

Flexible Benefits

**The Time is Right to
Bring Benefits and
Independence Together**



White Paper | June 2024



A Note from Flex's CEO

Innovation has created new opportunities for independent work and has made it easier for workers to choose when, where, and how much they work—on app-based platforms and in industries across our economy. Our existing laws, however, create obstacles for the self-employed to access benefits traditionally provided to employees by employers. We believe that independent work should be strengthened for the 21st century. That's why Flex authored this white paper, which sets forth:

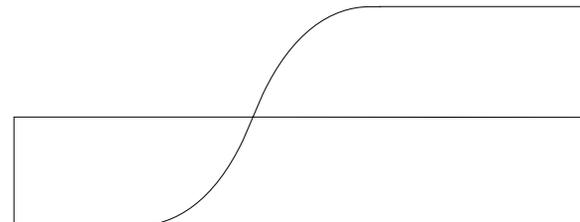
- Our country's fairly unique history of frameworks that tie benefits to employment
- That technologies and evolving worker preferences have led more people to seek opportunities that offer greater flexibility
- Why independent work offers greater flexibility than traditional employment
- How current laws hinder companies from offering benefits to independent workers

Together, these dynamics highlight the need for new policy ideas like portable benefits.

We recognize that innovative ideas take time. Yet it is incumbent upon us to work together. Because the impact of portable benefits would be significant. Millions of people would gain access to benefits while maintaining the flexibility and independence that is not possible with traditional employment.

That's an outcome worth advocating for—and why we are proud to release this white paper that highlights this important issue and showcases the broader policy rationales for portable benefits. We hope this paper contributes to the bipartisan discussions happening around the country.

—Kristin Sharp, *Flex CEO*



I. Introduction

Innovation has created new opportunities for independent work and has made it easier for workers to choose when, where, and how much they work—on app-based platforms and in industries across our economy. Our existing laws, however, create obstacles for the self-employed to access benefits traditionally provided to employees by employers.

When employers provide benefits to traditional employees—such as health insurance, retirement savings, or paid medical or family leave—those benefits are, to one degree or another, funded by and tied to a specific employer. That does not translate well to workers who choose to work outside of the traditional full-time employment model.

That's where the concept of portable/flexible benefits comes in.¹ Contrary to the traditional model where benefits are tied to a specific employer, portable benefits are owned and controlled by the worker. Portable benefits models offer ways for workers to receive funding for benefits like health insurance, retirement savings, or paid medical or family leave. Such benefits may be funded by 1) a worker directly, 2) one or more organizations that the worker engages with, or 3) some combination of the two.

The number of people earning income outside of traditional employment is growing as more people seek flexibility and autonomy beyond what is possible in an employer-employee relationship. Portable benefits recognize this dynamic.

Key characteristics of these benefits models include:

- Flexibility** (workers should be able to choose the benefits they want)
- Portability** (benefit contributions should be tied to the worker so benefits can accrue across sources of work); and
- Proportionality** (benefit contributions should be based on an individual worker's earnings)²

Portable benefits make sense for our evolving world because:

1. The existing model of employer-sponsored benefits is incompatible with the qualities of

independent work that draw so many: flexibility and autonomy.

2. Providing independent workers with benefits normally reserved for employees opens companies up to potential legal liability.³
3. Significant classification shifts could fundamentally disrupt the experience of independent workers, like those who choose app-based platforms, to earn income.⁴ Such work could become less flexible and more like traditional employment, eliminating what makes this work unique and valued—its flexibility and scalability.

The bottom line: workers should not have to sacrifice flexibility and independence to receive benefits, and companies should not have to risk potential liabilities for seeking to improve independent work. Portable benefits models offer the answer to those trade-offs.

Independent work has helped millions earn supplemental income on their own terms. App-based platforms are scaling their offerings to help communities across the U.S. improve food access, enhance health outcomes, and become more sustainable—while helping small businesses reach new customers. The app-based industry believes independent work should be strengthened for the 21st century—and portable benefits are the means to accomplish that goal.



II. A System Under Strain and Increasing Tension

Independent work—that is, work outside the context of the traditional employer-employee model—is not new. However, compared to most

other countries, the U.S. is different in having a framework that frequently ties benefits—e.g., healthcare coverage, paid time off, and retirement—to one’s status as an employee.⁵

This long-standing legal framework creates meaningful impediments as independent workers become an increasingly larger portion of the workforce. As digitalization enables greater independent work opportunities—a dynamic dovetailing with workers’ evolving preferences for greater flexibility and broader labor market changes—we must confront these tensions.

