

CONGRESSIONAL TESTIMONY

**The Future of Work:
Helping Workers and Employers Adapt to and Thrive in
the Ever-Changing Labor Market**

**Testimony before the
Health, Education, Labor, and Pensions Subcommittee**

and the

Workforce Protections Subcommittee

of the Education and Labor Committee

U.S. House of Representatives

October 23, 2019

Rachel Greszler

Research Fellow in Economics, Budgets, and Entitlements
The Heritage Foundation

My name is Rachel Greszler. I am a Research Fellow in Economics, Budgets, and Entitlements at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

In my testimony today, I would like to first emphasize the most important factors in creating workforce opportunities and protections; second, examine some of the changes happening in what is called the “Future of Work”; third, discuss some misguided policies that would hurt many of the workers they are intended to help; and fourth, propose ways to more broadly help workers and the economy to adapt to, and benefit from, the ever-evolving workplace.

Jobs and Productivity Are Essential for Workplace Protection and Opportunity

Before worrying about wages, benefits, and other working conditions, workers first and foremost need jobs. The opportunity to work, earn a living, and provide for one’s family is not only the most fundamental component of the labor market—it is also a central component of personal satisfaction and fulfillment. That is not something that will not change, no matter what the future of work brings.

In this regard, the exceptionally strong labor market is producing widespread gains in

employment, income, and opportunity. Just last week, the Bureau of Labor Statistics (BLS) reported that the unemployment rate hit a 50-year low of 3.5 percent.¹ Even more impressive was an all-time low of 6.3 percent for the comprehensive joblessness measure, which includes even those individuals who say they would like to work but have not looked for work. (The comprehensive jobless rate is a measure developed by the Mercatus Center that falls in between the BLS's U-5 and U-6 measures of unemployment).²

Of course, workers want more than just *a* job. They want a job that pays well, is fulfilling, and that provides opportunity for growth. The key to such a job is increased productivity. So, how can policymakers help workers achieve that?

Governments can attempt to micromanage workplaces—either directly through minimum wage laws or mandated benefits, or indirectly by forcing unions upon workers and employers—but employers ultimately cannot stay in business if they cannot cover their costs. Without workers becoming more productive, such forced actions will lead to fewer jobs and lower income.

On the other hand, if workers and employers have more autonomy to pursue their own goals and are allowed to keep more of their own earnings, the result is greater entrepreneurial activity, higher investment, and technological gains that make workers more productive. The more that workers produce, the more they earn, and the more the economy grows. Not

surprisingly, that is what happened with the Tax Cuts and Jobs Act (TCJA)³ and other deregulatory changes—incomes rose and are still rising. And, they are rising the most for low-income earners; over the past year, incomes increased 6.6 percent at the 10th percentile of workers, compared to 3.3 percent for the 90th percentile of workers.⁴

The Future of Work

The future of work is not some far-off event, nor a tectonic shift in the workplace. The future of work is already here, found in gradual changes, such as new methods of learning, new types of automation, and increased use of alternative work arrangements. These changes are all happening alongside traditional workplace and educational foundations.

A Rise in Independent Work for Supplemental Income. Various measures find that anywhere between 10 percent and 40 percent of workers engage in alternative work arrangements. Depending on the definition, this could include owning one's own business, performing contract work, participating in the gig economy, or working in a temporary position. Nevertheless, much of these alternative work arrangements occur alongside, or in addition to, other work, as nine out of every 10 workers continue to be engaged in traditional employment.⁵

A 2016 study of the U.S. and European labor forces by the McKinsey Global Institute,

¹BLS, "The Employment Situation—September 2019," October 4, 2019,

<https://www.bls.gov/news.release/pdf/laus.pdf> (accessed October 21, 2019).

²Michael D. Farren, "Comprehensive Jobless Rate Hits New All-Time Low," The Mercatus Center, October 4, 2019,

<https://www.mercatus.org/bridge/commentary/comprehensive-jobless-rate-hits-new-all-time-low> (accessed October 18, 2019).

³While the TCJA boosted economic output by allowing individuals to save, invest, and spend more of their own

money, the positive impacts of the tax cuts will be tempered by higher deficits if Congress fails to rein in federal spending.

⁴The White House, *Economic Report of the President*, March 2019, <https://www.whitehouse.gov/wp-content/uploads/2019/03/ERP-2019.pdf> (accessed October 21, 2019).

⁵U.S. Department of Labor, "Contingent and Alternative Employment Arrangements—May 2017," USDL-18-0942, June 7, 2019.

