

Unlocking Opportunity: Allowing Independent Contractors to Access Benefits

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Thank you Chairman Kiley, Ranking Member Adams, and Members of the Subcommittee on Workforce Protections for this opportunity to testify. My name is Katie Wells and I am a Postdoctoral Fritz Fellow in the Tech and Society Initiative at Georgetown University. For 8 years, I have investigated the working conditions and political campaigns of the largest gig economy companies in the U.S., from Instacart and DoorDash to Papa and Clipboard Health. Last year, I published a report about the instant delivery industry as well as a book about Uber.¹

Today, I will address the shortcomings of portable benefit proposals advanced by gig companies. For gig companies, portable benefits are a new tool to fortify the independent contractor business model.² Generally, a portable benefit is a program that can be maintained across jobs and is publicly administered, like Social Security, unemployment insurance, or paid family and medical leave. True portable benefits provide working people with the freedom to choose the jobs that best suit their lives or start independent businesses, thereby strengthening worker mobility and building worker power. New portable benefit proposals by gig companies are different, however. They are privately administered, less substantial than traditional social insurance programs, and restricted to certain industries. A DoorDash pilot program, for instance, offers drivers who work a certain amount on its platform a tiny subsidy of four percent of their earnings.³ While gig companies promote such benefits as policy innovations, in reality they are (a) inferior

¹ Wells K, Attoh K, and Cullen D (2023) *Disrupting D.C.: The Rise of Uber and the Fall of the City*. Princeton University Press; Wells K (2023) *The Instant Delivery Workplace*. Georgetown University. Available: <https://beeckcenter.georgetown.edu/wp-content/uploads/2023/04/Instant-Delivery-DC-Report.pdf>

² National Employment Law Project (2023) NELP Urges Caution on Portable Benefits Pilot Program Legislation. <https://www.nelp.org/news-releases/nelp-urges-caution-on-portable-benefits-pilot-program-legislation>

³ Lung N (2024, April 3) DoorDash to Pay Pennsylvania Drivers More to Help Cover Benefits. *Bloomberg Law*. <https://news.bloomberglaw.com/insurance/doordash-to-pay-pennsylvania-drivers-more-to-help-cover-benefits>

contributions for workers and (b) public giveaways for corporations that frequently violate labor and employment laws. Rather than improving conditions for workers, these new portable benefit plans sidestep the ongoing problem of worker misclassification in the gig economy.

When gig companies misclassify workers as self-employed, many of the costs and risks of doing business are shifted onto workers.⁴ These workers are excluded from the protections of local, state, and federal law on minimum wage, overtime pay, workers compensation, retirement benefits, employment-based health insurance, and paid sick days.⁵ As a result, many gig workers earn less than the state minimum wage that would apply were they properly classified as employees, turning the gig workforce into a “second-class status of nonemployees.”⁶ While disowning their duties and responsibilities as employers, Uber and other gig companies continue to exercise employer-like control over their workers.

What is often lost in debates about the misclassification of workers is that it not just workers who lose out but the public and our federal, state, and local governments too. Gig companies are amassing billions of dollars in valuations but avoid contributions to social programs and force the public to pay for essential services for their workforce. During the pandemic, the federal government created, for the first time, an emergency assistance for tens of millions of American gig workers. The gig companies did not contribute a dime, leaving the federal government with an \$80 billion bill.⁷ States across the country have accordingly taken legal action to recoup unpaid taxes. In 2022, New Jersey, for instance, recouped \$100 million from Uber in unemployment taxes for a four-year period (even though the company’s actual unpaid taxes in the state totaled \$650 million).⁸

In interviews with hundreds of Uber and Lyft drivers, Instacart delivery shoppers, elderly care workers for the Papa platform, and app-based nurses for CareRev and Clipboard Health, I have seen firsthand the costs to workers of misclassification. Last month, I met Ashley, an uninsured 31-year-old Certified Nursing Assistant in Pennsylvania. For two years, Ashley has worked in

⁴ For discussion, see Dubal V (2022) Economic security and the regulation of gig work in California: From AB5 to Proposition 22. *European Labour Law Journal*, 13(1), 51-65; Schor J (2021) *After the Gig: How the Sharing Economy Got Hijacked and How to Win it Back*. Univ of California Press; Ravenelle A (2019) *Hustle and Gig: Struggling and Surviving in the Sharing Economy*. Univ of California Press.

⁵ See Dolber B, Rodino-Colocino M, Kumanyika C, and Wolfson T (eds.) (2021) *The Gig Economy: Workers and Media in the Age of Convergence*. Routledge; Smith R and Pinto M (2020) Rewriting the rules: Gig companies’ drive for labor deregulation. In *Beyond the Algorithm: Qualitative Insights for Gig Work Regulation*. Cambridge University Press, 189-207.