How did we get here? During World War II, a wage freeze by President Roosevelt led companies to use benefits as an alternative mechanism to attract and retain workers. The IRS then exempted employer-based health insurance from taxation, which lowered the cost of health insurance via a job compared to other options at the time, such as private insurance.⁶ In the years that followed, a series of federal laws and regulatory decisions by the National Labor Relations Board helped cement insurance and other benefits into the employment model in the U.S.⁷ A similar dynamic played out with employer-sponsored retirement/pension benefits.⁸

These federal labor laws arose almost a century ago, long before technological innovation unlocked unprecedented access to flexible, independent work at scale. When the Fair Labor Standards Act and the National Labor Relations Act were adopted, we also faced a vastly different economic landscape: twenty percent were in manufacturing, for instance⁹, and many people stayed in the same job and often for the same company for decades or their entire career.

Since then, our economy has evolved significantly, in many ways. The service sector—“a broad category of the economy that now includes financial services, media, transportation, and technology”¹⁰—now represents two-thirds of the U.S. GDP. Today, there are more women working than ever before, and most families are now dual-income households.

Yet, notwithstanding these shifts, our benefits structure has remained static—a system where

benefits are largely provided by an employer and tied to a worker’s status as an employee¹¹ (and, in many cases, your status as a full-time employee).

Furthermore, as noted above, many federal and state laws facilitate an employers’ provision of those benefits. These same incentives are generally not available to individuals who wish to purchase a health insurance plan or contribute to a retirement account outside of an employment relationship.¹²

As technology and other factors fuel more opportunities—and demand—for flexibility in all types of work, many Americans want or need more control over their time than they can get from traditional employment.



III. Work is Changing—and the Importance of Flexibility is Increasing

Independent work is not new. However, independent workers represent an increasingly large portion of the workforce. Last year, freelance work reached an all-time peak, with an estimated 64 million freelancing in this country,¹³ with 7.3 million earning income on app-based rideshare and delivery platforms.¹⁴

This evolution is driven by several factors, including technological advancements, workers’ changing preferences, and broader marketplace dynamics. We explore each in turn.

A. Work is Changing

1. Technological advancements.

The internet has made independent work more widely available. From digital marketplaces and app-based platforms like those operated by Flex members to high-speed broadband and video conferencing, technology and digital connectivity has opened the door to more earning opportunities.

Today, workers can quickly¹⁵ sign-up, log-on, and find income-earning opportunities via platform work. While technology is fueling more

opportunities for flexibility in all types of work, many people want or need more control over their time than they can get from traditional employment.

App-Based Work: Overwhelmingly Supplemental and Part-Time

App-based platforms offer income-earning opportunities available practically whenever the need arises. Indeed, this is how the vast majority of app-based workers use these platforms: to supplement other income or provide some income at times and places that work for their circumstances on a given day. One survey found that nearly two-thirds of app-based earners spend 15 or fewer hours/week earning income on app-based platforms, and roughly half of app-based earners use app-based work for less than ¼ of their overall income.¹⁶ Another poll found that “81% of rideshare and delivery drivers combine app-based work with other income, responsibilities, or are retired.”¹⁷

That dynamic of app-based work primarily serving as an income supplementation is important to recognize as we look at the U.S. approach to benefits.¹⁸



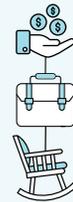
Nearly **2/3**

of workers earn money on app-based platforms 15 or fewer hours/week



~**50%**

of app-based earners make less than ¼ of their overall income from app platforms



81%

of app-based workers combine that with other income, responsibilities or are retired

2. Broader Economic and Market Dynamics.

Independent work such as that enabled by app-based platforms has helped many people respond to wage stagnation, combat significant inflation, and provide a financial cushion while starting new businesses.

Before the pandemic, traditional worker wages had largely stagnated for decades.¹⁹ While wages have generally increased in the post-pandemic economic landscape,²⁰ many of those wage gains have been offset by significant inflationary pressures.²¹ With recent historic inflation levels,²² app-based work provides important supplemental income: 85% of app-based earners say that their earnings from these opportunities have helped them deal with inflation-based rising costs.²³

More broadly, independent work opportunities like app-based platforms combined with portable benefits can help reduce “job lock”—instances “where employees become bound to an employer because leaving the job would mean losing coverage for crucial employment-related benefits—most notably health insurance.”²⁴

There are also other factors that drive workers toward flexible income earning opportunities like health impacts, caregiving responsibilities, and more²⁵—and the pandemic accelerated pre-existing trends of workers seeking more flexibility in their lives.²⁶ Studies have also shown that app-based work boosts entrepreneurial activity.²⁷

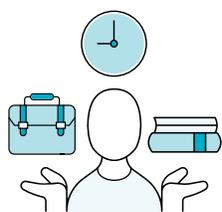
Whether to help supplement their total take home pay from a traditional job, to help offset inflation-

driven increased costs, or to provide a financial cushion while getting a new business off the ground, app-based work has provided a crucial mechanism for many to earn income on their terms.