“Independent Work: Choice, Necessity, and the Gig Economy,” classified independent workers into four different groups: (1) free agents, (2) casual earners, (3) “reluctants,” and (4) financially strapped. Of the 20 percent to 30 percent of workers that the study found to be engaged in independent work, 30 percent were free agents, electing independent work as their primary job; 40 percent were casual earners, choosing independent work to supplement other income; 14 percent were reluctant, relying on independent work as their primary income while they would prefer traditional employment; and 16 percent were financially strapped, supplementing their income out of necessity.⁶

The Gig Economy. While independent work as a whole has experienced significant growth over the past decade, the biggest growth component appears to be supplementation of traditional work with gig-type jobs. So-called gig-economy work fills an important niche, allowing workers to earn supplemental income for all types of goals and priorities, from saving for a house to paying for kids’ activities or college to providing income while sinking resources into a new business venture. Yet, the gig-economy remains a small component of the labor market, accounting for about 1 percent of total employment.⁷

Contracting. An important component of independent work is contracting. Contractors typically perform more specialized jobs that require either short-term work or less than a full-time position. Contracting can be an efficient means for employers and workers alike because it allows employers to gain more

specialized services, and is a way for workers to maximize their productivity and incomes.

Being able to purchase contracted services, as opposed to having to employ full-time employees, is particularly important for small businesses. Among small businesses that use contractors, the smallest ones use the most contractors: Businesses with only one to four employees used 6.7 contractors, on average.

If employers—particularly very small ones—had to hire every worker as full-time employee, they would be forced to decide among not having the work done at all; hiring a formal employee and likely paying him for idle time; or having a full-time employee do a job that is outside his skillset and position.

Benefits of Independent Work. Independent work allows higher labor force participation because it provides job opportunities for individuals who either cannot or do not want to commit to a traditional job. For example, many individuals with disabilities who cannot perform a traditional job can pick up independent work as their conditions and abilities allow; older individuals can stay engaged in the workforce, semi-retired, on their own terms (one of every three independent contractors is 55 or older);⁸ students can earn income while gaining education and training; and parents and caregivers can perform independent work to earn income without having to sacrifice their family needs and desires.

In most cases, independent work or alternative work is an individual’s desired choice. According to the BLS Alternative Work

⁶McKinsey Global Institute, “Independent Work: Choice, Necessity, and the Gig-Economy,” October 2016, <https://www.mckinsey.com/featured-insights/employment-and-growth/independent-work-choice-necessity-and-the-gig-economy> (accessed October 19, 2019).

⁷Pew Trusts, “How Well Are Independent Workers Prepared for Retirement?,” June 28, 2019,

<https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/06/how-well-are-independent-workers-prepared-for-retirement> (accessed October 21, 2019).

⁸U.S. Department of Labor, “Contingent and Alternative Employment Arrangements—May 2017.”

Arrangements Survey, nine of every 10 independent contractors prefer contract work to a traditional work arrangement.⁹ One of the biggest benefits of independent work is the ability to be your own boss, including setting your own schedule, picking which jobs you perform, and how you perform them.

Flexibility is a huge benefit to independent workers. A recent economic analysis of one million Uber drivers found that they valued the completely flexible work platform at about 40 percent of their earnings.¹⁰ In part, that was due to drivers choosing to work more hours as a result of the freedom to choose *when* to work—in fact, if the average Uber driver had to commit to a traditional taxi-cab platform, he or she would not drive at all.¹¹

Shortcomings of Independent Work. Despite overwhelming satisfaction with the choices, flexibility, and income opportunities afforded by independent work, this type of employment lacks some of the benefits of traditional employment. Most notably, independent workers do not have employer-provided benefits, such as health care and retirement savings accounts. Even though contractors often receive higher wages to compensate for the lack of benefits, it remains more difficult and costly for independent workers to obtain health insurance, retirement savings accounts, and other traditional employment-based benefits.

Misguided Policies and Unintended Consequences

⁹Ibid.

¹⁰M. Keith Chen, Judith A. Chevalier, Peter E. Rossi, and Emily Oehlsen, “The Value of Flexible Work: Evidence from Uber Drivers,” *Journal of Political Economy* (December 12, 2018), <https://www.journals.uchicago.edu/doi/abs/10.1086/702171?mobileUi=0&> (accessed October 21, 2019).

Despite a very strong labor market in which there are more job openings than there are people looking for jobs, and workers thus have an upper hand in negotiating for higher compensation, some workers are still struggling. They may be “left behind,” stuck in a low-wage job, or want more stability and opportunity. Or, they may be happy with their work, but lack some of the benefits and security associated with formal employment arrangements.

