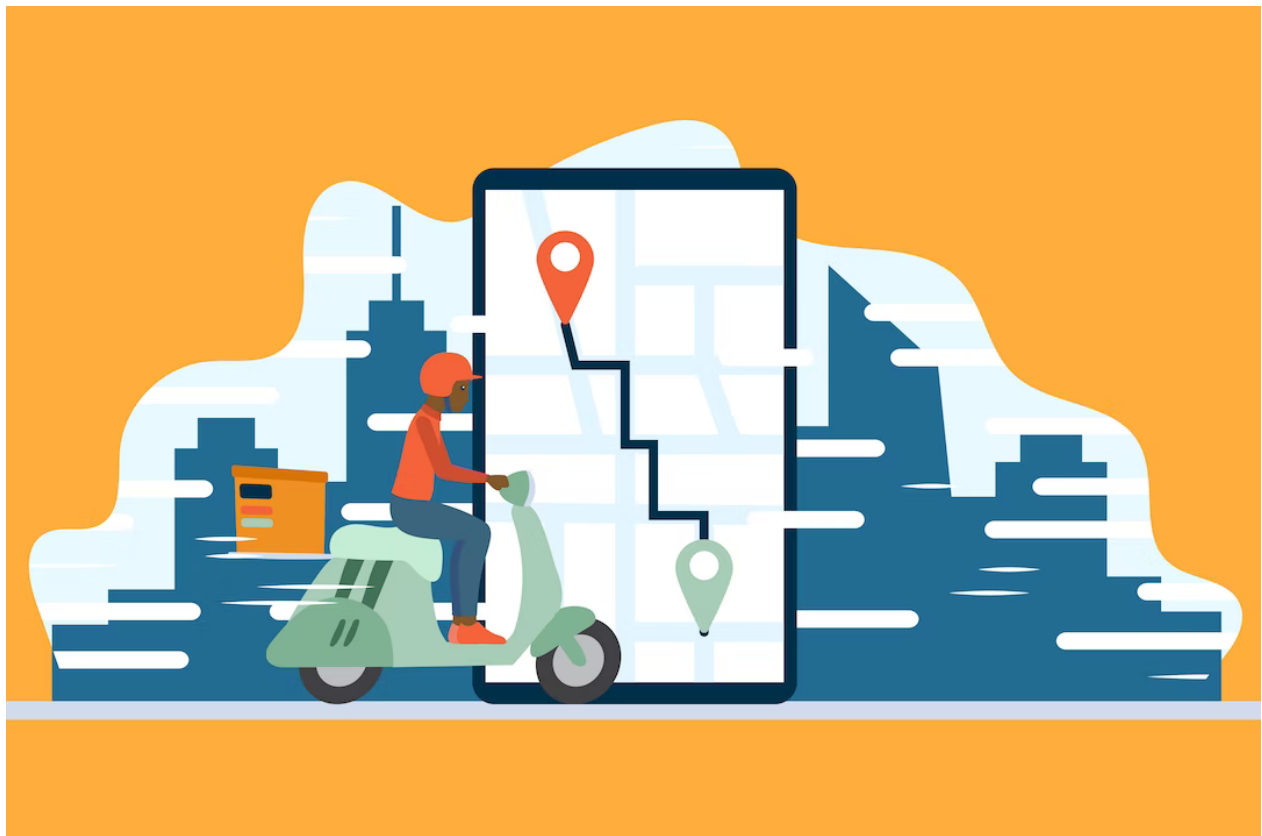


# Explainer: Benefits Models for Gig Workers



**Curran McSwigan**  
Economic Policy Advisor  
[@Curran\\_McSwigan](https://twitter.com/Curran_McSwigan)

## Takeaways

With the dramatic expansion of the gig economy in the United States, there has been a corresponding debate about how to protect gig workers. While federal legislation has been proposed which would make big, sweeping changes to American labor laws, it is by no means the only way to guarantee protections to workers. In this explainer, we look at other approaches—both here and abroad—that have either been proposed or enacted in order to provide more protections to the gig workforce while maintaining flexibility and independence.