3. Workers' Evolving Preferences.

Finally, for some, a traditional job doesn't work. Employers across the U.S. have nearly 9 million job openings right now,²⁸ while the unemployment rate has hovered below 4% for the longest continuous stretch in decades.²⁹ At the same time, 7.3 million people have chosen app-based work,³⁰ showing that people turn to independent work because it fits well with their preferences and needs—not because they can't find traditional employment roles.

The lodestar for many workers today is flexibility.³¹ No matter how one defines flexibility, workers want it: from remote work³² to the ability to set one's own schedule.³³ Preferences for flexibility can be found across industries and job types. A recent survey "found that two fifths of blue-collar workers (42%) and close to half of gray-collar workers (48%) consider job flexibility as or more important than pay, a portion nearly as high as white-collar counterparts (54%)."³⁴



90%
of app-based workers choose it for the flexibility.

The flexibility of independent work is important to workers, particularly those who choose to earn via app-based platforms. According to a recent survey, 90% of app-based workers choose to drive or deliver through rideshare or delivery platforms for the flexibility.³⁵ Half say they would not trade that flexibility for a fixed-schedule job even if it came with a 50% pay increase.³⁶ In balancing other responsibilities, full-time employment—or even part-time employment without scheduling flexibility—can be a non-starter for such individuals.

“

Imagine a coffee shop where an employed barista gets to start work at any time, refuses multiple offers to make coffee, leaves without notice to work for a competitor coffee shop across the street to pour a couple of coffees, and then does not return for days or even weeks at a time. Such a place does not exist, because no employer provides the flexibility that app-based work provides.”³⁷

This level of flexibility is not possible with traditional employment, especially shift work. Hourly employees rarely have opportunities to choose when, where, and how much they work, and when they do have such an opportunity, it is limited in scope. Scheduled shift workers simply cannot go home if they don't feel like working more or if something comes up at home. Nor can they choose whether or not to show up for a scheduled shift in the first place.³⁸

At the same time, many—including app-based platforms³⁹—have expressed concern that while the current legal rubric allows for this unprecedented flexibility, it also means that full-time, W-2 employees generally have greater access to benefits. That's because employer-provided benefits are governed by a legal framework that is, in practice, generally incompatible with independent work.

B. Why Independent Work Offers Greater Flexibility than Traditional Employment

So, why is independent work so much more flexible than W-2 employment? Much of it has to do with our employment laws.⁴⁰ Traditional employment laws require companies to track performance and control the hours and physical location of most non-salaried workers. Employers who fail to

do so face substantial liability. Because of these legal constraints, hourly employees rarely have opportunities to choose when, where, and how much they work, and when they do have such an opportunity, it is limited in scope.

Independent work, on the other hand, provides flexibility and autonomy beyond what is possible in a traditional employer-employee relationship. This ultimate flexibility is particularly true of app-based work. For instance, if you are earning on an app-based platform today, you:

- are not obligated to accept any delivery/ride opportunities—you may choose which offers to accept;
- do not have to log on for any amount of time or at a particular time;
- can “multi-app”—pursue earning opportunities via multiple app platforms—at your complete discretion;
- can change the geographic area where you earn without any prior approval; and
- work as much or as little you choose, when you choose.

As the New York Times noted last year, finding work on app-based platforms “offers something that traditional permanent employment still generally doesn’t: the ability to work when and

as much as you want, demand permitting, which is often essential to balance life obligations like school or child or elder care.”⁴¹ For many, the flexibility that app-based work provides is not just desirable, but is a necessity, as health conditions, caregiving responsibilities, and other realities make the rigidity of a traditional W-2 job incompatible with their personal lives.⁴²

In simple terms, there are tradeoffs between W-2 employment and independent work. The CEO of Alto, a carshare service that hires drivers as employees and allows riders to call rides using an app, captured these tradeoffs succinctly last year:

“[O]ne big pushback we get is that we’re more expensive, your product serves a different customer base and that is true... In exchange for that extra cost, what I need is some level of predictability for us, I need to be able to know that people are going to show up for their shift, so that I can count on that and deliver my product to my customer. I’m willing to find ways to create flexibility within some framework, but it can’t be I wake up this morning and I decide that I’m not going to work for Alto today or I want to work tomorrow but I didn’t tell you about that until this afternoon. There just are trade-offs.”⁴³

Positive Impacts of the App-Based Industry Across the United States

Every day, our member companies facilitate the movement of riders and delivery of crucial goods safely and efficiently. These companies are scaling their platforms to help communities increase food access, improve health outcomes, and become more sustainable—while helping small businesses reach new customers, supporting economic growth across the country, and creating millions of earning opportunities.

Collectively, these billions of rides and deliveries facilitated by our members contributed \$212 billion to U.S. GDP in 2022 and spurred a \$32 billion revenue boost for local businesses.⁴⁴ Consumers appreciate the value in both time saved (over 1 billion hours annually) and consumer surplus (\$11.5 billion), not to mention that app-based platforms are increasingly used to improve access to healthy food and medical appointments.⁴⁵



IV. Portable Benefits: The Answer to a System Under Strain

A. How Current Laws Discourage Providing Benefits to Independent Workers

One of the trade-offs facing workers is that full-time W-2 employees generally have greater access to benefits, such as healthcare, retirement, and paid leave through the employment relationship.

First, federal and state employment laws play a role. These laws rely on a multi-factor analysis⁴⁶ to determine whether a worker is an employee or an independent contractor, and courts may consider the provision of benefits by a company as a factor weighing in favor of employee status.⁴⁷ But because misclassifying a worker as an independent contractor—even unintentionally—can trigger liability, a company choosing to provide independent workers with benefits could open itself up to substantial legal risk.

A second hurdle is that conventional benefits are tied to the employer rather than the employee. This model simply does not work for independent workers.⁴⁸

Individuals working as employees who are offered access to healthcare, retirement, and other benefits during the tenure of their employment with a given employer must access those benefits through that employer. In other words, if an individual leaves employer A to work for employer B, they no longer have access to the benefits employer A had provided—such as coverage under their healthcare plan or receipt of 401(K) contributions—and may access only the benefits provided by employer B.

This model is also inconsistent with the nature of independent work because individuals earning income as independent workers can engage in any number of working relationships at any given time, with any number of entities, and for the duration of their choosing. Indeed, many workers earning income on platforms do so across more than one app.⁴⁹ Therefore, a benefits framework for independent workers inherently must be attached to and follow the worker across their working arrangements.

Furthermore, a portable benefits model must be constructed upon a mechanism that allows a



77%

of app-based workers support maintaining their current classification as independent contractors.⁵⁰

worker to accumulate benefits with any number of entities with which they engage and tied to some measurable value of output per platform. For example, in the case of an app-based worker, benefit contributions could be tied to a specified amount of earnings per platform.

Finally, a portable benefits model must preserve the flexibility of independent work. As previously discussed, employer-provided benefits are governed by a legal framework that discourages businesses from providing non-employees with workplace benefits. Adding to this tension is a simple fact: nearly all surveys demonstrate that independent workers prefer to retain their independent status.



A system of portable benefits promises to renew the promise of work and extend essential benefits to more workers in today's economy."⁵¹

—The Aspen Institute

B. Portable Benefits Overview & Policy Rationales

Portable benefits are the best way to increase independent earners' access to benefits while preserving the autonomy and flexibility of independent work.

From the bipartisan and bicameral bill from Sens. Mark Warner and Todd Young and Rep. Suzan DelBene to test portable benefits programs to the similarly bipartisan and bicameral Retirement Savings for Americans Act, there is increasing recognition that we should pursue policies that increase access to benefits for individuals working as independent contractors.

There are a number of policy rationales for doing so—including boosting economic mobility and supporting the diverse set of individuals who have chosen independent work because it offers them a way to come off of the economic sidelines on their terms. Most importantly, doing so reflects worker preferences and marketplace dynamics, where workers have stated a strong preference to retain the flexibility of independent work.