When addressing these concerns, it is helpful for policymakers to view them in broad context, considering not only the concerns expressed by discontented workers, but also the unexpressed concerns of contented workers who could be made discontented by proposed changes. Congress should consider policies in light of how they will affect all workers, particularly the least advantaged, and assess them on the basis of achieving higher incomes and greater opportunities.

Forcing Unions on Workers and Employers Lowers Employment, Restricts Income, and Threatens Workers’ Privacy

Legislation, such as the Protecting the Right to Organize (PRO) Act, would further expand unions’ government-granted monopoly status and strip workers of personal rights and privacies, including overturning three Supreme Court cases and 26 state right-to-work laws.¹²

Unions were established to benefit workers, but when they receive monopolistic power and undue influence, they do not have to provide value to workers to remain in business. This

¹¹Rachel Greszler, “The Value of Flexible Work Is Higher Than You May Think,” Heritage Foundation *Backgrounder* No. 3246, September 15, 2017.

¹²G. Roger King, Testimony before the Subcommittee on Health, Education, Labor and Pensions of the Education and Labor Committee, U.S. House of Representatives, July 25, 2019, https://republicans-edlabor.house.gov/uploadedfiles/roger_king_pro_act_testimony_-_july_2019.pdf (accessed October 21, 2019).

lack of value is evidenced by the relatively small portion of members' dues that unions spend representing workers, as well as by a decline in union membership when workers have a free choice not to unionize.

Declining union membership is due, at least in part, to failure of unions to adjust to changing workplaces. Unlike, say, a 1950s assembly line where workers clocked in at 9 a.m. and out at 5 p.m., and all produced 20 widgets a day, few jobs today are so clear-cut or routine. Yet unions maintain rigid compensation and workplace structures that prevent performance-based compensation and thus lead to lower productivity and pay.¹³

While unions can be successful in forcing companies to provide above-market compensation, this merely shifts resources from lower-skilled and younger workers who lose their jobs to higher-skilled and longer-tenured workers who receive higher compensation. It can also lead to industry-wide declines because no company can maintain above-market wages in the long-run. Automobile manufacturing in America is less than half of what it was just two decades ago,¹⁴ and the United Automobile Workers (UAW) union is at least partly to blame.¹⁵ The UAW drove compensation costs so high (over \$70 per hour, now that pension promises made decades

¹³Studies show that average pay rises by 6 percent to 10 percent after companies adopt pay-for-performance structures: Alison L. Booth and Jeff Frank, "Earnings, Productivity, and Performance-Related Pay," *Journal of Labor Economics*, Vol. 17, No. 3 (July 1999), pp. 447–463; Edward Lazear, "Performance Pay and Productivity," *American Economic Review*, Vol. 90, No. 5 (December 2000), pp. 1346–1361; Tuomas Pekkarinen and Chris Riddell, "Performance Pay and Earnings: Evidence from Personnel Records," *Industrial and Labor Relations Review*, Vol. 61, No. 3 (April 2008), pp. 297–319; Adam Copeland and Cyril Monnet, "The Welfare Effects of Incentive Schemes," *Review of Economic Studies*, Vol. 76, No. 1 (2009), pp. 93–113; and Daniel Parent, "Methods of Pay and Earnings: A Longitudinal Analysis," *Industrial and*

ago have come due) that plants are closing down and hundreds of thousands of workers have lost their jobs.¹⁶

Furthermore, stripping individuals of their privacy protections and their right to a secret-ballot vote would be both unprecedented and harmful to workers, particularly in light of the coercive and threatening actions of certain labor unions. As the government has taken steps to increase privacy protections (such as making it illegal for telemarketers to call numbers registered on the do-not-call-list), and as there are bipartisan efforts to enact further privacy protection laws, it is both ironic and disconcerting that Congress is simultaneously considering forcing employers to provide employees' personal information without their consent (including their home addresses) to outside organizations that want to solicit their business.

Finally, by stripping states' rights to pass "right-to-work" laws, federal policymakers would be violating state lawmakers' ability to provide worker freedoms and their rights to establish an economic and business climate that they believe is most conducive to growth and opportunity.

There is nothing inherently wrong with unions, but workers must be free to choose whether to

Labor Relations Review, Vol. 53, No. 1 (October 1999), pp. 71–86.

¹⁴Federal Reserve, "Domestic Auto Production," Bank of St. Louis, <https://fred.stlouisfed.org/series/DAUPSA> (accessed October 20, 2019).

¹⁵Rachel Greszler, "Why VW Workers Have More To Lose Than Gain From Unionizing," The Heritage Foundation, May 13, 2019, <https://www.heritage.org/jobs-and-labor/commentary/why-vw-workers-have-more-lose-gain-unionizing>.

