



## The Daily Dish

# The Importance of Protecting Portable Benefits

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Two bills have been introduced in Congress to protect or expand [portable benefits](#) – or benefits that follow the worker instead of being tied to employment. In the House, the [Modern Worker Security Act](#) passed in the Education & Workforce Committee in July. In the Senate, Health, Education, Labor & Pensions Committee Chairman, Bill Cassidy (R-LA) has proposed the [Unlocking Benefits for Independent Workers Act](#). Notably, both bills would provide a safe harbor to allow companies to voluntarily provide portable benefits to independent contractors (ICs) without fear of lawsuits in which these companies are accused of improperly classifying these workers as ICs instead of employees.

Under a portable benefits system, workers would not lose their benefits when they move from company to company. This way, they can access benefits similar to those of a traditional employer benefit system while still enjoying the autonomy and flexibility of a freelance worker.

Companies that would otherwise want to provide these portable benefits to their freelance workers may be hesitant to for fear that doing so may be used as evidence in a lawsuit that the company misclassified the worker as an IC and not an employee.

Opponents of these safe harbor bills argue that legislation to protect portable benefits sets out to solve a problem that [does not exist](#), and that fears of misclassification lawsuits for the provision of benefits are unwarranted. But this is incorrect. Indeed, the provision of employee benefits has been used before as a factor in determining worker classification in [Supreme Court cases](#). In addition, the [Internal Revenue Service's guidance](#) uses the provision of benefits as a determining factor for worker classification. Therefore, statutory clarity to protect the provision of portable benefits to ICs is needed.

The modern gig economy employs about [75 million](#) workers. The provision of benefits is, of

course, a positive for these freelance workers - so if businesses wish to provide them, they should be able to do so without fear of misclassification lawsuits. In short, Congress should consider these bills as a positive for both the millions of gig workers and the businesses that wish to provide them competitive benefits packages.