

# **NEW ECONOMY, NEW SOCIAL CONTRACT**

## **A PLAN FOR A SAFETY NET IN A MULTIEMPLOYER WORLD**

STEVEN HILL





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**AUTHOR**

STEVEN HILL is a Senior Fellow with the New America Foundation and a Holtzbrinck Fellow at the American Academy in Berlin. He is a veteran journalist and author of five books, including the internationally praised *Europe's Promise: Why the European Way is the Best Hope in an Insecure Age*, which was selected as one of the "Top Fifteen Books of 2010" by *The Globalist*. His articles and media interviews have appeared in the *New York Times*, *Washington Post*, *Wall Street Journal*, *The Atlantic*, *Financial Times*, *The Guardian*, *Le Monde*, *Die Zeit*, *Project Syndicate*, *Los Angeles Times*, *The Nation*, *Politico*, *Mother Jones*, *Huffington Post*, *Salon*, *Slate*, BBC, C-SPAN, Fox News, NPR, PBS, Democracy Now, Austrian Public Broadcasting and many others. He lives in San Francisco, CA. His website is [www.Steven-Hill.com](http://www.Steven-Hill.com), email [hill@Steven-Hill.com](mailto:hill@Steven-Hill.com), Twitter [@StevenHill1776](https://twitter.com/StevenHill1776), Facebook [StevenHill01](https://www.facebook.com/StevenHill01).

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# NEW ECONOMY, NEW SOCIAL CONTRACT

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## EXECUTIVE SUMMARY

The US workforce, which has been one of the most productive and wealthiest in the world, is undergoing an alarming transformation. Increasing numbers of workers find themselves on shaky ground, turned into freelancers, temps and contractors. Even many full-time and professional jobs are experiencing this precarious shift. Within a decade, nearly half of the 145 million employed Americans are expected to be impacted. Driving this disturbing trend are U.S. businesses, led by those in the so-called “sharing economy,” which increasingly rely on an “independent contractor loophole” that allows an employer to lower labor costs dramatically. By hiring independent contractors instead of regular W-2 employees, a business can evade contributing to a worker’s health benefits, Social Security, Medicare, unemployment, injured workers compensation, lunch breaks, paid sick days and vacation leave, lowering costs by 30 percent or more. New app- and Web-based technologies are making it easier than ever to hire such “1099 workers,” which in turn threatens to eviscerate the national safety net.

This paper outlines a fair, sensible and affordable way to create a new safety net for this new economy. Drawing upon what is already working in the U.S., this proposal would allow workers with multiple employers to benefit from a fully portable safety net based on Individual Security Accounts and a greater degree of legal parity between the many different classifications of U.S. workers.

# NEW ECONOMY, NEW SOCIAL CONTRACT

BY STEVEN HILL

## THE INDEPENDENT CONTRACTOR LOOPHOLE

The ride-sharing company Uber, besides being a rapidly growing global phenomenon, has also become a poster child for the “independent contractor loophole.” In a few short years, the company claims that it has spread to some 300 cities and 58 countries, striking fear into the hearts of taxi companies everywhere. It has been assessed a jaw-dropping market valuation of \$41 billion (soon to be \$50 billion)—to put that in perspective, that’s higher than Facebook’s valuation at a similar point in its growth, and is fast approaching the king itself, General Motors, the largest U.S. automaker (\$52.6 billion value). Not bad for a company that doesn’t actually make anything or own any cars, or directly employ any drivers -- since the drivers are all treated as independent contractors.

The employment status of its drivers has become one of the many controversies dogging Uber. CEO Travis Kalanick insists that his company is merely a technology platform facilitating rides between passengers and drivers, not an employer of drivers. “Are we American Airlines or Expedia?” asked Kalanick, in an interview with the *Wall Street Journal*.<sup>1</sup> He maintains they are more like Expedia, merely a go-between connecting buyers and sellers, in this case of a transit service.

