



AMERICAN BENEFITS COUNCIL

THE FIVE “CS”: PRINCIPLES FOR POLICYMAKERS REGARDING BENEFITS AND INDEPENDENT WORKERS

Employer-provided health and retirement benefits, coupled with public social insurance programs, comprise the core of long-term financial security for the vast majority of Americans. The design and regulation of these benefits are based on traditional definitions of an employer and employee that look to factors such as hours worked and degree of control to establish this relationship. Access to a variety of other benefits such as workers compensation and unemployment insurance are similarly linked to an actual “employment” relationship.

Nevertheless, a defining employment trend of the past several years is the increase in the types and prevalence of non-traditional work, much of which has become known as the “gig economy” but incorporates a wide variety of work arrangements. The term “independent worker” has been coined by economists to include those who engage with a business through a freelance, contract or contingent arrangement as well as those whose work is mediated by technology platforms. It also encompasses those who work independently as either a primary or secondary source of income, and those who work independently by choice or by necessity. The term therefore includes such diverse groups as parents working while children are at school, full-time car-sharing drivers, seasonal employees, college interns, individuals supporting themselves between jobs and retirees earning pocket money.

Taxonomy of the Independent Workforce Based on working age population of United States and European Union		
	Primary income	Supplemental Income
Preferred choice	<i>“Free Agents”</i> 30% 49 million	<i>“Casual earners”</i> 40% 64 million
Out of necessity	<i>“Reluctants”</i> 14% 23 million	<i>“Financially strapped”</i> 16% 26 million

Source: McKinsey Global Institute, **Independent Work: Choice, Necessity, and the Gig Economy** (October 2016)

The U.S. Department of Labor’s Bureau of Labor Statistics (BLS) recently updated its Contingent Worker Supplement, the most wide-ranging survey of the independent

workforce. The survey found that in 2017, 10.1 percent of the workforce was engaged in “alternative” (independent, temporary, on-call and contract-based) arrangements while 3.8 percent was engaged in “contingent” (short-term or temporary) arrangements, a decrease from 10.7 and 4.1 percent, respectively, in 2005. It is important to note, however, that this survey only measures individuals’ “main job” and does not account for supplemental work.

Although technology has fueled a greater awareness of the independent workforce, this important sector of the economy and labor force is diverse and encompasses far more than online platforms. According to the BLS, those whose work might be considered “electronically mediated” – such as through a mobile application – comprise just one percent of the overall working population.

Most, if not all, Council member companies still rely primarily on a traditional workforce. These plan sponsors continue to rely on decades of federal statutes, established regulation and legal precedent to navigate the complex world of employment law.

However, many companies also engage independent workers to fulfill certain roles or projects for varying amounts of time, or are considering doing so. If allowed under the law, giving independent workers access to certain benefits would help these organizations compete for talent in a tight labor market.

While it is unclear whether the independent workforce is growing or simply our alertness to it, the personal financial security needs of independent workers have prompted concerns on the part of federal and municipal policymakers that additional opportunities should be made available to these individuals. While worker demand should and will inspire free market solutions, lawmakers have already begun to act.

For example, the *Portable Benefits for Independent Workers Pilot Program Act*, sponsored by Senator Mark Warner (D-VA) in the U.S. Senate (S. 1251) and by Representative Suzan DelBene (D-WA) in the U.S. House of Representatives (H.R. 2685), would establish a portable benefits pilot program at the U.S. Department of Labor. It authorizes a total of \$20 million for competitive grants to states, local governments and nonprofits for pilot projects to design, implement and evaluate new models or assess and improve existing models for portable benefits for independent workers such as contractors, temporary workers and self-employed workers.

Over the past several years, the Council’s policy priorities for the future workforce have been embodied within a series of long-term public policy strategic plans and reports, including [A 2020 Vision: Flexibility and the Future of Employee Benefits](#) and [Safe and Sound: A Ten-Year Plan for Promoting Personal Financial Security](#). These principles supplement those documents to aid the development and evaluation of

public policy affecting employer-sponsored benefit plans in the context of the evolving independent workforce:

1. CHOICE: Recognize independent work as the product of a free labor market, addressing the desires of workers and companies that benefit from such services.

Independent work opportunities meet the needs of individuals who may prefer the flexibility of this kind of work, whether they are supplementing other income, transitioning into retirement, earning money between other obligations or choosing independent work for the autonomy it provides. This pool of talent is an increasingly important part of the American workforce.

According to [a recent McKinsey Global Institute study](#), 70 percent of people working independently in the United States and the European Union do so by choice (whether for primary or supplemental income), suggesting that public policy should be designed to provide opportunity to those who want it and freedom of choice for everyone else. For many of these workers – especially those who have employer-sponsored health and retirement benefits through a parent or spouse – employee benefits would direct resources away from the cash compensation they may prefer. Indeed, employer sponsorship of spousal and dependent benefit coverage is precisely what makes it possible for many individuals to seek independent work arrangements.

Most Council members, like other major American businesses, typically employ a traditional labor force made up of common-law employees. However, independent workers (such as temporary, contract and contingent workers) play a vital role by allowing companies to scale their workforce up or down according to seasonal or project-specific needs.

While independent workers may replace some traditional employees, it is equally true that engagement of independent workers often makes possible business growth that, in turn, results in the creation of additional traditional employee jobs. Furthermore, independent work can and frequently does serve as a means of transition to full-time employment at the same company.

