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November 11, 2022

Portable benefits only work for employers, not workers

The Ontario government launched a consultation and advisory panel in March 2022 to explore implementing a portable health benefits program[1] for part-time, temporary, and self-employed workers. This may sound good on the surface, but not when you lift the veil on portable benefits and see the real dangers for us all. Making matters worse, there is no worker representation on the panel.

A portable benefits program is problematic because it would further entrench the creation of a substandard classification of workers without access to basic employment standards. This is particularly dangerous for workers who are being denied rights through misclassification, who are disproportionately low-wage, racialized and immigrants. Exploring portable benefits sidesteps rather than fundamentally addresses the root problem – workers need to be treated as employees and have access to protections under the *Employment Standards Act*.

As more and more employers misclassify workers as independent contractors, thereby denying workers their rights to basic employment protections, workers have been speaking up and fighting back. Proposals for portable benefits are part of a common playbook used by companies in the U.S. They say they will provide benefits, as long as they can keep avoiding the law and don't have to treat their workers as employees.

App-based workers around the world are organizing against this corporate-imposed second-class status that denies them labour protections. They are standing up, overturning misclassification as independent contractors, and coming together to improve their working conditions. App-based workers successfully unionized in Norway in 2019. In other jurisdictions, employees successfully sought their employment rights through the courts -- California in 2018, France in 2020 and Netherlands, U.K. and Spain in 2021. Rather than fight it out in the courts, we are now seeing a new corporate strategy – find allies in government and offer portable benefits in exchange for laws that keep their workers outside of labour laws.

[1] It does not consider access to CPP, EI, WSIB or other protections under the ESA and does not consider retirement benefits for any workers.

Unfortunately, this playbook is coming to Ontario. In December 2021, the Ontario Workforce Recovery Advisory Committee (OWRAC) was appointed by the government to supposedly look at the future of work. Many workers came forward to speak out about working with no labour rights, being injured on the job, and facing wage theft without any protection. Workers were united with one key demand: full employment rights for all. Instead of heeding this demand, the OWRAC made a series of recommendations, including portable benefits, that open the door to the "gigification" of the entire economy. If implemented, they would make it easier for employers to misclassify workers as "independent contractors" and exclude them from Ontario's minimum labour standards.

We've already seen the passage of Bill 88 (so-called *Working for Workers Act*) entrench ride share and delivery workers as second-class employees without the right to be paid minimum wage for all their hours of work. Adopting a portable benefits plan will further entrench substandard conditions for gig workers.

What is the real problem?

We believe that low wage, temporary and self-employed workers need a decent work agenda with universal benefits, not portable benefits. Portable benefits do not get at the root problem of why so many workers don't have benefits in the first place.

The most obvious reason so many people don't have benefits is that successive provincial and federal governments have underfunded and restricted access to existing public benefit programs, such as OHIP, Employment Insurance (EI) and the Canada Pension Plan (CPP).

In addition, we have seen a huge growth in employer practices that deny benefits for part-time, low-wage and temporary workers. For example, nurses working casual, part-time or through temp agencies are denied benefits while their full-time counterparts doing exactly the same work get benefits. Employers are able to treat workers this way because we have no rules requiring equal treatment between part-time, contract or temporary workers and full-time workers.

We need equal pay and benefits regardless of the designated classification of work by the employer to ensure part-time, contract, and temp agency workers get the same pay and benefits as their full-time counterparts.

The growth of precarious work has also been fueled by many workers being misclassified as independent contractors. Even when workers really are employees, being called an independent contractor means they are denied benefits and minimum entitlements under labour law, while being excluded from workers comp protections and contributions to EI and CPP. Misclassification is the result of employers flouting the law, poor labour rights enforcement, and a lack of legislative clarity that workers should be deemed employees unless the company can demonstrate that they are truly an independent business.

It is not just app-based workers that are denied benefits and employment rights. Misclassification is a long-standing employer practice to move the costs of business onto individual workers and to cut costs. Misclassification is rampant in the trucking sector, courier, and construction sector. It affects personal support workers who are being misclassified as independent contractors and then only being paid for in-home care work, not for their travel time between clients. Misclassification is happening in the business service sector where technicians who fix our photocopier machines or provide digital services are also being denied basic rights.

We need legislative clarity that misclassified workers are employees. This can be done with a presumption that workers are employees unless it can be proven by the hiring entity that they are really independent businesses unto their own according to the ABC test.[2]

What are the dangers of a portable benefit plan?

In exchange for support of portable benefits, companies want labour law reforms that prevent gig workers from being protected as employees. Enshrining portable benefits for misclassified workers and the self-employed further entrenches a category of workers with substandard rights and benefits. If this is allowed, more employers will try to misclassify their employees as independent contractors. A portable benefits program will also incentivize companies that do provide benefits to stop providing them to the lowest waged and most precarious workers, and instead suggest they opt into portable benefits. So even those 1 in 4 workers that currently receive company health benefits could stand to lose those benefits.

Racialized and immigrant workers who are predominantly in low-wage and precarious jobs will pay the highest price.[3] We should not be developing policy that enshrines inequality, reinforces systemic racism, and deepens the failures of our labour laws and enforcement.

What do workers need?

The most efficient and effective approach to extending health benefits to part-time, temporary and self-employed workers would be fully universal social programs, such as pharmacare and dental care. The universal nature of these programs means that workers, regardless of where they work, continue to have access to benefits throughout their work lives and during retirement.

What workers really need is a universal national drug, health and dental plan. We are already on the path to a national dental program. We need universal benefits for all. We need full access to labour rights for all.

[2] Goldblatt Partners LLP, (April 2021), Submission to the Public Consultation on Gig Work in Canada.
[3] Workers' Action Centre, (2022), Justice for Workers Means Racial Justice.