Complicating matters, the legal standard for what makes an individual an employee rather than a contractor is vague, having to do with how much the worker is actually “independent,” and how much she or he is dictated to by the employer. The lack of clarity and resolution has led to complex situations, some of them tragic. When an Uber driver hit and killed six year old Sofia Liu, and badly injured her mother and brother as they were traversing a crosswalk on New Year’s Eve in San Francisco in 2013, Uber washed its hands of any responsibility. Why? Because the driver was an independent contractor, not an employee, according to Uber (never mind that the driver had a reckless driving record in Florida, including being arrested for driving 100 mph into oncoming traffic while trying to pass another car—something Uber’s faulty method used for background checks failed to uncover).<sup>2</sup>

But Goliath may have met his David in June 2015. That’s when the California Labor Commissioner’s Office ruled that an Uber driver should be classified as a direct employee, instead of a contractor. In response to a claim filed by driver Barbara Berwick, the commissioner decided that because “Uber is involved in every aspect of the operation,” Berwick should be classified as an employee and is owed \$4,000 in employee expenses. The ruling only applies to this single driver, and is limited in its scope (and Uber is appealing the decision). But it’s not the only case. In Florida, the Department of Economic Opportunity also ruled that Uber driver Darrin McGillis was an employee of the company. And two groups of Uber and Lyft drivers have brought class-action lawsuits against the ride-sharing companies, claiming they are treated more like employees, not as independent contractors free to perform their services as they see fit. These cases might eventually amount to sizable chinks in the Uber armor, but so far have been little more than minor speed bumps on the road to Uber’s multi-multi-billion dollar IPO. The controversy over Uber drivers’ job classification is not likely to be settled any time soon.

## THE 1099 ECONOMY

Yet Uber's labor battle is just the tip of a looming iceberg that the US economy is drifting toward. The ride-sharing company is not the only employer looking to benefit from the independent contractor loophole. Businesses, whether identified with the so-called "sharing economy" or not, are increasingly relying on "non-regular" employees -- a vast and growing army of freelancers, contractors, temp workers and part-timers that are assuming leading roles in this burgeoning "freelance society." This practice has given rise to the term "1099 economy," since these workers don't file W-2 income tax forms like any regular, permanent employee, instead they file the 1099-MISC form for the IRS classification for "independent contractor" ('MISC' is short for Miscellaneous Income).

The advantage for a business such as Uber of using 1099 wage-earners over W-2 workers is obvious: an employer usually can lower its labor costs dramatically -- usually by 30 percent or more -- since it is no longer responsible for a 1099 worker's health benefits, Social Security, unemployment or injured workers compensation, lunch or rest breaks, overtime, disability, paid sick, holiday or vacation leave and more. Outsourcing to this growing multitude of 1099 workers has become the preferred method for America's business leaders to cut costs and maximize profits. Corporate America, once the anchor of the "good jobs" economy that came out of the New Deal era, is increasingly relying on these non-regular type workers as a core part of its new business model.

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**A 2014 study found that more than one in three workers—53 million Americans—are now freelancing. Within 10 years nearly half of the 145 million employed Americans will find themselves turned into so-called "independent workers."**

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Consequently, many workers today are no longer employed for very long by a single employer. More and more people have multiple employers, and the work day is being segmented and reduced into shorter and shorter "micro-gigs." Indeed, in the gigs of the sharing economy, working for companies like TaskRabbit, Elance-Upwork, Postmates, Homejoy and others, some contractors, rabbits, taskers, day laborers and freelancers have multiple employers *in a single day*. One new economy booster clarified employers' new strategy: "Companies today want a workforce they can switch on and off as needed"<sup>3</sup>—like one can turn off a faucet or a radio.

How widespread are these labor force trends? A 2014 study commissioned by the Freelancers Union found that more than one in three workers—53 million Americans—are now freelancing. "Freelancing is the new normal," says Sara Horowitz, executive director of the Freelancers Union.<sup>4</sup> Other estimates predict that within 10 years nearly half of the 145 million employed Americans—65–70 million workers—will find themselves on similar grounds, turned into so-called "independent workers."<sup>5</sup> Sharing economy companies like Uber, Airbnb and TaskRabbit allegedly are "liberating workers" to become "independent" and "their own CEOs" --in reality, workers are being forced to take ever-smaller jobs ("micro- gigs") and wages while the companies profit handsomely. Even many full-time, professional jobs and occupations are experiencing this precarious shift.



The accelerated use by employers of the 1099/independent contractor loophole has in turn begun causing a rapid erosion of the safety net for workers and families – indeed of the New Deal social contract that was forged across many decades. The working conditions are dramatically shifting, and more and more American workers are no longer covered by the laws and regulations of that social contract. Under the current system, employers actually have an incentive to fire their entire workforce if they can get away with it, and go 100 percent with 1099 workers, or as high a percentage of them as possible. A business owner would be foolish not to, watching as your competitors go this route and dramatically slash their labor costs by 30 percent or more.