With just a few clicks on a phone, you can order groceries to your door, hail a ride to the doctor, or schedule someone to assemble your new dresser. The gig economy has expanded consumer access to goods and services, enabled new ways of doing business for small and large companies, and created work opportunities for millions of people. And the pandemic only accelerated the gig economy's growth. <sup>1</sup>

The growth of the gig economy has also altered the American labor force as we once knew it. Sixteen percent of all Americans have at some point worked for an online platform app. <sup>2</sup> By 2027, some predict that half of all people in the United States will have worked a gig job. <sup>3</sup>

So, who makes up the gig workforce? Most tend to be younger and are working part-time. For example, around 80% of all drivers work less than 20 hours per week, and 70% work less than 20 weeks each year. <sup>4</sup> People of color and migrants are overrepresented in gig work. A third of Hispanic adults and a fifth of Black adults have earned money from platform gig work versus just 12% of white adults. <sup>5</sup> One unifying attribute among these workers, however, is a desire for the freedom that comes from a flexible schedule. In fact, according to a recent Harvard Business School study, “the vast majority of drivers place significant value on flexibility.” <sup>6</sup>

As the number of gig workers has increased, a debate surrounding how to provide a series of protections for these workers has increased as well. Key to that conversation is a technical distinction around how workers are classified. Currently, gig workers are independent contractors rather than employees, meaning they are typically excluded from the benefits and protections of employment such as paid leave, health care, and minimum wage guarantees. But, unlike employees, independent contractors have the flexibility to choose when, where, and how much they work.

As part of that debate, there has been an interest by some policymakers at the state level to expand the definition of employment to cover these workers, which is discussed more below. And at the federal level, there has been a push on the left in support of the Protecting the Right to Organize (PRO) Act, legislation which would make big, sweeping changes to American labor laws. Specifically for the gig workforce, the legislation expands who is considered an employee by significantly narrowing who can be considered an independent contractor. <sup>7</sup> Supporters of this legislation argue that it would give more benefits to gig workers. However, app-based companies argue that employment reclassification would mean they would need to take away the flexibility that many gig workers enjoy and that providing employee-like benefits would ultimately force them to increase prices, reduce service availability, and limit access to platforms.

But the PRO Act is by no means the only way to guarantee benefits and protections to workers. Numerous cities, states, and countries are experimenting with other benefits models for gig workers. In this explainer, we unpack these other methods and explore their impacts.

## **Examples of Benefits Models**

# California

In September 2019, California passed AB5, legislation redefining what constitutes an employee or independent contractor in the state. To do this, the law used an “ABC test” that laid out specific criteria for whether workers would be considered independent contractors. Specifically, workers would only be considered independent contractors if they met three criteria: A.) they are free from control and direction by the hiring company; B.) they perform work outside the usual course of business of the hiring entity; **and** C.) they are independently established in that trade, occupation, or business.<sup>8</sup> If they did not meet all three, the individual would be considered an employee.

Under the new legislation, most ride-hail drivers and food-delivery workers in the state were likely to be considered employees as opposed to independent contractors. As a result, app-based companies were expected to provide all the same benefits entitled to traditional employees. However, the issue was far from settled. In November 2020, California voters passed Proposition 22, a ballot measure which retains drivers’ independent contractor status and grants them a new, limited set of benefits. This benefits model includes:<sup>9</sup>

- **Guaranteed earnings floor:** Workers are guaranteed 120% of the state-mandated minimum wage for “engaged time” spent driving. Engaged time is defined as the time between accepting a ride or delivery request and completing the trip.<sup>10</sup> In addition, workers receive \$0.30 per mile for vehicle expenses, which is increased annually with inflation.<sup>11</sup>
- **Health insurance stipend:** Prop. 22 also established a quarterly health care subsidy to qualifying app-based drivers. For drivers averaging 25 hours or more per week of engaged time, a stipend of 82% of the average monthly premium for a Covered California Bronze plan is provided. For drivers averaging at least 15 hours but less than 25 hours of engaged time a week, companies pay a stipend of 41% of the average premium. Nothing is provided for drivers averaging less than 15 hours a week.<sup>12</sup> Further, workers could separate stipends from each platform they qualify for.
- **Medical and disability coverage for job-related accidents:** Prop. 22 provides all app-based workers with occupational accidental insurance, which includes disability payments and covers medical costs for on-the-job injuries.
- **Discrimination and termination protections:** Prop. 22 prohibits companies from discriminating against app-based drivers based on any protected characteristic under state employment anti-discrimination law. Prop. 22 also prohibits companies from terminating the contract of a driver except for reasons that are specifically stated in their contract and provides for an appeal process for those decisions.