⁶ Sherer J and Poydock M (2023) *Flexible Work without Exploitation*. Economic Policy Institute. <https://www.epi.org/publication/state-misclassification-of-workers/>

⁷ JPMorgan Chase (2022) Lessons learned from the Pandemic Unemployment Assistance program during COVID-19. <https://www.jpmorganchase.com/institute/research/household-income-spending/lessons-learned-pandemic-unemployment-assistance-program-covid>; Siddiqui F and Van Dam A (2021, March 16) As Uber avoided paying into unemployment, the federal government helped thousands of its drivers weather the pandemic. *The Washington Post*. <https://www.washingtonpost.com/technology/2021/03/16/uber-lyft-unemployment-benefits/>; Davidson K (2021, January 14), Many Oregon gig workers got regular unemployment benefits. Here’s why it matters. Oregon Public Broadcasting. <https://www.opb.org/article/2021/01/14/gig-workers-employees-unemployment-pua-oregon/>

⁸ Deshmukh S and Kalia S (2022, September 13) Uber pays New Jersey \$100 million in back taxes over driver employment status. *Reuters*. <https://www.reuters.com/business/autos-transportation/uber-pays-new-jersey-100-mln-back-taxes-over-driver-employment-status-nyt-2022-09-13/>; Coleman J (2019, November 14) Uber owes New Jersey about \$650 million in taxes, state says. *The Hill*. <https://thehill.com/homenews/state-watch/470467-uber-owes-new-jersey-about-650-million-in-taxes-state-says/>

hospitals and nursing homes through the ShiftKey platform, which classifies her as an independent contractor even though she is effectively an employee. The ShiftKey app technically allows Ashley to set her hourly rate, as she seeks to obtain shifts in health care facilities. But, as Ashley has learned, the fact that she can set her hourly rate does not mean that she can earn a decent wage. In order to obtain shifts she has to bid against other nurses. And so Ashley must lower her hourly rate, again and again. In the end, when she finally outbids her peers, she has lowered her rate well below a decent wage.⁹ To make matters worse for Ashley, ShiftKey provides no paid sick leave and unemployment insurance, and yet Ashley is required to pay \$6 in fees for each shift and foot the annual bill for drug tests and vaccines. As she puts it: “You get treated differently [because] you’re not an employee.”¹⁰ Ashley, and workers like her, would not be served well from gig companies’ portable benefit proposals.

App-based labor platforms like ShiftKey, which raised \$300 million in funding last year to bring its valuation to \$2 billion,¹¹ are part of a robust lobbying effort to enact minimal, and sometimes zero, government oversight of app-based labor platforms.¹² As I document in my new book, Uber has been at the forefront of this decade-long and nation-wide campaign to minimize federal, state, and municipal regulation, especially around labor standards.¹³ Uber tested and perfected this legislative strategy of exempting its business from existing laws in D.C. before exporting the model to other cities, states, and industries.¹⁴ Since 2017, Uber and its peer gig companies have obtained, at an unprecedented pace, legislation in 34 states to pre-empt municipal laws.¹⁵ Gig companies have also sought to exempt their businesses from bedrock labor and employment laws by spending \$220 million on a ballot initiative in California that championed the idea of portable benefits.¹⁶ In Massachusetts, gig companies spent \$20 million last year, and \$7 million so far this year, on copycat ballot initiatives.¹⁷ After a decade of

⁹ Ashley’s experience is not unique. See: Lecher C (2023, October 5) What happens when nurses are hired like Ubers. *The Markup*. <https://themarkup.org/working-for-an-algorithm/2023/10/05/what-happens-when-nurses-are-hired-like-ubers>

¹⁰ Interview with author, 9 February 2024, Interviewee code: US2024SHK20921B

¹¹ Hess AJ (2024, March 19) How one company is helping healthcare workers efficiently schedule shifts. *Fast Company*. <https://www.fastcompany.com/91040336/shiftkey-most-innovative-companies-2024>

¹² Sherer J and Poydock M (2023) *Flexible Work without Exploitation*. Economic Policy Institute. <https://www.epi.org/publication/state-misclassification-of-workers/>; See for example Colorado Senate Bill 22-210: https://leg.colorado.gov/sites/default/files/documents/2022A/bills/2022a_210_01.pdf