Sounds extreme? The large pharmaceutical company Merck sold its factory in Philadelphia and the new owner fired all 400 Merck employees and rehired them as independent contractors—Merck then contracted with the company to continue making the same antibiotics for them.<sup>6</sup> These strategies are what I call the “performance steroids” of the new economy—once enough businesses engage in that kind of practice it unleashes a race to the bottom, putting pressure on all businesses to adopt that strategy to compete. These perverse incentives are threatening to destroy the U.S. labor force and turn tens of millions of workers into little more than *bracero* day laborers. The sharing economy’s app- and web- based technologies have made it so much easier to hire and fire 1099 workers, and we are only at the initial stages of their impacts and how it will affect the labor force over the next several decades. *Buzzfeed’s* Charlie Warzel has rightly observed that “any tech reporter who spends their time covering the sharing economy is now, essentially, a labor reporter.”

That in turn will be greatly destabilizing to the broader macroeconomy. For at the end of the day, if not enough people have enough income in their pockets and bank accounts to buy up all the products and services that U.S. companies produce, the economy could reach a dangerous tipping point. We could well face the prospect of an “economic singularity” in which there will be too few viable consumers with enough purchasing power to continue driving economic growth in our mass-market economy.

So a lot is at stake in the resolution of these labor market tensions. The problem created by the new digital economy is not merely one of inequality, which is typically thought of as *income* inequality. The challenge really needs to be reimagined as one over how to stabilize the economy and re-establish economic security for the broad swath of American workers. One important way would be to figure out how to provide the support structures that workers and families need in order to prosper and feel a measure of protection and reassurance, *regardless of their employment situation or their job classification*. In other words, we have to figure out how to preserve some of the New Deal social contract and safety net for workers of all stripes.

## THE PORTABILITY OF THE SAFETY NET

Former Treasury Secretary Larry Summers, as well as many others, have proposed the idea of the “portability” of the safety net. The United States, says Summers in a Report of the Commission on Inclusive Prosperity, which he co-chaired, is “unique in providing significant aspects of basic economic security through the employment contract.” As a result, “as corporations have shed employees through devices such as subcontracting or hiring independent contractors, they have also shed traditional responsibilities as employers, leaving families to face risks on their own. The unraveling of the traditional employer-employee relationship has made it more difficult to provide basic economic security.”<sup>7</sup>

The New Deal system was constructed around the notion that most of the supports for workers and families accrued to an individual based on her or his employment in a specific workplace, and often with a single employer for a considerable length of time. Employers acted as mini-agents of the New Deal social contract for their own employees. But the working conditions

on which that social contract was based have shifted dramatically, and more and more American workers are no longer covered by the laws and regulations of that social contract.

In Summers' report for the Commission on Inclusive Prosperity, he cites the example of health care insurance to illustrate his point. One of the major selling points for passing the Affordable Care Act was that it would liberate workers to move more easily from job to job. No longer are their employment prospects hurt by "job lock," in which they do not dare leave a job for fear of losing their affordable health care. That change alone gives slightly more bargaining power to workers with their employers.

But as the Summers report goes on to say, "other elements—including pensions, workers' compensation, and unemployment compensation—are all still tied to employment." And that increasingly has become a major problem as more Americans become "independent" workers, unmoored from any particular job or company. They are losing their access to core components of the safety net, not only health care and Social Security but also unemployment and injured workers compensation, paid sick days, holidays, vacations and more. This should be properly thought of as the "personal infrastructure" for individuals and families, and it is corroding – just as we understand the importance of maintaining a rusty bridge, or investing in physical infrastructure like roads, ports and airports, or in energy efficiency, we have to invest in the support structures that maintain individuals and families, and by extension entire communities.

So the challenge has become: How do we replace any single employer or business as the central point of delivery for the New Deal benefits basket, and spread the load and risk to multiple employers? How do we allow the increasingly sizable labor force of millions of Americans who are becoming 1099 workers, with multiple employers and "independent" of any single workplace, to retain access to this safety net? Every generation has a stake in figuring this out.