In the months since Prop. 22 passed, there have been mixed responses. Some workers for platform companies have said that the benefits are falling short of what they thought they were promised, with some drivers expressing frustration that their pay is actually less than the promised minimum

wage due to engaged time requirements.<sup>13</sup> But other research suggests that the vast majority of drivers are big fans of Prop. 22. One survey reported that three-of-every-four drivers in California believe Prop. 22 creates a better future for app-based drivers.<sup>14</sup> A big reason for this is the fact that a vast majority of drivers place a high value on the ability to choose when and how much they work. For example, 75% of Uber drivers in California preferred being an independent contractor instead of an employee, and they valued flexibility over any of the other benefits.<sup>15</sup>

The experience around the health care stipend also offers interesting lessons. Prop. 22 requires drivers to work at least 15 hours per week on average and purchase a Covered California policy to be eligible for the stipend. Yet a research survey from April 2021 found that while over half of surveyed drivers had worked enough hours to qualify for some type of stipend, 85% did not apply.<sup>16</sup> Some of this can be explained by the fact that many have access to health insurance through other means.<sup>17</sup> However, many drivers have reported a lack of information on the application process and eligibility criteria as well as concerns over their existing insurance plans being ineligible for the stipend.<sup>18</sup> Increasing awareness on who is eligible for the stipend and how to apply may reduce instances of ineligibility after the fact and encourage more drivers to pursue the benefit.

Currently, the future of Prop. 22 remains in limbo, after a recent court ruling deemed the initiative unconstitutional in part because it prevents workers from collective bargaining.<sup>19</sup> The state attorney general and gig companies have appealed the ruling, and Prop. 22 remains in effect while the legal process plays out.

## Massachusetts

Since 2004, Massachusetts has used an ABC test that presumes all workers are employees unless an employer can prove independent contractor status.<sup>20</sup> However, a new ballot measure, backed by various gig companies, was introduced in the state that is similar to California's Prop. 22. The measure was certified as constitutional in September 2021 and received enough signatures to be placed on the November 2022 ballot. The measure seeks to classify app-based drivers as independent contractors and offer them limited benefits. The benefits model would include:

- **Guaranteed earnings floor:** Workers would be guaranteed 120% of minimum wage for engaged time, which would be equal to \$18/hour in 2023. Drivers must also be paid at least \$0.26 per mile to cover vehicle expenses.
- **Paid sick leave:** App-based workers would accrue one hour of paid sick time for every 30 hours of work, up to 40 hours per year.
- **Health insurance stipend:** Drivers working 25 or more hours of engaged time per week receive stipends equal to 100% of a Massachusetts Health Connector plan premium, while those working at least 15 hours of engaged time per week receive a partial health care stipend.

- **Paid medical and family leave:** Workers would receive coverage through the state's paid family and medical leave program, of which the weekly benefit is determined by average weekly earnings.<sup>21</sup>
- **Medical and disability coverage for job-related accidents:** All app-based workers would receive occupational accidental insurance, which provides disability payments and covers medical costs for on-the-job injuries.
- **Discrimination and termination protections:** Companies would be prohibited from discriminating against app-based drivers based on any protected characteristic under state employment anti-discrimination law. Companies could also not terminate the contract of a driver except for reasons that are specifically stated in their contract and provides for an appeal process for those decisions.

Similar to Prop. 22, there is expected to be significant attention paid to this initiative in November. Major gig companies have come out in support of the Massachusetts initiative, arguing it provides app-based drivers with benefits while maintaining their independence and flexibility. Meanwhile, some unions, pro-worker groups, and politicians have been vocal about their opposition to the measure, criticizing the value of these benefits and arguing that these workers should instead be treated as employees.

## **New York**

In 2021, a different approach was explored in the New York state government. While legislation was never introduced, the effort was unique as both gig companies and labor groups were at the table and involved in discussions.<sup>22</sup>

Under current federal law, independent contractors are unable to unionize and participate in collective bargaining agreements.<sup>23</sup> The idea behind the New York proposal was set to have app-based workers remain independent contractors but allow them to vote to form unions. These unions would then engage in sectoral bargaining with companies to set industry-wide standards, which must include guaranteed earnings of at least 120% of the minimum wage. Specifically, the benefits model would have included:

- **Guaranteed state-wide earnings floor:** Workers would be guaranteed a wage for engaged time.
- **Due process:** Workers who lose access to the platform would have access to a deactivation appeals procedure.
- **Portable benefits fund:** Mandatory platform contributions to a new portable benefits fund.

- **Unemployment benefit:** The Network Worker Loss of Income Replacement Benefit would protect against partial loss of income, provide an unemployment benefit for undocumented workers whose work authorization has lapsed, and allow traditional unemployment insurance claimants to earn income through platform work and meet the work search requirement, without losing eligibility.
- **Workers' compensation:** Workers would receive expanded accident protection, workers' compensation, and death benefits. These benefits are already available to rideshare drivers in New York State through the existing Black Car Fund.
- **Organizing and sectoral bargaining:** This would grant organizing and bargaining rights to rideshare and delivery workers, enabling unions to engage in sectoral bargaining with companies to set industry-wide standards.

