



Creating a “New” New Deal: Evolving Worker Protections for the 21st Century

Introduction

The U.S. workforce is undergoing the most substantial transition in almost a century, and the way we work will likely be changed forever. Employees are increasingly leaving traditional, 9-5 jobs with one employer and flocking to independent work – freelancing, contracting, consulting, temping, self-employment, and part-time jobs – and a full 30% of our workforce is now working this way. This new Gig Economy crosses all sectors, from graphic design to law to accounting, and we rely on them to drive innovation, progress, and economic growth. However, we leave these workers without basic protections, benefits, and supports that traditional employees receive.

The New Deal legislation of the 1930s was a pivotal achievement for workers’ rights, offering protection from discrimination, benefits, and professional growth and development. This support system made sense for the workforce at that time: employees worked one job for one employer for many years, and their benefits were tied to that job. But while the way we work has evolved over the past century, our policies have not, and we’re left with an outdated social support system that excludes almost one-third of the workforce. Today’s freelance economy is forced to fend for themselves for affordable health insurance, protection from unpaid wages and discrimination, retirement plans, unemployment insurance, and fair taxation laws. The New Deal helped the middle class thrive in the 1900s, but now, many Americans are struggling to meet their basic needs, and the middle class is shrinking rapidly.

If we want to support the 42 million Americans working independently – a number that is only increasing – then we need to build a “new” New Deal that meets the needs of the new workforce. Furthermore, as government is increasingly hamstrung by belt-tightening and a lack of public confidence, we need to look to other sustainable, community-driven solutions to solve these challenges: a concept we refer to as new mutualism.

Updating the New Deal

The New Deal was expansive in its protections, from providing relief to the unemployed to promoting unions, all for the purpose of creating a stable, middle class. These protections are just as important today, but need to be modified for the new, mobile workforce. We propose the following policy updates:

1. Expand Unemployment Protection

- **Provide independent workers ineligible for unemployment insurance with tax-advantaged savings accounts for use during unemployment.** Traditionally, unemployment insurance helps workers weather periods of income instability. However, most independent workers are ineligible for unemployment insurance and must find other ways to meet regular expenses when facing episodic employment. This can cause dangerous financial instability, as they rely on credit cards and government assistance, with an increased cost to state and local governments. We propose creating a model – similar to a flexible spending account – in which independent workers ineligible for unemployment insurance can invest in a pre-tax account that can be accessed during periods of unemployment. Given that the self-employed have a higher tax burden, this could help them pay basic expenses (such as utilities and transportation) when they aren’t working.
- **Include independent workers in new programs designed to assist workers through periods of unemployment.** In the last few years, the government has expanded unemployment insurance benefits by extending the benefit period and offering greater access to retraining programs – but independent workers did not qualify for many of these programs. Moving forward, independent workers deserve the same consideration in any policies or programs that are developed to alleviate the strain that unemployment creates on meeting one’s basic expenses.



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2. Increase Independent Workers’ Access to Affordable, Portable Benefits

- **Expand health insurance options for the self-employed.** Large companies benefit from sizeable cost savings because existing laws allow them to group their employees together in large risk pools. But as the way we work today becomes more outsourced, open, and flexible, smaller affinity networks should be able to group together to share in these same cost savings. Some proposed solutions in the health care reform legislation, like creating Consumer Owned and Operated Plans (CO-OPs), are a promising start to harnessing the power of smaller, non-employer groups. But the savings are still tilted toward large companies, not the independent workers of the Gig Economy. Government can also play a role in providing low-cost social capital to support innovative, market-based models of delivering benefits.
- **Allow the self-employed to fully deduct their health insurance premiums before assessing their self-employment tax.** While employer-provided health insurance is completely subsidized by the federal government through the employer tax exclusion, costing taxpayers billions in lost revenue every year, the self-employed must still pay taxes on the cost of their health insurance. Given that they already bear the full cost of health insurance alone, this is a gross inequity and an unfair financial burden. President Obama signed into law the Small Business Jobs and Credit Act of 2010, which allows the self-employed to deduct health insurance premiums from self-employment tax income for 2011. This should be made a permanent deduction.