This paper outlines a way for the United States to evolve our system to retain the best parts of the safety net while still fostering a vigorous entrepreneurial climate. It will outline a foundation for a new social contract that can provide a degree of security for workers and families who are trying to make it in the new economy. As Larry Summers and others have said, the key word is "portability": we have to make the personal support infrastructure for workers and families more portable, so that the safety net follows the worker from job to gig and employer to employer. The net needs to protect the worker, regardless of her or his employment situation. Here's an example that points the way for how we can do that.

## **A SAFETY NET FOR A MULTIEMPLOYER WORLD**

Fortunately, we already have a working model that can be adapted. It's called a "multiemployer plan," which is an employee benefit plan to which more than one employer contributes. Multiemployer plans operate like an insurance plan; they provide benefits for participants through pooling of risk and economies of scale for the employees covered by the plan. Crucially, multiemployer plans allow mobile workers to earn and retain their benefits even as they transfer from employer to employer or job to job, a portability which helps to avoid interruptions in coverage.<sup>8</sup>

Such multiemployer plans are often found in industries like construction and mining, and increasingly among some Silicon Valley companies. Most construction workers, for example, are independent contractors and temp workers. They contract with an employer to do a specific job, and once that job is finished, their relationship with that employer ends. Then the construction worker has to look for a new job with a new employer. In any given year, that worker may end up working for numerous



employers at various jobs and projects. These are the types of conditions that more and more U.S. workers in many different occupations and industries are being subjected to.

## How do we allow the increasingly sizable labor force of millions of Americans who are becoming 1099 workers, with multiple employers and “independent” of any single workplace, to retain access to this safety net?

Despite the fact that these construction workers are hired on a contingency basis, the types of benefits offered by a multiemployer plan are often fairly comprehensive and substantial. The benefits are on a par with those provided by large corporations and other companies to their regular employees, including:

- Health care benefits
- Pension benefits
- Unemployment benefits
- Occupational illness/injury benefits
- Vacation, holiday and severance benefits
- Disability/sickness insurance
- Training and education (including apprenticeships and educational scholarships)
- Financial assistance for housing
- Child care centers
- Life insurance
- Accident insurance
- Legal services<sup>9</sup>

So how are such plans funded? That is a key question, since someone has to pay for all the different pools of social insurance established to support each worker and her or his family. Typically the employer pays a set amount per each worker, pro-rated according to the number of hours the employee works for that employer (often called an “hour bank” system). Those payroll deductions are set aside in a fund. The specific amount paid by the employer is written into an agreement (typically \$3 to \$4 per each hour worked by each employee), and it pays for each worker’s own safety net, i.e. “personal infrastructure.” The fund is governed by a board of trustees, with equal number of employer and employee representatives appointed as trustees. The trust agreement defines the benefit rules, with the board of trustees given the authority to determine the plan design and level of benefits.

It all sounds perfect for part-time and freelance/temp/independent workers in the new economy, like just what the doctor has ordered, but there is a catch: in most cases, these multiemployer plans are the products of one or more collective bargaining agreements that typically involve one or more labor unions. The unions often are guild unions, that is, unions that are

representing a particular craft or occupation that have enough collective muscle to persuade multiple employers to sign on the dotted line. For example, the International Union of Operating Engineers (IUOE) is a 100-year-old union with a membership of 400,000 nationwide. Operating engineers operate, maintain, and repair heavy construction equipment to build the nation's highways, power plants, dams and buildings.<sup>10</sup> Through a multiemployer plan for its members, the IUOE has been able to attain and maintain a middle class level of benefits, wages, conditions and even training and apprenticeships for its members.

The multiemployer plan administered by IUOE Local 9 in Colorado has an hour bank system, in which hours worked by an employee for a contributing employer are accumulated in much the same way that funds accumulate in a savings account, or in one's own personal Social Security accounts. A participant can accumulate four months (500 hours) of unemployment coverage for when the member is having difficulty finding the next job, a constant worry in the construction and trades industry. Local 9 also has maintained a training facility southeast of Denver with a mechanic/welder training shop and over 30 training pieces of heavy equipment, so that employers can be assured of a pool of skilled workers. IUOE also maintains a defined-benefit pension fund with \$8 billion in assets, the fifth largest labor-management pension plan in the United States, with no unfunded liabilities and benefits guaranteed by the U.S. Pension Benefits Guaranty Corporation.<sup>11</sup>