¹⁶Tomi Kilgore, "Auto Industry Cutting Jobs at the Fastest Pace Since the Financial Crisis," Market Watch, May 21, 2019, <https://www.marketwatch.com/story/auto-industry-cutting-jobs-at-the-fastest-pace-since-the-financial-crisis-2019-05-21> (accessed October 19, 2019).

join them and to be represented by them, and Congress must not grant them special favors.

Inaccurate Definitions of “Employee” Could Eliminate Entire Business Models

As more workers engage in alternative work arrangements, a small portion—who would prefer traditional employment—have expressed dissatisfaction with their employment options. Subsequently, certain policymakers are seeking to reclassify independent workers as “employees,” and to reclassify employees of a small, family-run franchise as “joint employees” of a both their actual employer as well as a larger company. The end result of such efforts would be to slightly increase the level of traditional employment by shifting some current independent workers into more formal employee relationships, but at the expense of reducing total employment and income because it would not be possible for companies to fully employ all the individuals with whom they do business. In other words, these new definitions would benefit a small few at the expense of many.

Joint Employer Definition. Codifying the drastically altered *Browning-Ferris*¹⁷ definition of a “joint employer” would upend both the franchise and business-services contracting models in the United States.¹⁸ Franchisors should not and will not take on legal liability for workers whom they do not hire, fire, pay, supervise, schedule, or promote—in short, workers over whom they exercise no direct control. Instead, they will restrict the number of their franchises, fewer people will be employed, and fewer goods and

services will be produced (leading to higher prices for consumers).

Similarly, requiring businesses to become employers of individuals with whom they simply contract limited services would upend an efficient and beneficial workplace model. It would be extremely unwieldy, if not impossible, for employers to bargain across multiple different businesses that employ the same contractor. Consequently, companies would simply not contract with unionized labor. By increasing legal liabilities and raising the cost of many services, the proposed “joint employer” definition would reduce employment and opportunities for workers, curtail business growth, and leave consumers with fewer choices and, likely, higher prices.

A November 2018 study by the American Action Forum found that the *Browning-Ferris* joint employer definition, which impacts up to 44 percent of private-sector workers, has cost franchise businesses as much as \$33.3 billion annually, reduced employment by 376,000 jobs, and caused a 93 percent spike in lawsuits against franchises.¹⁹

Independent Contractor vs. Employee. Independent contractors are different from employees in a number of important ways, and each status has its own advantages and shortcomings.

Independent contractors are their own bosses. They choose when, where, how, and for whom they work. Because they do not have a formal employer, independent contractors do not qualify for things like unemployment insurance, and are not subject to rules, such as

¹⁷*Browning-Ferris Industries v. NLRB*, August 27, 2015.

¹⁸James Sherk, “Keeping the American Dream Alive: The Challenge to Create Jobs Under the NLRB’s New Joint Employer Standard,” Testimony before the Committee on Small Business and Entrepreneurship, The U.S. Senate, June 16, 2016, [https://www.heritage.org/testimony/keeping-the-](https://www.heritage.org/testimony/keeping-the-american-dream-alive-the-challenge-create-jobs-under-the-nlrbs-new-joint)

[american-dream-alive-the-challenge-create-jobs-under-the-nlrbs-new-joint](https://www.heritage.org/testimony/keeping-the-american-dream-alive-the-challenge-create-jobs-under-the-nlrbs-new-joint) (accessed October 19, 2019).

¹⁹Ben Gitis, “The Joint Employer Standard and the Supply Chain,” American Action Forum, November 26, 2018, <https://www.americanactionforum.org/research/joint-employer-standard-and-supply-chain/> (accessed October 19, 2019).

hour limits and wage restrictions. Moreover, because they do not have an employer, they do not receive employer-provided benefits, such as health insurance and retirement savings plans. Instead, they have to obtain these on their own, often at a higher cost both because of unequal tax treatment as well as higher administrative costs for individual vs. group-based benefits. In addition to being one's own boss, independent work provides greater income potential because workers are typically more productive when paid to perform a specific job than when paid a salary or hourly rate, and independent work does not limit the number of hours individuals can work.

