



Uber-Union Partnership May Jumpstart the “Portable Benefits” Movement in the Gig Economy

Insights

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Of all the public policy debates surrounding the gig economy of late, one of the hottest topics has been “portable benefits” – the concept that gig economy workers should have flexible, portable benefits that they can take with them from job to job, or “gig to gig.” This push just got a major jumpstart that may turn out to be a game-changer.

Portable Benefits a “Hot Topic”

As we have previously discussed, states and local governments are increasingly moving forward on their own with proposals to explore the provision of benefits to individual 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. California has been exploring this approach as well.

The “portable benefits” movements even has advocates at the federal level. Last year, Senator Mark Warner (D-Virginia) 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.

Uber and SEIU Make Major Announcement

These efforts just received a powerful boost with the announcement of a joint call by Uber and the Service Employees International Union (SEIU) for Washington State to develop a “portable benefits system” that would cover gig economy workers. The joint letter was signed by Uber CEO Dara Khosrowshahi, SEIU Local 775 President David Rolf, and Seattle investor and activist Nick Hanauer.

The letter begins by acknowledging that a number of “legal, policy and political hurdles” have prevented meaningful progress toward a new portable benefits system. However, they go on to state:

“These hurdles will only be overcome when parties are willing to sit down, put aside historical differences, and work together to develop a solution. Furthermore, while we applaud and support efforts at the national level, we believe there is great opportunity to take the first significant steps at the state level. The pursuit of local solutions will expedite the move from the theoretical into the practical, unraveling the thorny issues and beginning to show how a portable benefits system can empower workers and enable technology to meet the growing demand for more flexible, independent forms of work.”

The letter then outlines several key “foundations” a portable benefits system must include:

- Flexibility – a system of individual accounts that follow workers.
- Proportionality – a system that accounts for “differentiated and diverse connections to work” through proportional contributions.
- Universality – a system that is universal in its application across businesses, industries and sectors.
- Innovation – promotion of the development of innovative products and systems that respond to and enhance independent work.

Positive Reaction

Reaction to this announced joint effort appears to be positive. For example, U.S. Senator Mark Warner tweeted, “This is an important start towards remaking our social safety net to address a changing economy. I applaud the [Uber-SEIU] partnership and will keep pushing my legislation to encourage this kind of portable benefits innovation at the local level.”

Key Issue Will Be Employment Status

Moving forward, a key issue will be whether (and how) such policies deal with the fundamental issue of classifying gig economy workers as employees, independent contractors, or something different. The employment classification issue has been thorny and a key driver of litigation across industries and companies in the gig economy.

For example, the Handy proposal pending in New York last year would have permitted the creation of a portable benefits system in exchange for gig workers agreeing that they are independent contractors. However, last year’s Washington proposal would have merely blocked workers and government agencies from considering the benefits system when determining classification status under state law.

The joint Uber-SEIU letter specifically states that a portable benefits system should provide “businesses with legal certainty over their work arrangements.” Does this mean statutory clarification of the independent contractor status of gig economy workers? That remains to be seen, but is likely to be a key issue moving forward, certainly from an employment law perspective. A portable benefits approach that does not solve the misclassification debate would not likely provide the clarity that gig economy employers seek.

What Comes Next?

All eyes will now be on the state of Washington. Other states and local governments will likely continue to push forward with proposals of their own, but it appears that the cutting edge of this debate will now shift to the Evergreen State.

With two key stakeholders like Uber and SEIU at the table and on the same page, however, there is a good opportunity that this issue will be advanced “from the theoretical to the practical,” as the

letter's signatories noted. This is definitely one to watch!

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