The legislation at one point had the support of many pro-labor groups because, alongside access to bargaining power, the legislation would also have granted unemployment insurance and workers' compensation to ride-hail drivers and delivery workers.<sup>24</sup> But others in the labor movement objected to certain provisions, as the legislation also included text stating unions could not encourage or organize gig workers to participate in activities such as strikes and boycotts.<sup>25</sup> Further, because the legislation would have established statewide standards for the bargaining process, it included language preventing local governments from creating a minimum wage for workers or enforcing local rules on working conditions.<sup>26</sup>

While the legislative efforts failed, the cooperation between labor groups and gig companies in its initial stages showed a different path forward for achieving a model that advances the interests of workers.

## Washington

On March 31, 2022, Washington Governor Jay Inslee signed legislation into law creating a set of minimum benefits for rideshare drivers.<sup>27</sup> The law applies only to drivers carrying passengers with transportation network companies, not those doing delivery.<sup>28</sup> Backers of the bill included transportation companies Uber and Lyft, as well as the local chapter of Teamsters' labor union. The law cements drivers' status as independent contractors while also ensuring they receive the following benefits:

- **Guaranteed earnings floor:** The law establishes two tiers of pay. For drivers originating in cities with more than 600,000 people (such as Seattle), the rate is either \$1.38 per mile driven with a passenger in the vehicle or 59 cents per minute, whichever is greater. For everywhere else, the rate is \$1.17 per passenger mile or 34 cents per minute.<sup>29</sup> The per-mile and per-minute earning floors will also be adjusted annually based on increases to the state's minimum wage, which considers inflation.

- **Paid sick leave:** Drivers will earn one hour of paid sick leave per every 40 hours with a passenger in the vehicle, consistent with the state’s sick leave program.
- **Workers’ compensation coverage:** Transportation network companies will fund workers’ compensation coverage through Washington’s state-run program.<sup>30</sup>
- **Discrimination and termination protections:** Companies would be prohibited from discriminating against drivers based on any protected characteristic under state employment anti-discrimination law. Companies could also not terminate the contract of a driver except for reasons that are specifically stated in their contract, and the law provides an appeal process for decisions.
- **Driver resource center:** The law creates a driver resource center, an independent nonprofit organization, which will represent drivers in account disputes and provide representation services, outreach, and education and training. The center will be funded through a per-trip surcharge set to begin in 2024.
- **A mandatory study on state unemployment, paid family and medical leave, and long-term care programs for drivers:** The law requires the convening of a working group of stakeholders, containing representatives from both the rideshare industry and labor, to study and report on the appropriate integration of drivers into state-run programs related to paid family and medical leave, unemployment insurance, and long-term care. The report will also detail suggested changes to state laws to establish specific rates and terms by which transportation network companies and drivers can participate in these programs.

Seattle had passed its own ride-hail pay standard in 2020, and the new law’s two-tier system maintains the city’s higher minimum pay requirements. However, the law does restrict counties and cities, like Seattle, from implementing any new requirements on transportation companies going forward.

While the president of the National Teamsters labor union has publicly come out against the law’s provisions, the legislation’s support from both a local labor union and the transportation companies highlights collaboration between the groups can be successful.<sup>31</sup> In fact, some in labor have suggested that the law’s approach is preferable to a ballot initiative, like Prop. 22, in securing key benefits.

## United Kingdom

Gig workers in the UK, including app-based drivers, have traditionally been viewed as “self-employed.” This classification is meant to capture those individuals who run a business and are directly responsible for its success or failure.<sup>32</sup> In the UK, individuals who are self-employed are not entitled to benefits, aside from some limited legal protections.

The categorization of gig workers came into question last year after the UK's Supreme Court ruled Uber drivers must be treated as "workers" based on an assessment of the app in 2016. "Worker" status is a unique and pre-existing employment classification that falls in-between self-employed (not entitled to benefits) and traditional employee (entitled to full benefits).<sup>33</sup> The court found that Uber's log-off process meant that when drivers were logged onto the app, they were under an obligation to do some work, but there was no obligation to turn the app on at any given time. Yet, the court found that since drivers are in a position of dependency in relation to Uber in that they have little or no ability to improve their standing through skill alone, categorizing them as totally self-employed was incorrect.<sup>34</sup>

In the UK, "workers" are individuals that have a contract or arrangement to perform work or services, such as temp workers, short term casual workers, and in some cases freelancers.<sup>35</sup> Notably, workers are still self-employed; they are entitled to worker benefits but remain self-employed for tax purposes. The main difference in status between the self-employed and workers is that those who are self-employed exercise greater control over their work and contract. Those categorized as workers are also entitled to the UK national living wage and paid holiday time. In response to the ruling, Uber publicly recognized the importance of granting their workers key social protections and now offers the following benefits to its drivers:

- **Minimum wage:** Uber will pay drivers the UK national living wage.
- **Holiday pay:** Paid holiday time equivalent to 12.07% of drivers' net earnings.
- **Pension contributions:** Automatic enrollment and guaranteed contributions of 3% of earnings to a pension plan.<sup>36</sup> Both the company and the worker would contribute to the pension.

