



Federal Legislation Seeks to Advance Portable Benefits for Gig Workers

Insights

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Several weeks ago, we asked if the concept of portable benefits for gig economy workers was one step closer to reality, with rumors swirling of imminent federal legislation forthcoming. Well, this issue just took a big leap forward with the introduction of legislation by Senator Mark Warner (D-Virginia).

Yesterday, Warner introduced the “Portable Benefits for Independent Workers Pilot Program Act” to provide for \$20 million in grant funding to assist states, localities, and nonprofit organizations to experiment with portable benefits models for gig economy workers. A companion measure was introduced in the House of Representatives by Rep. Suzan DelBene (D-WA). The legislation appears largely to be based on a Benefits Innovation Fund proposal advocated for by the Aspen Institute’s Future of Work Initiative.

In announcing the proposal, Senator Warner stated, “As more and more Americans engage in part-time, contract or other alternative work arrangements, it’s increasingly important that we provide them with an ability to access more flexible, portable benefits that they can carry with them to multiple jobs across a day, a year, and even a career. These incentive grants will accelerate experimentation at the state and local levels to better support a more independent 21st century workforce.”

Under the proposal, grants would be awarded by the U.S. Department of Labor (USDOL) to eligible organizations to “support broad innovation and experimentation with respect to portable benefits.” Of the total funding, \$5 million would be earmarked for existing models, while the remaining \$15 million would be allocated for new models or approaches to providing such benefits. Portable benefits are defined to mean “work-related benefits that are provided to eligible workers for eligible work in a manner that allows the worker to maintain benefits upon changing jobs” and includes things like workers’ compensation, skills training, disability coverage, health insurance, and retirement savings.

This legislation echoes activity the USDOL took last year in awarding over \$150,000 in grants to “support the planning and research of portable benefit plans for low-wage workers.”

As we have previously discussed, states and local governments are increasingly moving forward on their own with proposals to explore this provision of benefits to individuals performing work in the

gig economy. Most notable are proposals that have been set forth in the state legislatures in Washington, New York and New Jersey. One of the proposals in New York, conceived by gig company Handy, would permit independent workers to be given the option from day one to acknowledge in writing that they are correctly classified as independent workers. In exchange, they would receive an additional 2.5% of the fee for each job that would be placed into an individual health savings account for the worker. And California is contemplating legislation to address these and similar issues, although specific language has not yet been introduced.

In addition, this might not be the last federal action we see on this topic. Recent comments from an influential House member provided some hope that Congress would provide some statutory relief to fix the ill-fitting wage and hour rules as they apply to gig workers – perhaps through the creation of a new classification that would address gig workers who may fall somewhere between the traditional employee and classic independent contractor models.

An obvious question is what this federal legislation portends for the proliferation of portable benefits efforts across the country? On the one hand, pilot funding such as this could provide for up-front costs (such as legal fees, economic research, and actuarial studies) that may help advance state and local portable benefits proposals. On the other hand, local jurisdictions contemplating similar actions may take a “wait and see” approach to see lessons learned from some of these pilot projects. Only time will tell, as we are still a long way from this legislative proposal becoming reality. But it’s clear that portable benefits and the gig economy in general will continue to be a hot topic and the local, state, and federal level for some time to come.

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