3. Combat Nonpayment

- **Include independent contractors in state wage claim systems.** When clients don’t pay, freelancers waste countless hours chasing down payment, at a significant loss to themselves and to the larger economy. While state labor laws differ, most only provide protections to traditional employees. These laws give the state department of labor the right to investigate and penalize employers who do not pay their employees – a right that should be expanded to include independent contractors who are stiffed by companies. New York State has already set a precedent by passing legislation in the state Assembly in 2011 that would allow the state Department of Labor to investigate cases where self-employed workers are not paid by their clients. The New York State Senate should pass their bill and create a model for other states to amend their labor laws to include independent contractors in their wage claim systems.
- **Prioritize independent workers as creditors under bankruptcy law.** As a society, we have decided that workers should be paid first when companies go bankrupt. Freelancers are not businesses that can absorb the loss. Recently, with the economic downturn, many companies have filed for bankruptcy, and freelancers have often been the last creditors to be paid, if they are paid at all. These workers deserve the same creditor status as employees, which requires evolving our bankruptcy law.

4. End Misclassification of All Workers

- **Ensure that misclassification legislation and enforcement does not undermine workers who are legally independent contractors.** When independent contractors are wrongly classified as employees, they lose on two fronts: they don’t get the benefits of employer-sponsored insurance that employees receive, nor do they reap the tax benefits that freelancers get. For example, if a company hires an independent contractor through a staffing agency, the worker will receive a W-2 (identifying them as an employee) from the agency. However, the individual will not receive benefits through the staffing agency, and because they received a W-2, they can no longer deduct the cost of the health insurance that they have to purchase on their own. Policymakers should consider implementing a process where independent contractors declare their employment status before being hired by clients so that there is a clear understanding of each party’s responsibilities. The IRS has templates that could be used for this purpose, and other countries use similar forms regularly, but the U.S. hasn’t yet implemented this.

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5. End Discrimination of All Workers

- **Amend the laws enforced by the Equal Employment Opportunity Commission to protect independent contractors from discrimination.** Federal laws protect employees from discrimination based on age, race, and sex, among other classes, but unfortunately the language used in these laws excludes independent contractors from receiving the same protections.

6. Document the Independent Workforce

- **Conduct a consistent, standardized, ongoing count of independent workers to measure the size of the workforce and its impact on the U.S. economy.** It has been six years since independent workers were surveyed by the government in any comprehensive way. When the Contingent Work Supplement was last administered in 2005, there were 42.6 million independent workers. Six years and a recession later, anecdotal evidence and privately-funded surveys demonstrate that these numbers have grown, as workers who were laid off turn to freelancing and as companies look to independent contractors for greater flexibility and cost-savings. Without an accurate count, we cannot create policies that effectively support this critical workforce. The U.S. Department of Labor needs to count independent workers in an on-going fashion using consistent definitions by reviving the Contingent Work Supplement; including independent workers in standard labor statistics and economic measurements; quantifying the impact of independent workers on the U.S. economy; and assessing the impact (or exclusion) of proposed policies on independent workers.

7. Encourage Entrepreneurship

- **Create a New Entrepreneur Tax Credit for sole proprietors during the first few years of starting their businesses.** Most small business owners start as unincorporated sole proprietors, yet there are few tax incentives to help their businesses grow. They struggle with start-up costs and unexpected tax liabilities in the first few years, and a tax credit would help offset these challenges. This would positively affect the sole proprietors as well as the broader economy, because the businesses will eventually hire other workers as their businesses thrive.

Conclusion

If we want to have a thriving middle class in this country for years to come, we need to evolve our laws and support system to meet the needs of the modern workforce. With employers cutting employee benefits and an increasing number of people seeking independent work, 30% of our workforce is vulnerable to discrimination, nonpayment, financial hardship, unfair tax laws, and a lack of basic benefits. And, we cannot depend solely on government to provide a new support system: our institutions need to move away from regarding the office as the center of a person's economic life, from business as the provider of benefits, and from government as the provider of social supports. In the long term, we can build stable markets and societies where people make a living, communities flourish, and businesses profit. The solution will rest with new mutualism: our ability to form networks of sharing and exchange that can build political will and meet society's needs.