Because independent work is a valid choice, policymakers should resist measures to reclassify these workers or create a brand new class of employee. Efforts to make non-cash benefits available to these workers should focus on increasing voluntary access and opportunity rather than imposing strict requirements or establishing a parallel benefits system. Policymakers should also explore ways to strengthen the incentives for full participation in public programs, which function as a baseline of social insurance for these workers.

2. COVERAGE: Allow companies to help independent workers obtain health and retirement coverage on a group basis.

Since participation in employer-sponsored plans may be unavailable to independent workers, and participation in federal social insurance programs is frequently inconsistent for these individuals, a stable individual market, where individuals can obtain health insurance and retirement coverage, is essential.

To supplement the individual market and make coverage more affordable, public policy should permit the development of creative, free-market arrangements that replicate the strengths of group coverage: economies of scale, pooled risk and robust choices. Because current law and legal precedent have already established clear parameters for the administration of benefits for contingent workers, the adoption of such arrangements should not impose additional administrative responsibilities, trigger employee classification rules or create a new legal “class” of employees.

For example, workers should also be able to band together to obtain portable retirement coverage through the expansion of open multiple employer [retirement] plans (or “open MEPs”). For independent workers with opportunities to save through other sources – for example, those whose spouses are covered by a workplace plan – the contribution limits should be relaxed to accommodate retirement saving for more than one person. Harmonization of the rules governing different kinds of defined contribution retirement plans would also expand equitable access to savings opportunities.

Likewise, stakeholders in the independent labor market – be they companies, technology platforms or the workers themselves – should be able to assemble MEPs for the purpose of purchasing health insurance coverage on a group basis. A number of models for this kind of coverage already exist but need to be evaluated more carefully with respect to independent workers.

3. CONSISTENCY: Build on the federal framework for plan design and administration.

Uniform benefit plan administration, as provided under the Employee Retirement Income Security Act (ERISA), is essential for multi-state employers to sponsor benefits, since even subtle variations in state and local laws may create substantial administrative burdens and costs. Just as importantly, it provides essential protections for workers and beneficiaries of benefit plans.

State and municipal proposals to provide benefits to independent workers, while well-intentioned, could undermine the uniform standards and participant protections provided by ERISA. Efforts to address benefits for independent workers should begin at

the federal level and take advantage of the ERISA framework. Even those initiatives that are not explicitly preempted by ERISA should be avoided if they would potentially increase administrative burdens for employers.

Federal solutions to national problems are generally preferable because they ensure that individuals and businesses are treated consistently, no matter where they are located. In the absence of federal solutions, local initiatives should be evaluated with respect to the overriding need for national uniformity, which allows the employer-sponsored system – and multi-state employers – to thrive.

4. COOPERATION: Ensure that future policies support and enhance the existing and successful employer-sponsored benefit system.

The employer-based benefits system at the core of America's health and retirement security, supported by targeted tax incentives, covers millions of employees and their families at a tremendous bargain to the U.S. taxpayer.

As policymakers seek to develop programs facilitating greater health and financial security for independent workers, they should build upon the work of large plan sponsors and endeavor to work alongside it, rather than in competition with it. This includes avoiding sweeping changes that, while designed with good intentions, would destabilize employer plans.

For example, lawmakers should reject proposals that would impose an additional layer of burdens on employers, disrupt appropriate worker classification practices or reduce the value of existing tax incentives to finance new benefits for independent workers.

5. CREATIVITY: Support company innovation for attracting and retaining talent.

A successful human capital strategy is essential for companies in a competitive global business environment. Demographic trends clearly indicate that the labor market will shrink significantly as the baby boomer generation leaves the workforce and birth rates remain low. Because the workers of the future will demand and expect flexibility – and will have the option of independent rather than traditional work – employers will need to deploy a variety of benefit and compensation strategies to compete for and retain talent – including skilled independent workers.

As noted above, independent work arrangements often function as a means of transition to full-time employment. Such arrangements can be beneficial for both parties

as they determine if the job and the candidate are the correct fit. Innovative programs, such as those that include education and training opportunities, that do not run afoul of misclassification rules would lead to a stronger American workforce.

Similarly, at the end of a working career, independent work can be integrated with phased retirement programs to account for labor market and demographic trends. For some organizations, it may be critical to ensure workforce continuity and the preservation of institutional knowledge through the use of succession planning and phased retirement programs. Public policy should be flexible enough to permit the treatment of some outgoing employees as independent workers with respect to certain industries or job functions.

CONCLUSION

Independent workers are an important part of the modern workforce and are likely here to stay. This workforce has become a critical component of many companies' human capital strategies and, by extension, the U.S. economy.

While independent work is a legitimate choice consistent with the free market principles of our economy, the employer-sponsored benefit system has proven to be a successful means of promoting health and financial well-being. To the extent that public policy can reduce the burdens associated with hiring full-time employees, such measures should be pursued.

However, if we are to address issues related to independent workers directly – perhaps through the development of voluntary, portable benefit vehicles – we must be careful not to do so in a way that disrupts the good work that large companies are already doing.

In *A 2020 Vision: Flexibility and the Future of Employee Benefits*, the Council's public policy strategic plan, we called for a "presumption of good faith" standard of regulation, permitting employer practices to evolve in tandem with new technology. Because the rise of the independent workforce is itself a kind of technological advancement, companies should have the flexibility to innovate without the fear of regulatory burden. Such flexibility will help both workers and businesses achieve their goals.