Applying the proposed three-part "ABC" test would invalidate decades of legal precedent and add a fourth, different, test for defining employees within federal statute.²⁰ By adding two factors that ignore and can negate the "common law" test that defines an employee based on an employer's level of control over that worker, the ABC test could wipe out employment and income opportunities for millions of Americans. Instead of causing companies to formally employ previously independent contractors (as its proponents claim), the provisions of the PRO Act would instead prevent certain types of companies from doing business with independent contractors. For example, the "B" component of the test would prevent a limousine company from using any type of delivery contracting services because it is in the business of delivering passengers places. The "C" component of the test would essentially drive out the small guys by preventing companies from contracting with individuals who do not actively market their services and do not work for multiple different customers.²¹

²⁰Trey Kovacs, "The Case Against the Protecting the Right to Organize Act," August 27, 2019, https://cei.org/content/case-against-protecting-right-organize-act#_edn28 (accessed October 21, 2019).

²¹Ibid.

In short, applying the proposed ABC test to determine workers' status could effectively eliminate most gig-economy and contract jobs because trying to fit them into traditional employment platforms is like trying to force round pegs into square holes—it just will not work.

Take Uber, for example. If policymakers force Uber to treat drivers as formal employees, the company would have to take away the very autonomy and flexibility that draws drivers to the platform. Instead, drivers would have to follow Uber's prescribe shifts, they would be told which passengers to pick up instead of choosing ones convenient to their location and schedule, drivers would have to request time off in advance, and they may no longer be able to work for another company besides Uber. Moreover, the increased liability on Uber's behalf could cause the company to enact supervision measures such as installing cameras in drivers cars so that Uber could have more control over drivers workplace conditions. Finally, customers could count on a steep increase in prices, which would reduce demand and lead to even fewer Uber jobs.

The problem with attempting to provide more benefits and protections to independent workers is that the overwhelming majority of them have chosen independent work precisely *because* they do not want the restrictions that come along with traditional employment. Moreover, many of these workers already have the benefits of traditional employment, either through their own work or through a family member's. Only 16 percent of gig-economy workers rely on the gig platform for their main job.²²

²²Board of Governors of the Federal Reserve System, "Report on the Economic Well-Being of U.S. Households in 2017," May 2018, <https://www.federalreserve.gov/publications/2018-economic-well-being-of-us-households-in-2017-preface.htm> (accessed October 22, 2019).

Requiring virtually all workers to report to a boss would eliminate millions of jobs and opportunities, leaving workers, employers, and consumers all worse off. Stripping workers of options that offer autonomy and flexibility would particularly hurt less-advantaged workers, such as single parents and individuals with disabilities, who need accommodating schedules and greater autonomy.

Wage and Hour Restrictions Reduce Employment and Flexibility

Higher wages are a great thing when they come from a free market as a result of workers becoming more productive. The government, however, cannot make workers more productive, and employers cannot stay in business if they are forced to pay workers more than they produce.

A \$15 Minimum Wage. The Raise the Wage Act, which would establish a nation-wide \$15 minimum wage, would lead to millions of lost jobs, and a survival-of-the-fittest labor market with no place for less-experienced or disadvantaged workers. Moreover, the Congressional Budget Office explained how a \$15 minimum wage would negatively affect the entire economy through higher prices, smaller total incomes, larger deficits, higher interest rates, higher inflation, a more rapid pace of automation; and a smaller economy.²³

Liberal and conservative economists alike caution against a \$15 minimum wage. In 2015, Alan Krueger of President Barack Obama’s Council of Economic Advisers, called a \$15 minimum wage “a risk not worth taking,” and

said it would “put us in uncharted waters, and risk undesirable and unintended consequences.”²⁴ Similarly, former Clinton Administration economist Harry Holzer cautioned that a \$15 minimum wage would be “extremely risky,” particularly for young and less-educated workers who need to gain work experience.

Even in wealthier, high-cost cities, such as Seattle, the shift to a \$15 minimum wage has resulted in only small gains for the most experienced workers, with significant losses for the least-experienced and less-advantaged.²⁵ A \$15 minimum wage could devastate lower-cost and more rural areas of the country.

Unless Congress has a solution for addressing millions of newly unemployed workers and for confronting the consequences of an economy that has no place for workers who cannot produce at least \$35,000 of value (the cost to employers of employing a full-time worker at \$15 per hour), they should instead leave minimum-wage laws to state and local governments, which can better set the appropriate rate for their communities.

Expanded Overtime Threshold. Hourly workers are subject to overtime rules that require employers to pay them time-and-a-half for any hours over 40 that they work in a given week. Additionally, salaried workers who earn less than about \$23,700 per year (rising soon under a new Department of Labor rule to about \$35,700) are also subject to overtime rules and pay. Some policymakers would like to raise the overtime salary threshold to closer to \$50,000,

²³CBO, “The Effects on Employment and Family Income of Increasing the Federal Minimum Wage,” July 2019, <https://www.cbo.gov/system/files/2019-07/CBO-55410-MinimumWage2019.pdf> (accessed October 21, 2019).