The concept of portable benefits has drawn support from a remarkably diverse set of stakeholders. For instance, a group ranging from SEIU Local 2015 President (and now U.S. Senator) Laphonza Butler to the CEO of New America to the President of American Action Forum were signatories in 2015 to a set of principles for portable benefits.⁵²

Last year, Flex announced principles for federal legislation to provide portable benefits, marking the first time the app-based industry has reached consensus on a national approach to provide app-based workers with benefits.⁵³

While differences may exist between specific models, all portable benefits concepts generally share certain characteristics. These include:

- Flexibility** (workers should be able to choose the benefits they want or do not want)
- Portability** (benefit contributions should be tied to the worker so benefits can accrue across an individual’s working arrangements)
- Proportionality** (benefit contributions should be based on earnings)

Public Policy Rationales for Portable Benefits



Enhances economic stability. Portable benefits can strengthen the economic stability of individuals and families by expanding the number of independent workers with access to benefits like retirement plans and health insurance—that can reduce the impact of financial adversity and help when workers transition in their traditional jobs.



Encourages entrepreneurship. App-based work income has been shown to boost entrepreneurialism.⁵⁴ Portable benefits would add a safety net component that could further support new business activities.



Supports work flexibility. The unprecedented flexibility offered at scale by app-based independent work is incompatible with our employment rubric and laws. Portable benefits move past that outdated, binary dichotomy that forces a choice between flexibility and benefits.



Improves healthcare outcomes. Greater access to benefits like healthcare and paid leave have been shown to aid workers’ well-being.⁵⁵



Boosts worker mobility and productivity. “Job lock” refers to when individuals are deterred from leaving a job, starting their own business, or reducing work hours because one’s employment-provided benefits would be at risk.⁵⁶ Job lock undermines productivity and stifles entrepreneurship, while portable benefits would undermine that dynamic to boost worker mobility and spur productivity gains.



Reflects worker preferences and marketplace dynamics. Workers have stated a strong preference to retain the flexibility of independent work. More people than ever before are engaging in independent work. Portable benefits support these workers and the ways they want to work on their own terms.



Supports greater social inclusion. To the extent that app-based work has helped a diverse group of people come off the economic sidelines, portable benefits can offer a mechanism to recognize the dignity of all workers.

Endnotes

1. For this paper's purposes, we use portable benefits and flexible benefits interchangeably throughout.
2. Flex, [Flex Announces Principles for Federal Legislation to Provide Portable Benefits for App-Based Workers](#) (June 28, 2023). Other principles supported by Flex including certainty (app-based workers and platforms that are covered would be guided by a national test governing their classification as independent contractors and the workers' relationship with app-based platforms); efficiency (such portable benefits accounts should be efficiently managed by approved third-party institutions); and parity (independent contractors deriving their benefits from a portable account should be eligible for the same kinds of tax breaks and pre-tax contributions as employees). *Id.* These principles are related to broader policy issues as well as practical and legal considerations that are generally beyond the scope of this paper, which is designed to highlight why portable benefits make sense for our evolving economic landscape and the broader public policy rationales for such benefits.
3. See *infra* discussion below in Section IV.A.
4. See, e.g., Sonecon, [The Many Ways Americans Work and The Costs of Treating Independent Contractors as Employees](#) (April 6, 2022).
5. Dylan Scott, [Why the US is the only country that ties your health insurance to your job](#), Vox (Oct. 16, 2023). See also Committee on Employment-Based Health Benefits, *Employment and Health Benefits: A Connection at Risk* (1993) at 1, 31.
6. Aaron E. Carroll, [The Real Reason the U.S. Has Employer-Sponsored Health Insurance](#), New York Times (Sept. 5, 2017).
7. [Employment and Health Benefits: A Connection at Risk](#), Institute of Medicine (US) Committee on Employment-Based Health Benefits; Field MJ, Shapiro HT, editors. Washington (DC): National Academies Press (US) (1993).
8. U.S. Government Accountability Office, [The Nation's Retirement System: A Comprehensive Re-evaluation is Needed to Better Promote Future Retirement Security](#) (Oct. 2017) at 7. Members of Congress have sought to address the fact that there are significant gaps into retirement security for many Americans, introducing legislation like the bipartisan [Retirement Savings for Americans Act](#). Flex endorsed this bill, noting, "Too many Americans today endeavor under a retirement framework that fails to accommodate the diverse types of work available in our 21st century economy. ... This bill would represent a significant step toward providing millions with portable benefits that are tied not to a particular company but to the work that so many Americans do every day." Congressman Lloyd Smucker, [Bipartisan, Bicameral Retirement Savings for Americans Act Gains Momentum](#) (Oct. 26, 2023).
9. ABC News, [Made in America: A Brief History of U.S. Manufacturing](#) (Feb. 14, 2011).
10. Citi, [The American Economy is Experiencing a Paradigm Shift](#), The Atlantic (2018).
11. While an individual's status as an employee—whether on a full-time or part-time basis—does not guarantee access to workplace benefits, employers can leverage their benefit offerings to recruit and retain employees. See, e.g., Sally Prather and Danielle Capilla, [How Employers are Leveraging Benefits to Recruit and Retain Workers](#), BenefitsPRO (Oct. 28, 2022).
12. For example, an independent contractor who uses a portion of their earnings to purchase health insurance or contribute to a retirement savings account still must pay payroll tax on those earnings, whereas an employee receiving those dollars from an employer for the same purpose would carry no tax liability. Michael Mandel and Alec Stapp, [Regulatory Improvement for Independent Workers: A New Vision](#), Progressive Policy Institute (July 2020).
13. Upwork Research Institute, [Freelance Forward 2023](#).
14. Public First, [U.S. App-Based Rideshare and Delivery: Economic Impact Report](#) (March 2024).
15. See, e.g., DoorDash, [Sign up to become a Dasher](#) ("Sign up in minutes and start earning within days. Once your application is approved, you can start dashing right away and cash out instantly.")
16. Flex Association, [Survey Finds App-Based Work Crucial to Mitigate Inflation; Majority Prefer to Remain Independent](#) (May 1, 2023). That app-based work is primarily for supplemental income is echoed by myriad studies. See, e.g., DoorDash, [Is Dashing a Substitute for Traditional Employment?](#) (Jan. 23, 2024) (examining state-level unemployment rates, the Job Openings and Labor Turnover Survey database, and worker surveys and finding that "one of the misconceptions about dashing is that people turn to dashing only when they can't find a 'traditional' job. ... But this is not the case.").

