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NELP Urges Caution on Portable Benefits Pilot Program Legislation

Washington, DC—On May 18, 2023, Senators Mark Warner and Todd Young and Representative Suzan DelBene introduced *The Portable Benefits for Independent Workers Pilot Program*, legislation that would establish a grant program to fund local experiments with new portable benefits programs for workers who are excluded from or face barriers to accessing workplace benefits programs, such as temporary workers, part-time workers, and workers classified as independent contractors. NELP urges Congress to set criteria for federally funded portable benefits programs so that these pilot programs promote worker mobility and strengthen economic security rather than weaken existing labor rights and protections.

At NELP, we believe that all working people—regardless of who they are, what they do for a living, or how they get work—should have jobs that provide financial security for them and their families and stability to plan their lives. These jobs must provide access to benefits—including paid sick and family leave, comprehensive health insurance, unemployment insurance, and workers’ compensation—so that working people can weather life’s ups and downs. And these benefits should be portable, meaning that they should be accessible to and follow people from one job to another. Social Security is a prime example of a portable benefits program that, among other things, ensures an income for retired and disabled workers and their families.

Too often, however, portable benefits programs are designed as a giveaway to corporations that are misclassifying their workers as independent contractors. These programs provide a far more limited set of benefits to misclassified workers than the benefits they would have the right to as properly classified employees.

In Massachusetts, for example, a recently introduced bill would set up individual tax-exempt savings accounts for app-based delivery drivers—called “portable benefit accounts”—that could be put towards retirement savings, healthcare costs, or compensating drivers’ lost income due to illness or other specified times off from work.¹ App-based delivery companies would be required to contribute a meager amount—equal to four percent of a worker’s earnings—to each worker’s account.² The bill would also enshrine the workers’ classification as independent contractors, which means thousands of underpaid delivery drivers would be permanently excluded from Massachusetts’ strong benefits for employees.³ These benefits—which include paid sick leave,⁴ paid family and medical leave,⁵ unemployment insurance, workers’ compensation, and employer contributions to Social Security—are far superior to the portable benefits structure proposed in the bill. It is no coincidence that this bill comes on the heels

¹ Bill H.961, <https://malegislature.gov/Bills/193/H961/BillHistory>.

² Section 3(a).

³ Section 6(f).

⁴ <https://www.mass.gov/info-details/earned-sick-time>.

⁵ <https://www.mass.gov/info-details/how-pfml-is-different-than-fmla#employer-responsibilities->

of enforcement actions by the Massachusetts attorney general against app-based ride-hail and delivery companies for misclassifying their workers as independent contractors.⁶

We urge Congress to reject models like the Massachusetts bill and other corporate attempts to use portable benefits programs to circumvent our bedrock labor and employment rights and legislate inadequate and inferior benefits for workers who should be employees.

Instead, NELP supports portable benefits programs that include these components:

- (1) Benefits must be universally accessible, meaning that all working people are eligible and can access the benefits. This means coverage for *every* worker regardless of for whom, where, and for how long they work and how they are classified; it also means including workers regardless of immigration status or industry;
- (2) The portable benefits program must be adequately funded to meet the needs of all workers and provide the same if not greater benefits than those available if they were classified as an employee;
- (3) The businesses hiring and paying the workers—not just the workers themselves—must be responsible for funding the program;
- (4) Workers and their representative organizations must have a say in defining, negotiating for, monitoring, and auditing the portable benefits program; and
- (5) The program structure must protect the funds by incorporating strict fiduciary duties and protections from conflicts of interest.⁷

Furthermore, any portable benefits experimentation funded by Congress, including through the proposed Portable Benefits for Independent Workers Pilot Program, must ensure that taxpayer money cannot be used to subsidize corporate efforts to enshrine systems of inferior benefits for misclassified workers.

A properly structured, widely accessible, and well-funded portable benefits program provides working people with the freedom to choose the jobs that best suit their needs or start independent businesses without worrying about access to critical benefits, thereby strengthening worker mobility and building worker power. We urge Congress to center the needs of workers—not powerful corporations seeking to degrade workplace standards—when designing these programs.

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The National Employment Law Project is a non-partisan, not-for-profit organization that conducts research and advocates on issues affecting underpaid and unemployed workers. For more about NELP, visit www.nelp.org. Follow NELP on Twitter at @NelpNews.

⁶ <https://www.mass.gov/news/ags-office-issues-62-million-in-citations-against-national-delivery-service-company-over-employee-misclassification-violations>; <https://www.mass.gov/news/ag-healey-uber-and-lyft-drivers-are-employees-under-massachusetts-wage-and-hour-laws>.

⁷ <https://rooseveltinstitute.org/publications/work-benefits-ensuring-economic-security-in-the-21st-century/>.