²⁴Alan B. Krueger, “The Minimum Wage: How Much Is Too Much?,” *The New York Times*, October 9, 2015,

<https://www.nytimes.com/2015/10/11/opinion/sunday/the-minimum-wage-how-much-is-too-much.html> (accessed October 21, 2019).

²⁵Allison Schrager, “A New Study of Seattle’s Minimum Wage Hike Shows Who It Helps, and Who It Hurts,” October 22, 2018, <https://qz.com/1429986/a-new-study-of-seattles-minimum-wage-hike-shows-who-it-helps-and-who-it-hurts/>

with the intent of raising incomes for lower-wage and middle-wage workers.

The problem with raising the salary threshold in an attempt to increase wages is that businesses will respond to such changes by adjusting other factors to keep their overall labor costs constant. As left-leaning economists Jared Bernstein and Ross Eisenbrey explained, additional overtime costs “would ultimately be borne by workers as employers set base wages taking expected overtime pay into account.”²⁶

Three ways that employers will respond to higher overtime thresholds are: (1) taking away worker flexibilities, such as working from home; shifting work from one week to another to meet family needs; or taking away benefits, such as vacation days; (2) shifting salaried employees to hourly workers, which leads to less-stable incomes and more employer restrictions on when and where employees must perform their work; and (3) reducing employees’ base pay both to cover expected overtime pay as well as excessive compliance costs.²⁷

Government-Mandated Benefits Are Burdensome, Costly, and Inefficient

Employer-provided benefits can be an efficient and helpful way for individuals to obtain health, life, and disability insurance, or a retirement savings account, because larger pools of workers result in lower average prices and smaller administrative costs.

Government-mandated benefits, on the other hand, can have the unintended consequence of reducing employment, restricting pay and other

benefits, and causing employers to discriminate against workers who are most likely to incur higher costs because of those benefits.

Even less helpful and efficient, however, would be government-provided benefits, such as a national paid family leave program. Employers are already rapidly expanding access to paid family leave benefits, and a government program—with a new tax on workers—would shift these privately financed costs to workers. Those costs would be disproportionately born by lower-income workers, as studies have shown government-provided paid family leave to be regressive with middle-income and upper-income earners disproportionately benefiting from them. In addition to the higher costs, a one-size-fits-all government program cannot meet workers’ needs in the ways that more accommodating and flexible employer-provided programs can.

How to Benefit Workers Through Choice and Opportunity

Government interventions in the labor market—attempting to mold the labor market to meet politicians’ changing desires, instead of allowing the private sector to meet the market’s demands—can benefit certain groups, but always at the expense of others, and typically in ways that create a smaller economy for everyone. Instead of trying to micromanage the labor market, Congress can enact policies that help employers and workers respond to the changing nature of work. This will lead to higher incomes and a larger economy for everyone.

²⁶Jared Bernstein and Ross Eisenbrey, “New Inflation-Adjusted Salary Test Would Bring Needed Clarity to FLSA Overtime Rules,” Economic Policy Institute, March 13, 2014.

²⁷The Obama Administration estimated that employers would spend \$295 million complying with its proposed

increase in the threshold to about \$47,800, while workers would receive an estimated \$1.2 billion in additional wages. This amounts to a 25 percent compliance cost.

Modernized, Choice-Based Labor Organizations. At their inception, unions served the important purpose of protecting workers' safety, preventing worker exploitation, and giving workers an otherwise unheard voice. But as many of the things unions used to provide are now protected by law or enforced by a globally competitive free enterprise system, traditional union functions have become of less value and importance. Yet, unions generally have not adapted to provide benefits that are of value to today's workers. In some instances, unions have served to the outright detriment of workers by preventing them from being rewarded for their hard work.²⁸ And, some workers have lost trust in unions amidst all-too-common findings of union corruption and embezzlement.²⁹

Workers' Choice and Members Only Arrangements. The union exclusivity model is flawed on both sides: Workers in a unionized workplace cannot be represented by anyone other than the union, and unions must represent all workers, including those in right-to-work states and public employees' unions, who choose not to join the union.

States that have enacted right-to-work laws could free unions from the so-called free rider problem by enacting workers' choice or members' only models in which unions do not represent non-union members. Such structures would require workers who want union-provided services to pay for those services, and would free workers to choose their own representation. This structure could even allow workers to pick and choose the services for which they want to contract with the union.

²⁸James Sherk, "Why Did This Union Oppose Higher Pay For Its Members," The Daily Signal, May 18, 2014, <https://www.dailysignal.com/2014/05/18/union-oppose-higher-pay-members/>.