17. Public First, [U.S. App-Based Rideshare and Delivery: Economic Impact Report](#) (March 2024).

18. A recent Aspen Institute paper defined benefits as including “health insurance, paid leave, retirement contributions.” The Aspen Institute Future of Work Initiative, [Benefits Beyond Measure: The Role of Workplace Benefits in Improving Job Quality](#) (Jan. 2024). That paper echoes much of the backstory we lay out in the following section. We would argue that the Aspen paper errs in its emphasis on “workplace benefits”—rather than, as we detail in Section IV.A, benefits that are tied to a worker—or portable benefits. The more important part is the provision of benefits to workers, not whether those benefits are directly provisioned by a workplace entity; thus, employment status is not the answer. Benefits being tied to an employer comes with downsides, and that assumes one’s employer offers a suite of benefits. Nearly a third of workers do not have retirement benefits, nearly a quarter do not have paid sick leave, and two-thirds do not have access to long-term disability. See Bureau of Labor Statistics, U.S. Department of Labor, [Employee Benefits in the United States](#) (Sept. 21, 2023).

19. Scott Lincicome and Ilana Blumsack, [Independent Work](#), Cato Institute (Dec. 15, 2022) (“From 1973 to 2013, hourly compensation of a typical (production/nonsupervisory) worker rose just 9 percent while productivity increased 74 percent. This breakdown of pay growth has been especially evident in the last decade, affecting both college- and non-college-educated workers as well as blue- and white-collar workers.”)

20. Irina Ivanova, [Wages surged for lowest-paid Americans after the pandemic](#), CBS News (March 23, 2023).

21. Sarah Foster, [Wages are finally rising faster than inflation. Will Americans ever feel like it?](#) Bankrate (Sept. 7, 2023) (“After cratering during the pandemic, the job market roared back, becoming the hottest in a lifetime and bestowing workers with even better bargaining power, job opportunities and raises than before. But it failed to be fully felt. Parallel with supply shocks and pandemic-related disruptions, inflation also burst as the economy fired off on all cylinders, eating away at many workers’ gains. When the gap between wage growth and inflation was at its widest in the third quarter of 2022, prices had jumped 12.8 percent since the start of 2021, while wages had climbed a smaller 9.1 percent, a 3.7-point gap...”).

22. See, e.g., Paul Wiseman et al., [US inflation jumped 8.5% in past year, highest since 1981](#), AP News (April 12, 2022).

23. Flex Association, [Survey Finds App-Based Work Crucial to Mitigate Inflation; Majority Prefer to Remain Independent](#) (May 1, 2023).

24. Caden Rosenbaum, [Portable Benefits to Improve the Gig Worker Economy](#), Libertas Institute. See also Noah Lang, [Gig workers need benefits, but making them employees isn’t the solution](#), Fast Company (Dec. 20, 2022) (“To create a more financially resilient labor force and remove job lock, I believe we should re-examine and expand these moves to create a third way: Decouple benefits from work classification, innovate on portable delivery models, and require job providers to help fund these benefits.”).

