAM SHOULD BE VOLUNTARY AND ELIMINATE THE LEGAL BARRIERS TO PROVIDING BENEFITS

Ontario has two primary paths of work: The first is traditional employment, which comes with traditional benefits but often without the independence and flexibility that many workers desire or may require for personal reasons. The second is independent contracting, which provides flexibility and independence but is not tied to common workplace benefits.²

Current laws in Canada restrict organizations, businesses, and individuals from providing independent contractors with benefits precisely because these benefits have conventionally been tied to employer-employee relationships. These benefits may include dental plans, prescription drug plans, contributions to a registered retirement savings plan, vacation days, paid or sick leave, or parental benefits. As specifically outlined in the labor standards interpretations, policies, and guidelines under the section “Determining the Employer/Employee Relationship – IPG-069,” independent contractors are “not allowed to participate in payer benefits plans” and have “no vacation pay.”³ If an organization were to provide benefits to their independent contractors, those workers would likely have to be reclassified as employees and thus also lose their independence and flexibility.

This tension between flexibility and benefits discourages organizations, businesses, and individuals from providing benefits to independent contractors without tying them down to an employment relationship.

The first step to providing a portable benefits program is to remove these factors from the independent contractor and employee worker classification rules. Because these rules are set a national level, there will have to be a change in the labor standards guidelines to eliminate the benefits factors from the worker classification rules. Several large platform companies have already indicated that they want and are ready to give benefits to independent contractors, conditional on the law allowing them to do so.

Involvement in the portable benefits program should be voluntary by all participants. From the provider side, this would be the fairer system because 97.9 percent of businesses in Canada are small businesses employing 100 employees or fewer.⁴ Over one-third of these small businesses are concentrated in Ontario. A requirement that businesses must provide benefits for independent contractors may thus unduly burden these small businesses and other resource-constrained organizations such as nonprofits who may work with independent contractors. Even a two-year exemption program for small businesses may not address the challenges because the vast majority of small businesses remain small for most of their existence. Furthermore, it’s important to note that ordinary individuals also hire independent contractors and thus would be subject to this as well.

2. There is also a less common “dependent contractor” status that is a hybrid between employee and independent contractor. Dependent contractors are entitled to a reasonable notice of termination.

3. “Determining the Employer/Employee Relationship - IPG-069,” Government of Canada, last modified June 9, 2022, <https://www.canada.ca/en/employment-social-development/programs/laws-regulations/labour/interpretations-policies/employer-employee.html>.

4. “Key Small Business Statistics—2020,” Innovation, Science and Economic Development Canada Small Business Branch, last modified December 10, 2020, https://www.ic.gc.ca/eic/site/061.nsf/eng/h_03126.html.

The program should be voluntary for the workers as well because many independent contractors are supplementary earners and may already have access to workplace benefits from their full-time employment. For example, 55 percent of Lyft drivers have a traditional job, and 95 percent of them drive fewer than 20 hours per week.⁵ This is the case for most other gig economy platforms, including Uber and DoorDash.

Removing these barriers and allowing voluntary participation would enable organizations, individuals, and businesses to provide a “menu of benefits”—some organizations may provide one or two sets of benefits, whereas others, especially larger companies, may provide a more complete set of benefits.

This type of voluntary program does mean that not all organizations will provide benefits to all their independent contractors. However, because independent contractors often receive income from a variety of different clients and organizations, the voluntary nature of the program mitigates the problem of independent contractors not having access to benefits. An evaluation of the program two to three years later will help identify the extent of this problem.

PRINCIPLE 2: CONTRIBUTIONS SHOULD COME FROM MANY DIFFERENT SOURCES

Allowing contributions from different sources can maximize the amount that each individual independent contractor receives without placing excessive burden on one party to provide everything. Platform companies, small businesses, and organizations can each implement in different ways.

For example, Upwork, a freelancer platform can facilitate contributions from three parties in the following way: It can set up a 5 percent “fee” that will go into a benefits fund (a specific or general fund) for the independent contractor. Of that fee, 2.5 percent will be paid for by the platform itself, and 2.5 percent will be paid for by the client or customer who is hiring the independent contractor. It is not uncommon to have a fee for the payer—Airbnb charges each customer a standard service and cleaning fee. The Black Car Fund in New York also charges a 2.5 percent mandatory tax to customers for each taxi or ridesharing transaction. However, that fund is only for drivers and only for workers’ compensation insurance. The third payer could be the independent contractor himself or herself, and organizations can set up various “matching contributions” plans to encourage greater savings into a benefits fund. Tax incentives could also be helpful to encourage independent contractors to contribute to these funds.

PRINCIPLE 3: POLICYMAKERS SHOULD TREAT THE PROGRAM AS EXPERIMENTAL, EVALUATING TWO TO THREE YEARS AFTER IMPLEMENTATION

The idea of portable benefits for self-employed workers and independent contractors is new and innovative. Policymakers and designers may not have all the right answers upfront, and some of the practical challenges will only be realized as part of the experience of the program. For this reason, the program should have a review period about two to three years after the implementation to evaluate the successes and challenges and to reform the program as needed. Building an evaluation period as foundational to the launch of the portable benefits program will ensure that in the long term, Ontario will have an effective system that benefits all stakeholders—and especially workers by allowing them to step into the future of a flexible benefits for a flexible workforce system.

5. Lyft, *Lyft Economic Impact Report 2022*, 2022.