²⁹Bob Gilson, "American Federation of Government Employees Still Most Corrupt Union in the U.S.,"

Unions as Professional Organizations. Workers do not have to be employed by the same company or even in the same field of work in order to benefit from unions. One of the most successful and fast-growing unions in the U.S. is the Freelancers Union. This completely optional—and dues-free—union has attracted 450,000 members by providing what workers value, such as education, insurance benefits, and advocacy.

Union-Provided Training. As technology and trade continue to alter the workplace, unions could provide valuable training to workers to help prepare them for changes within their own job or help them gain the skills and experience for a new type of work. Some unions do provide worker training, but expanding it outside the job they already perform could be particularly beneficial for workers in declining industries.

Representation Services. Union-prescribed pay scales, which focus only on tenure and title, do not make sense for many workplaces where there are either many different positions or a wide range of skills and expertise. In those cases, unions could still provide value through things like representation services and setting minimum salary, while allowing individual workers to directly negotiate their compensation packages with their employer. This is the type of structure that the Major League Baseball players' association provides.

Reduced Government Barriers to Wage Growth and Flexibility. Higher incomes are universally beneficial, and income growth is particularly important for lower-income earners. The only way for workers' wages to rise is if the workers become more productive,

FedSmith, August 3, 2017, <https://www.fedsmith.com/2017/08/03/american-federation-government-employees-still-most-corrupt-union-usa/> (accessed October 21, 2019).

and investment—both in education and training as well as in technology that makes workers more productive—is crucial to rising incomes.

Lower Taxes. Americans spend more on taxes than they do on food, clothing, and housing combined.³⁰ If policymakers want to raise workers’ incomes, they should start by letting them keep more of what they earn. Similarly, the less that the government takes in taxes from employers, the more employers will have left over to compensate their workers. Following the TCJA and other deregulatory efforts, the wages of lower-income workers expanded rapidly, at twice the pace of the highest-income earners.

No Double Taxation of Savings and Investment. Double taxes are doubly discouraging. By taxing savings and investment income twice, Congress reduces the amount of saving and investment in the economy. Yet, saving and investment are key to economic growth and higher wages. Congress could increase incomes for everyone by taxing it only once.

Expanded Expensing. By generally not allowing companies to account for the full cost of their investments when they incur the costs, the U.S. tax code reduces investment, which translates to lower productivity and income gains. The tax cuts temporarily fixed this problem by allowing companies to immediately “expense” some short-lived investments, but other investments, such as buildings, still have to use the costly and complicated pre-TCJA system. Permanent tax cuts and expanded expensing could boost the

size of the economy by 4.3 percent,³¹ leading to significant income gains across all income groups.

Fewer Regulations. Regulations impose tremendous costs on businesses, particularly on smaller businesses and entrepreneurs who do not have the resources to comply with—or often even understand—the complex web of federal regulations. When entrepreneurs face fewer barriers to entry, they create more jobs. And when businesses do not have to comply with costly and unwarranted regulations, they have more resources to devote to raising wages. In a tight labor market where employers have to compete for workers, they will do so by raising wages and benefits.

Clarified Definition of Employee. Businesses already face three different definitions of an employee in federal statutes. This can make it difficult for businesses to differentiate between employers and contractors, and extremely costly if they make the wrong determination.

If Congress expands the definition of employee such that businesses can be held liable for the actions of workers over whom they exercise little or no control, fewer jobs will be available for workers, and fewer opportunities for entrepreneurs. Workers who do keep their jobs will face stricter workplace rules that do not meet their needs and desires.

Congress should clarify the test for independent contractor status under the Fair Labor Standards Act, the National Labor Relations Act, and the tax code based on the “common law” test that bases determinations

³⁰Rachel Greszler, “Today, You Pay Your Federal Taxes. Tomorrow Is the Real Tax Freedom Day,” The Daily Signal, April 15, 2019, <https://www.dailysignal.com/2019/04/15/today-you-pay-your-federal-taxes-tomorrow-is-the-real-tax-freedom-day/>.

³¹Permanent TCJA and expanded expensing for all investments would grow the economy by 4.3 percent

over the pre-tax reform baseline, or about 2.6 percent over the temporary current law baseline. See, Adam N. Michel and Parker Sheppard, “Simple Changes Could Double the Increase in GDP from Tax Reform,” Heritage Foundation *Issue Brief* No. 4852, May 14, 2018, <https://www.heritage.org/taxes/report/simple-changes-could-double-the-increase-gdp-tax-reform..>

on how much control an employer exerts over a worker. Similarly, Congress should codify the definition of a “joint employer” to apply only if one company exercises direct and immediate control over another company’s employees.

