



# POLICY SPOTLIGHT

How States Can Support Flexible Benefits for Independent Workers

LIYA PALAGASHVILI | OCTOBER 2024

More than one-third of Americans earn their income through independent contracting, freelancing, or gig work. For some, this work provides supplementary income; for others, it is their only opportunity to participate in the labor market. Independent workers are present across a range of industries, skill levels, and educational backgrounds and include creatives, professionals, service providers, merchants, and entrepreneurs. Some policymakers are attempting to halt this workforce. For example, California's Assembly Bill 5 aimed to reclassify independent workers as payrolled employees, but instead reduced independent work opportunities without providing the promised increase in payrolled jobs. Rather than restricting work opportunities, state policymakers can play a leading role in empowering independent workers by making it easier for them to access portable benefits.

## **Unleashing Portable Benefits for the Independent Workforce**

Despite recent efforts to reclassify them, most independent contractors (79 percent) would prefer to keep their work arrangements and not become employees. And most of them (80 percent) would like access to flexible or portable benefits—that is, benefits that are not tied to a particular job or employer but travel with the worker.

States such as Utah and Pennsylvania are already showing how portable benefits can allow individuals to maintain their nontraditional work arrangements while accessing work-related benefits. These kinds of benefits are the best sustainable solution if the nature of work in the United States continues to change and flexible forms of work become the new norm.

State policymakers can unleash flexible and portable benefits solutions for the independent workforce through seven key reforms that seek to accomplish the following:

- Remove barriers to benefits.
- Create flexible benefits and savings opportunities.
- Improve access to healthcare benefits.

## **Seven Ways State Policymakers Can Play a Leading Role**

### **Removing barriers to benefits**

1. Stipulate that no state agency can use the presence of benefits to determine whether a worker is an independent contractor or an employee.
2. Allow individuals to register as independent workers and ensure state regulators treat them as such.

### Creating flexible benefits and savings opportunities

3. Adopt federally created Section 125 cafeteria plans and exempt the contributions to these flexible benefits accounts from state income taxation.
4. Adopt federally created universal savings accounts (USAs) and exempt them from state-level capital gains taxes and state income taxation.

### Improving access to healthcare benefits

5. Clarify that any individuals (as long as they are residents of that particular state) can join together for the purposes of forming their own group risk pools to buy insurance.
6. Allow independent contractors to buy into a company's insurance plan as employees without it triggering an employment classification criterion.
7. Establish that any payments made toward purchasing health insurance products are not subject to state income taxes.

### Enhancing the Livelihoods of Americans

Independent work can be beneficial, desirable, and even preferred for many working Americans. We should embrace and welcome the new reality that many Americans choose this type of work. At the same time, we must endeavor to fix the shortcomings that exist—mainly, that workers do not have access to the same benefits afforded to traditional employees.

State policymakers should make reforms in line with those outlined above to better meet the needs of the growing independent workforce. Embracing innovative policy reforms will create a fairer system for all workers, both traditional employees and self-employed workers.

Such reforms would not harm existing employees but only enhance the livelihoods of independent contractors.

### Further Reading

Liya Palagashvili and Jonathan Wolfson, “Flexible and Portable Benefits for Independent Workers: State Policy Guide” (Mercatus Policy Brief, Mercatus Center at George Mason University, October 2024).

Liya Palagashvili, “Legalizing Access to Flexible Benefits,” in *State Solutions to Empower Upward Mobility*, Archbridge Institute, May 2024.

Liya Palagashvili, “Flexible Benefits for a Flexible Workforce: Legalizing Access to Portable Benefits for Independent Workers” (Testimony before the House Subcommittee on Workforce Protections, Mercatus Center at George Mason University, April 11, 2024).

Liya Palagashvili and Caden Rosenbaum, “Findings and Recommendations of the Utah Flexible Benefits Working Group” (Policy Analysis, Libertas Institute, February 21, 2024).

Liya Palagashvili, “Let’s Address the Real Challenges for Independent Contractors and Gig Workers,” *Labor Market Matters*, February 1, 2024, <https://liyapalagashvili.substack.com/p/lets-address-the-real-challenges>.

Liya Palagashvili, *Understanding Nontraditional Work Arrangements and the Policy Landscape for Self-Employed and Gig Workers* (American Enterprise Institute, July 2023).

Liya Palagashvili, “Flexible Benefits for a Flexible Workforce: Unleashing Portable Benefits Solutions for Independent Workers and the Gig Economy” (Mercatus Policy Brief, Mercatus Center at George Mason University, February 3, 2023).

#### ABOUT THE AUTHOR

Liya Palagashvili is a senior research fellow at the Mercatus Center at George Mason University and formerly an assistant professor of economics at State University of New York–Purchase College.

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