

Virginia's Portable Benefits Bill: Legalizing Access to Benefits for the Independent Workforce

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Good afternoon, Chair Deeds, and distinguished members of the committee, thank you for the opportunity to speak today.

My name is Liya Palagashvili. I am an economist and senior research fellow at the Mercatus Center at George Mason University, and member of the Data Users Advisory Committee for the U.S. Bureau of Labor Statistics.

For almost a decade now, my research has focused on self-employment and the independent workforce, including the advantages of portable benefits systems for this workforce. Two of my publications that recommend state portable benefits reforms are attached— “Flexible Benefits for a Flexible Workforce: Unleashing Portable Benefits Solutions for Independent Workers and the Gig Economy” and “Flexible and Portable Benefits for Independent Workers: State Policy Guide.” I hope you find these resources helpful in your discussion of the merits of legalizing benefits for independent workers in Virginia.

Today, governments are grappling with the challenges caused by a growing independent, gig, or self-employed workforce. In Virginia, there are almost 600,000 independent workers, who generated 20 million dollars in revenues in 2022 alone.¹ This number is expected to grow significantly in the next decade. This workforce spans industries, skill levels, and educational attainment. For example, these workers can be musicians, ridesharing and delivery drivers, yoga instructors, software developers, graphic designers, landscapers, and self-employed online merchants.

Today I address the following three points:

1. **Current laws in Virginia and across the United States restrict employers from providing independent workers with benefits, leaving a growing fraction of the workforce without access to common workplace benefits.**
2. **Independent workers would benefit from increased access to benefits while maintaining the flexibility of their work arrangements.**

¹ U.S. Census Bureau, Nonemployer Statistics 2022: <https://www.census.gov/programs-surveys/nonemployer-statistics.html>

3. **Portable benefits reforms do not increase cases of misclassification. Instead, they allow properly classified independent workers access to benefits.**

Laws Restrict Companies from Voluntarily Providing Benefits to Independent Contractors

Employment and tax laws offer two primary paths of work: The first is traditional (W-2) employment, which comes with traditional and generally tax-advantaged benefits. This employment comes without true independence and work autonomy that many workers desire or may require for personal reasons. The second is independent contracting, which provides work autonomy and independence but generally requires workers to forgo common workplace benefits. As the independent economy, a growing fraction of the workforce does not have access to traditional benefits that are afforded to employees.

Laws in Virginia and across the United States currently restrict employers from providing independent contractors with benefits; precisely because these benefits—healthcare, retirement, vacation days, and paid or sick leave—have conventionally been tied to employer-employee relationships.

Therefore, if an employer were to provide benefits to independent contractors, those workers would likely have to be reclassified as employees and consequently lose their independence and flexibility.

Removing this legal barrier and allowing voluntary participation could enable companies to provide a “menu of benefits,” where some businesses may provide one or two individual benefits, whereas others—especially larger companies—may provide a more complete set of benefits.

Many companies have already indicated that they want and are ready to provide benefits to independent contractors, conditional on the law allowing them to do so. Indeed, several of them are currently providing benefits to independent contractors in states that allow them to do so. For example, two years ago I testified before the Utah Legislature on a portable benefits bill that eliminates the presence of benefits as a factor in worker classification tests.² This bill was passed and went into effect in May 2023. As a result, Target’s *Shipt* launched a pilot benefits program in Utah in partnership with the benefits company Stride. Furthermore, last month, the company Lyft announced that it, too, will run a pilot portable benefits program in Utah.

Similarly, with the support of the governors, the company DoorDash is currently running portable benefits programs in both Pennsylvania and Georgia.

To reiterate, those examples of companies running portable benefits programs for independent workers were only made possible because of legal changes. In Virginia, it is not currently possible for independent workers to receive benefits. The first step to providing portable benefits is to remove the presence of benefits as a factor in the independent contractor and employee worker classification tests.