A Responsible Federal Budget and Fiscal Outlook. Although the economy is doing well and the labor market is strong, this will not last forever. The longer that Congress waits to confront the U.S.’s undeniably unsustainable fiscal outlook, the more severe the consequences will be, including low or no wage growth; a labor market where workers will be lucky to have a job; and large and abrupt cuts in government services, including promised entitlement benefits.

Equal Tax Treatment of Health Insurance and Retirement Savings. Current tax law provides a significant financial advantage for employer-provided health insurance benefits that is not available to self-employed purchases of health insurance, and tax-free retirement accounts provide higher limits for employer-provided plans than for individual retirement accounts (IRAs). Policymakers should equalize the tax treatment governing health insurance and retirement savings, regardless of whether an employer or an individual purchases a plan.

Accessible, Affordable, and Portable Benefits. The average worker will change jobs 12 times throughout his career. That can mean changing health insurance 12 times, and either having to roll over retirement accounts or managing many different accounts. Independent workers, for their part do not have access to less-expensive group-based health insurance, disability insurance, and retirement savings accounts. Policymakers should make it easier for individuals to pool together to purchase group-based insurance by expanding

the concept of association health plans so that workers will have access to choice-based and portable benefits that meet their needs.

Increased Paid Family Leave Through Universal Savings Accounts or Tax-Free Savings Withdrawals. Universal savings accounts (USAs) would allow workers to save money for any purpose while paying taxes only once. This would make it easier for workers to accumulate higher savings, which could be used for a variety of life’s circumstances, including family and medical leave.

Although not as beneficial as USAs, allowing workers to make penalty-free withdrawals from their IRAs or 401(k) plans is another way to help workers take paid family leave. The Setting Every Community Up for Retirement Enhancement (SECURE) Act would allow workers to make penalty-free withdrawals from their retirement plans for the birth or adoption of a child.

Increased Paid Leave by Allowing Workers to Choose Paid Time Off. Current law prohibits low-wage private-sector workers (those making less than about \$23,700, and soon to be \$35,700) from choosing to take paid time off or extra pay in exchange for overtime hours. Public-sector workers have this option. The Working Families Flexibility Act would allow workers to choose between time off and extra pay for the overtime they work.³² This would allow a low-wage worker who works two hours of overtime each week for a year to accumulate four weeks of paid time off.

Lower Taxes and Regulations. After the TCJA went into effect, many companies polled their workers, asking what they would like to receive as a result of companies getting to keep more of their earnings. Many workers said they wanted new or expanded paid family leave

³²Rachel Greszler, “Mike Lee’s Bill Would Boost Paid Family Leave Without Growing the Government,” The Daily Signal, April 11, 2019,

<https://www.dailysignal.com/2019/04/11/mike-lees-bill-would-boost-paid-family-leave-without-growing-government/>.

policies, and companies responded by providing them. More than 100 large companies announced new and expanded policies, and the top 20 employers in the U.S.—including Starbucks, Lowes, and Wal-Mart, which typically employ lower-wage workers—now all provide paid family leave.³³ Freeing up resources for businesses allows them to provide the compensation that workers desire.

Summary

Workers need not fear the future of work. Across time, change and innovation amidst the free market have led to rising incomes for everyone. Rather than try to bring back the

labor market of the past by telling workers and employer how they must interact with one another, dictating compensation packages, and limiting with whom employers can do business, policymakers should help workers and employers to adapt to changes.

Congress can help workers adapt to and benefit from changes in technology and the nature of work by: enacting pro-growth policies that generate a stronger economy and competitive labor market; by allowing the private sector to respond to workers' demands; by allowing options (outside the traditional nine-to-five job) for individuals to earn a living or to supplement their income; and by making it easier for non-traditional employees to access traditional work-place benefits.

The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2017, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2017 income came from the following sources:

- Individuals 71%
- Foundations 9%
- Corporations 4%
- Program revenue and other income 16%

The top five corporate givers provided The Heritage Foundation with 3.0 percent of its 2017 income. The Heritage Foundation's books are audited annually by the national accounting firm of RSM US, LLP.

Members of The Heritage Foundation staff testify as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position of The Heritage Foundation or its board of trustees.

³³National Partnership for Women & Families, "Leading on Leave: Companies with New or Expanded Paid Leave Policies (2015–2019)," August 2019,

<http://www.nationalpartnership.org/research-library/work-family/paid-leave/new-and-expanded-employer-paid-family-leave-policies.pdf>