Although the ruling only applies to Uber, the decision and its central argument has wider implications for the gig economy overall in the UK. There has also been a greater push for putting protections in place for gig workers more broadly. As part of this, Uber reached a trade union deal last year with GMB Union. The groups anticipate coming together on benefits for workers, and such collaboration marks a big step for unions and companies working together on behalf of drivers.<sup>37</sup>

The UK's situation differs from the United States due to the existence of a third category of "worker". However, the UK Supreme Court ruling and Uber's work with the GMB Union may offer insights into how the US can navigate giving gig workers access to essential benefits while allowing them to retain flexibility and independence.

## **Portable Benefits Accounts**

As an alternative to the employer-provided benefits models for gig workers above, some state and federal policymakers are exploring a different model: portable benefits accounts. In this approach, contributions from employers (and sometimes workers as well) are deposited in a fund. Workers can then use money from this account to secure benefits they would like to receive, whether that be



putting money into a retirement account, paying for health benefits, or getting paid for time off. With a portable benefits model, workers can take the benefit fund from job to job without any disruption to health care coverage or retirement funding.<sup>38</sup>

Several states have introduced legislation for portable benefits models and a bipartisan bill with a similar format has been reintroduced in Congress. Below we explore a few of these state-level and federal efforts:

**Wisconsin:** Legislation has been proposed which would create a portable benefits account structure that gig companies may adopt.<sup>39</sup> Details include:

- **Earnings contribution:** Employers and workers can both contribute to the portable benefits account.
- **Flexible benefits:** The fund can be used for lost income due to illness, accident or other event, retirement, and/or health care benefits.
- **Occupational accident insurance:** All app-based workers would be entitled to occupational accident insurance that would provide disability payments for medical expenses for on-the-job injuries.

While the legislation provides a framework for the portable benefits account, it doesn't require companies to adopt it. Further, as part of the creation of these accounts, the bill states that app-based workers would remain classified as independent contractors and couldn't be considered employees.

**Pennsylvania:** In Pennsylvania, a proposed bill would create a state-run portable benefits fund into which all gig companies would be required to contribute.<sup>40</sup> The fund would then be responsible for delivering benefits to platform app workers across the state. Several of the benefits outlined in the bill include:

- **Guaranteed contributions:** The gig companies would make a quarterly contribution into the portable benefits fund equal to 2% of the worker's annual earnings.
- **Income replacement:** Upon certain qualifying events, the portable benefits provided would include an income replacement benefit.
- **Occupational accident insurance:** All app-based workers would be entitled to occupational accident insurance that would provide disability payments for medical expenses for on-the-job injuries.<sup>41</sup>

Upon the creation of the fund, the board handling its implementation would create a procedure for determining which additional benefits should be included and how the funds should be distributed.<sup>42</sup>

**Federal:** Newly introduced federal legislation looks to test out a portable benefits model for the independent workforce. The Portable Benefits for Independent Workers Pilot Program Act, sponsored by Senator Mark Warner (D-VA), Senator Todd Young (R-IN), and Rep. Suzan DelBene (D-WA), would designate \$20 million in grant funding to incentivize states, localities, and nonprofits to experiment with and research portable benefits models.<sup>43</sup> The bipartisan bill provides states and cities with the flexibility to look at what type of portable benefits program may best suit their workers. This may include models offering unemployment benefits, life and disability insurance, sick leave, training benefits, and health insurance.<sup>44</sup>

## Conclusion

The gig economy's rapid growth does not appear to be slowing any time soon. But as consumer demand surges and many workers turn to jobs that offer better flexibility, the question of how to protect gig workers' interests looms large. It's clear from the examples above that states and countries are experimenting with different benefit models for these modern workers that continue to allow for independence. They are by no means alone. The European Union Commission recently released a proposal advocating for the employment reclassification of all gig workers. In Australia, regional governments are working with platform companies to expand driver safety. And Chile recently passed a law that incorporates platform workers into the government's health care and pension program. As the gig economy grows, so does the need to strike a balance between maintaining the flexibility that allows it to thrive and a strong social safety net for the workers who keep it going.

### TOPICS

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