



New York State and Seattle Lead Discussion on Portable Benefits

Insights

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In an effort to head off litigation by workers claiming they have been misclassified as contractors, companies using a largely on-demand workforce have been working with the New York State Assembly to develop a system of portable benefits to provide occasional workers with some level of benefits that would be available to them despite not being attached to a particular employer.

At the same time, Assemblyman Joseph Morelle plans to introduce legislation addressing portable benefits in January 2017, following discussions with gig economy companies. In advance of Assemblyman Morelle's legislation, home services provider Handy drafted its own proposed legislation setting out guidelines for the establishment of portable benefits.

Under the Handy proposed legislation, participating companies would contribute around 2.5 percent of the fee for each job to an individual account for each worker, which that worker could use to pay for healthcare or other benefits. In exchange, the worker would agree to be classified as an independent contractor, likely precluding the worker from joining a union to bargain for better benefits or bringing litigation seeking recognition as an employee.

Labor unions, whose support could be crucial to the passage of any such implementation, have expressed skepticism at the details made public to date, claiming that workers stand to lose much more than they will be gaining through the proposed legislation.

Meanwhile, on the other coast, the Seattle City Council has proposed legislation to allow at least some gig workers to collectively bargain. Although independent contractors are not covered by the National Labor Relations Act, independent contractor farmworkers have nevertheless granted the right under state law to bargain with the farms with which they contracted. Similar legislation in Seattle could provide independent contractors with more leverage to get some level of benefits, and could potentially serve as a model for independent contractors in the rest of the country.

Among other ideas being considered in the gig economy realm is the idea to consider creating a third class of worker, somewhere between employee and independent contractor. There is precedent for this third classification in Canada, and the UK has created a parliamentary commission to consider whether another category of worker should be legally created, one that gives more benefits than that to which independent contractors are currently entitled.

2017 will certainly see further developments regarding this topic, so stay tuned to our blog for further updates.

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