¹³ For discussion, see Wells K, Attoh K, and Cullen D (2023) *Disrupting D.C.: The Rise of Uber and the Fall of the City*. Princeton University Press; Schor J (2021) *After the Gig: How the Sharing Economy Got Hijacked and How to Win it Back*. Univ of California Press; Ravenelle A (2019) *Hustle and Gig: Struggling and Surviving in the Sharing Economy*. Univ of California Press; Cohen R (2022, October 12) The coming fight over the gig economy, explained. *Vox*. <https://www.vox.com/policy-and-politics/2022/10/12/23398727/biden-worker-misclassification-independent-contractor-labor>

¹⁴ Uber’s first battle to evade regulation took place in D.C. On a single day in 2012, Uber leveraged its customer base to inundate D.C. Council with 50,000 emails and 37,000 tweets opposing municipal oversight. The next day, a price minimum and accessibility requirement were struck from the legislation. For discussion, see Wells K, Attoh K, and Cullen D (2023) *Disrupting D.C.: The Rise of Uber and the Fall of the City*. Princeton University Press.

¹⁵ Sherer J and Poydock M (2023) *Flexible Work without Exploitation*. Economic Policy Institute. <https://www.epi.org/publication/state-misclassification-of-workers/>; Hilgers L (2023, April 13) When Your Boss is an App. *The New York Times*. <https://www.nytimes.com/2023/04/13/magazine/gig-jobs-apps.html>

¹⁶ Steward S (2021) Portable benefits discourse distracts from gig companies’ power play. Aspen Institute. <https://www.aspeninstitute.org/blog-posts/portable-benefits-discourse-distracts-from-gig-companies-power-play/>

¹⁷ Stout M (2024, January 22) Uber and allies pump \$7 million into potential ride-share ballot question this fall. *The Boston Globe*. <https://www.bostonglobe.com/2024/01/22/metro/uber-lyft-instacart-ballot-questions-donations/>

disregarding laws and engaging in deceptive practices,¹⁸ gig companies have begun pitching proposals like portable benefits to soften the image of their exploitative independent contractor model.¹⁹

The issue of portable benefits raises real questions about tax avoidance and misclassification in the gig economy. Specifically, what responsibility do new tech-mediated labor platforms like Uber and ShiftKey have to their workforces as well as to the public at large? These gig companies want the power that comes with being an employer while disowning the duties and responsibilities enacted over the past century by federal and state lawmakers. Portable benefits are a new strategy to cement a specific business model built on worker misclassification, labor exploitation, and tax avoidance.

These portable benefit schemas hurt businesses like ShiftMed and Gale Healthcare Solutions that play by the rules and fairly pay into Social Security, unemployment insurance, and paid family leave programs.²⁰ In the Midwest, the Mercy hospital system, one of the 25 largest systems in the U.S., has developed its own employee-based app scheduling system for nurses.²¹ These app-based labor platforms offer their W-2 healthcare workers both the flexibility to choose their own shifts and the protections inherent in being an employee. But, it is unfair and impractical for these companies to have to compete with ShiftKey and other companies that shirk their responsibilities to workers like Ashley. Thank you for the opportunity to testify before your committee. I look forward to answering your questions.

¹⁸ Isaac M (2017, March 3) How Uber deceives the authorities worldwide. *The New York Times*. <https://www.nytimes.com/2017/03/03/technology/uber-greyball-program-evade-authorities.html>

¹⁹ After Seattle enacted a minimum wage for ride-hail drivers, for instance, Uber went to the Washington statehouse to alter the law. Instead of undoing the law in its entirety, state lawmakers established the first state-wide minimum wage and paid sick leave program for ride-hail drivers while acquiescing to Uber's demand that gig workers would not be classified as employees. In New York state, Uber similarly agreed to a minimum wage for ride-hail drivers during a portion of their work days in exchange for unprecedented assurances that the state of New York will not bring a misclassification suit against the company. See also: Marr M (2023, December 27) Uber, Lyft pay proposals in 2024 shaped by New York deal. *Bloomberg Law*. <https://news.bloomberglaw.com/daily-labor-report/uber-lyft-driver-pay-proposals-in-2024-shaped-by-new-york-deal>

²⁰ *Staffing Industry Analysts* (2023, August 17) Coalition of 30 healthcare staffing firms seeks employment status clarification from DOL. <https://www2.staffingindustry.com/Editorial/Daily-News/Coalition-of-30-healthcare-staffing-firms-seeks-employment-status-clarification-from-DOL-66526>

²¹ Lewis N (2023, May 15) How Mercy Health 'Uberized' its nursing staff. *SHRM*. <https://www.shrm.org/topics-tools/news/technology/how-mercy-health-uberized-nursing-staff>