² Liya Palagashvili, “Utah’s Portable Benefits Bill: Supporting Gig Workers and the Independent Workforce,” February 21, 2023: <https://www.mercatus.org/research/state-testimonies/utahs-portable-benefits-bill-supporting-gig-workers-and-independent>

Independent Workers Value the Flexibility of their Work and Would Benefit From Access to Benefits

Independent, freelancing, and gig work has grown significantly in the past two decades, especially after the pandemic, as workers began seeking out more flexible forms of work.

According to the 2023 survey from the Bureau of Labor Statistics, 80 percent of independent contractors prefer their contractor arrangement over an employment arrangement.³ Over a dozen surveys indicate that workers prefer the flexibility of engaging in independent work, especially workers who have dependent care obligations or other personal circumstances that prevent them from taking on employment. In fact, approximately 46 percent of freelancers state that freelancing gives them the flexibility they need because they are unable to work for a traditional company owing to personal circumstances, such as health issues or family obligations.⁴

These flexible job arrangements can be particularly transformative for women who are the primary caregivers in their households.⁵ One study found that self-employment rates are higher for women who have young children and that self-employed female workers have more flexibility in their work location, hours, and schedule compared to women in traditional employment.⁶

In a nationwide survey, researchers also found that about 75 percent of self-identified homemakers, or stay-at-home mothers, indicated that they would likely return to work if they had flexible options.⁷ Another survey of 2,000 women in independent work found that 96 percent of these women indicated that the primary benefit of engaging in platform-economy work is the flexible working hours.⁸ Indeed, 70 percent of these platform-working women were the primary caregivers in their homes. A quarter of these women recently left their full-time employment for platform-based work, and 60 percent of them indicated that they did so because they wanted flexibility, needed more time to care for a child, parent, or other relative, or both.

Independent work and self-employment are providing an important source of income for a large set of working Americans, especially for working mothers, many of whom are unable to take on traditional employment. At the same time, there are shortcomings with this type of work: independent workers do not have access to common workplace benefits afforded to traditional employees. About 80 percent of self-employed workers indicated they would like access to flexible or portable benefits— benefits that are not tied to a particular job or employer.⁹

To better meet the needs of the growing independent workforce, governments could reform laws to give independent workers access to benefits.

³ Bureau of Labor Statistics, “Contingent and Alternative Employment Arrangements—July 2023,” news release no. USDL-24-2267, November 8, 2024, <https://www.bls.gov/news.release/conemp.nr0.htm>

⁴ Adam Ozimek, “Freelance Forward Economist Report,” Upwork, accessed January 14, 2023, <https://www.upwork.com/research/freelance-forward-2021>

⁵ Liya Palagashvili and Paola Suarez, “Women as Independent Workers in the Gig Economy” (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, March 2021).

⁶ Katherine Lim “Self-Employment, Workplace Flexibility, and Maternal Labor Supply: A Life-Cycle Model,” *Economic Review of the Household* 17, no. 3 (2019): 805–42.

⁷ Kaiser Family Foundation, CBS, and New York Times, Non-Employed Poll, December 2014.

⁸ Hyperwallet, *The Future of Gig Work Is Female: A Study on the Behaviors and Career Aspirations of Women in the Gig Economy*, 2017.

⁹ Tito Boeri et al., “Solo Self-Employment and Alternative Work Arrangements: A Cross-Country Perspective on the Changing Composition of Jobs,” *Journal of Economic Perspectives* 34, no. 1 (2020): 183.

Portable Benefits Reforms Legalize Access to Benefits for Properly Classified Independent Workers

Legalizing access to portable benefits does not increase the misclassification of workers. That's because businesses are still required to follow their state's worker classification tests—whether that is the common-law, ABC, or another state test. Businesses are also still required to follow a federal agency's worker classification tests. If federal and state regulators find that a business is misclassifying independent contractors as employees, that business is still in violation of federal and state laws. The proposed portable benefits reforms should have no impact on that determination.

Legalizing access to benefits for independent contractors means that legitimate and properly classified independent contractors will be able to receive benefits from hiring parties. Policymakers could simultaneously make portable benefits reforms and strengthen their laws on worker misclassification—these policies are not mutually exclusive.