25. U.S. Chamber of Commerce, [Understanding America’s Labor Shortage](#) (January 2024).

26. Statista, [Change in Remote Work Trends Due to COVID-19 in the United States in 2020](#) (2023).

27. Rice University found a 7% to 12% increase in entrepreneurial interest after the arrival of rideshare platforms in a community, attributed to the safety net that app-based work provides while people pursue their goals. John M. Barrios et al., [Launching with a parachute: The gig economy and new business formation](#), Journal of Financial Economics (April 2022), Volume 144, Issue 1, 2022.

28. U.S. Bureau of Labor Statistics, [Job Openings and Labor Turnover Summary](#) (May 1, 2024).

29. Scott Horsley, [U.S. unemployment has been under 4% for the longest streak since the Vietnam War](#), NPR (Jan. 5, 2024).

30. Public First, [U.S. App-Based Rideshare and Delivery: Economic Impact Report](#) (March 2024).

31. “[F]lexible work is no longer a temporary pandemic response but an enduring feature of the modern working world.” McKinsey & Company, [Americans are embracing flexible work—and they want more of it](#) (June 23, 2022). This trend receives a boost from “career portfolioing”—a dynamic where “employees become free agents, relying increasingly on themselves to carve out a meaningful and rewarding professional life. They put together a mosaic of positions to collectively fulfill their aspirations around income, advancement, skill development and enjoyment. They are no longer subject to a longstanding relationship with a single, lifetime employer, or dependent on a strong job market.” Scott Sonenshein, [Americans Are Taking More Control Over Their Work Lives—Because They Have To](#), Government Executive (Jan. 5, 2023).

32. Scott Sonenshein, [Americans Are Taking More Control Over Their Work Lives—Because They Have To](#), Government Executive (Jan. 5, 2023) (“Eighty-seven percent of workers offered at least some remote work embrace the opportunity.”).

33. Katherine Bindley and Chip Cutter, [Workers Care More About Flexible Hours Than Remote Work](#), Wall Street Journal (Jan. 25, 2022) (citing a survey of workers finding that 95% want flexible hours/schedules, a higher percentage than those who said they want location flexibility (78%)).

34. Sander van ‘t Noordende, [Non-Office Workers Also Deserve—and Want—Flexible Work, According to New Survey](#), Forbes (April 4, 2023).

35. Public First, [U.S. App-Based Rideshare and Delivery: Economic Impact Report](#) (March 2024).

36. *Id.*

37. See, e.g., DoorDash, [Portable Benefits: A Framework to Strengthen Independent App-Based Delivery Work](#) (2023).

38. Numerous commenters have also expressed concern over unpredictable work schedules in traditional, often hourly employment, citing the minimal or non-existent control that workers have over their employer-dictated schedules in such traditional employment opportunities. See, e.g., Jodi Kantor, [Working Anything but 9 to 5](#), New York Times (Aug. 13, 2014).

39. See, e.g., DoorDash, [Portable Benefits: A Framework to Strengthen Independent App-Based Delivery Work](#) (2023); Lyft, [Independence + Benefits](#); Shipt, [Flexible schedules and flexible benefits: A new model would boost financial security for shoppers while preserving independence](#) (Oct. 12, 2023); Uber, [Working Together, Priorities to Enhance the Quality and Security of Independent Work in the United States](#) (August 2020).

40. See *infra* discussion below in Section IV.A.

41. Lydia DePillis, [If the Job Market Is So Good, Why Is Gig Work Thriving?](#), New York Times (Aug. 15, 2022, updated June 22, 2023).

42. See, e.g., Chamber of Progress, [The Many Ways Americans Work and The Costs of Treating Independent Contractors as Employees](#) (April 6, 2022) (finding that “[n]early 1.52 million people—46 percent of those reclassified—chose independent contracting because disabilities, chronic illness, or family responsibilities precluded working in traditional jobs. Involuntary reclassification would cost those vulnerable people an average of \$20,759 across full-time and part-time contractors for direct income losses totaling an estimated \$31.4 billion.”).

43. Aspen Institute Economic Opportunities Program, [Good Work in the Gig Economy: Building a Sustainable App-Based Economy](#) (Aug. 8, 2023).

44. Public First, [U.S. App-Based Rideshare and Delivery: Economic Impact Report](#) (March 2024).

45. Public First, [U.S. App-Based Rideshare and Delivery: Economic Impact Report](#) (March 2024).

46. For example, most courts and regulators use the economic realities test to determine employee status for purposes of the Fair Labor Standards Act (FLSA)—an analysis that considers the circumstances of a working relationship across six factors. However, as the GAO has noted, “No definitive test exists to distinguish whether a worker is an employee or an independent contractor. The tests used to determine whether a worker is an independent contractor or an employee are complex, subjective, and differ from law to law. For example, the National Labor Relations Act, the Civil Rights Act, the Fair Labor Standards Act, and the Employee Retirement Income Security Act each use a different definition of an employee and various tests, or criteria, to distinguish independent contractors from employees.” U.S. Government Accountability Office, [Employee Misclassification: Improved Outreach Could Help Ensure Proper Worker Classification](#) (May 8, 2007).

47. See U.S. Government Accountability Office, [Employee Misclassification: Improved Outreach Could Help Ensure Proper Worker Classification](#) (May 8, 2007) at 6. (“When the tests are combined in some type of hybrid, a court typically weighs the common law factors and some additional factors related to the worker’s economic situation, such as how the work relationship may be terminated, *whether the worker receives leave and retirement benefits, and whether the hiring party pays Social Security taxes.*” (*emphasis added*)).

48. The dichotomy between the autonomy of independent work and the benefits of employment has led some to argue that app-based workers should be classified as employees under the existing legal paradigm. As studies have shown, however, this could cost hundreds of thousands of app-based workers earning opportunities. This is because an employment model could result in app-based platforms having to actively manage workers' schedules—including when and for how many hours they must work— and limit hiring in a way that reflects the volume of business in any given market. Forcing a fundamental transformation of business models would lead to higher prices, reduced demand, and fewer earning opportunities for app-based workers. See, e.g., Sonecon, [The Many Ways Americans Work and The Costs of Treating Independent Contractors as Employees](#) (April 6, 2022).

49. On major app-based rideshare and delivery platforms, for instance, individuals “multi-app” or drive/deliver for an average of 1.9 platforms. Public First, [U.S. App-Based Rideshare and Delivery: Economic Impact Report](#) (March 2024).

50. Flex, [New Morning Consult Poll Shows 77% of App-Based Workers Prefer to Remain Independent Contractors](#) (Nov. 2, 2022).

51. The Aspen Institute, [Designing Portable Benefits: A Resource Guide for Policymakers](#) (June 2019).

52. See, e.g., Portable Benefits, [Common Ground for Independent Workers](#), Medium (Nov. 10, 2015). See also New York City Public Advocate Jumaane D. Williams, [A White Paper on Protecting Workers Classified as Independent Contractors](#) (May 2022) (calling on New York State to “create a portable benefits program that would extend key benefits to those who would retain contractor status following the implementation of said standards.”).

53. Flex, [Flex Announces Principles for Federal Legislation to Provide Portable Benefits for App-Based Workers](#) (June 28, 2023). App-based companies are also actively experimenting with portable benefits initiatives at the state level as a proof of concept. Earlier this year, for instance, DoorDash launched a new portable benefits savings pilot program in partnership with Pennsylvania Governor Josh Shapiro that will demonstrate how Dashers could accrue funds to support expenses related to health insurance, retirement, and paid time off. In launching this program, the company noted that its partnership with the Shapiro administration is focused on finding solutions “that don’t force workers to choose between structured employment with benefits or flexible work without.” DoorDash, [DoorDash Announces Portable Benefits Savings Program for Dashers in Pennsylvania](#) (April 3, 2024).

54. John M. Barrios et al., [Launching with a parachute: The gig economy and new business formation](#), Journal of Financial Economics (April 2022), Volume 144, Issue 1, 2022.

55. Julia M. Goodman and Daniel Schneider, [The association of paid medical and caregiving leave with the economic security and wellbeing of service sector workers](#), BMC Public Health. 2021 Nov 1;21(1) (“[W]orkers with access to paid sick leave benefits are less likely to report to work while sick, to forgo medical care for themselves and their family members, and to experience workplace injury. They are more likely to experience improved sleep quality and to seek cancer screening and other preventive medical care. Children whose parents have access to paid sick leave have improved access to and use of healthcare services and reduced ER visits. Paid parental leave for new parents has been linked to improved self-rated health, reduced psychological distress, and reduced alcohol consumption.”).

56. Dean Baker, [Job Lock and Employer-Provided Health Insurance: Evidence from the Literature](#), AARP (March 2015).