Another labor union, the International Brotherhood of Teamsters, maintains the largest multiemployer defined-benefit pension plan in the US, the Western Conference of Teamsters Pension Trust. The WCTPT has 583,000 participants, and it is a \$35 billion fund that receives "personal infrastructure" contributions from more than 1400 employers, ranging from small companies with fewer than 50 employees to major corporations like Coca-Cola, Safeway supermarkets and United Parcel Service. It was founded in 1955 and designed to allow union workers – truck drivers, vegetable packers, floor sweepers, construction workers – to benefit from the security of a pension safety net despite frequent job changes.<sup>12</sup>

These multiemployer vehicles have been operating semi-quietly, beneath the radar, despite the fact that they are in widespread use, providing personal infrastructure for millions of Americans. Some of the plans provide only pensions; others provide other components of the safety net, such as health care, unemployment benefits and such, and are called "welfare plans." As of 2012, there were 2,740 multiemployer pension plans in existence with \$624 billion in assets and over 15 million workers participating. And there were approximately 1800 multiemployer welfare plans, providing health care and other kinds of personal infrastructure, with nearly 6 million workers participating.<sup>13</sup> So these are not obscure, never- been-tried vehicles. These are duly constructed legal entities, overseen by the National Labor Relations Act (NLRA) and the Employee Retirement Income Security Act (ERISA), which permits employers to contribute money into a joint trust on behalf of a specific individual employee, pro-rated to the number of hours the employee works for each employer.

But what if an individual is not a member of a union, and as an independent contractor or freelancer has no hope of joining a union anytime soon? For those workers, there is another model, a variation on a multiemployer plan, known as a multiple employer welfare arrangement (MEWA). Primarily used for health care, a MEWA is an arrangement to provide medical benefits to employees of two or more employers, even if there is no collective bargaining agreement with those employers. Typically, a MEWA will involve employers who are members of a professional, trade or business association that offers medical coverage to association members.<sup>14</sup>

In Silicon Valley, where a constant churn of thousands of contractors, temps and freelancers are hired and let go every week, a similar model is emerging. Agencies like MBO Partners act as the "employer of record" for contingent tech workers, providing a

bridge between contracted employees and their multiple employers. The services of MBO Partners and similar agencies include providing a “centralized benefit administration” for the worker’s access to safety net provisions such as health benefits, injured workers compensation, disability, 401(k), as well as payroll administration, tax deductions, overtime and more. All of these different types of multiemployer plans show potential for creating an effective safety net for freelancers, indie contractors, temps, part-timers and other types of 1099 workers. It’s all a matter of whether the laws and regulations have been structured in the right way. In drafting a better model, it makes sense to build upon what is already working successfully.

## **INDIVIDUAL SECURITY ACCOUNTS**

Here’s how we can adapt these multiemployer safety net models for the current challenges presented by the new economy. When Uber, TaskRabbit, Elance-Upwork, Manpower, Merck or any other business is hiring their contractors and freelancers, in addition to the wages that they pay they should also pay a few dollars per hour that is invested in an “Individual Security Account” for each worker’s safety net. The amount any business pays into the ISA would be pro-rated according to the number of hours the worker is employed by that business (if wages are not based per hour but on completion of a job, such as for an Uber driver, the company would chip in a percentage of the gross wages for that job into the worker’s ISA). These accounts would be structured to pay, via payroll deductions, into existing state and federal safety net programs -- Social Security, Medicare, unemployment insurance and injured workers’ compensation -- as well for other safety net components, such as health care and paid sick days, vacation and holidays (the worker also would have some wages deducted, much like regularly-employed W-2 workers do now for Social Security, Medicare, etc.). Each worker’s ISA, and the funds in it, would be tracked with a personal ID number (such as a Social Security number).

If an employer already provides health insurance for its regular employees, that would continue. But for non-regular 1099 workers and part-timers, employers would pay into each worker’s Individual Security Account a pro-rated amount based on the number of hours worked or a percentage of gross wages, and the funds would go toward the worker’s purchasing of health insurance through one of the Obamacare exchanges or co-ops. For workers with multiple employers, that worker would earn a contribution from each employer, pro-rated to the number of hours worked or a percentage of gross wages, which would accumulate in the ISA and would be used to purchase health insurance.

What about paid sick days, vacations and holidays? Currently in most states there are no existing, legally-mandated programs for those. Where they exist, it is usually the result of a contractual agreement between a single employer and its (usually unionized) employees. But what if a worker has multiple employers? That makes it more challenging to figure out which employer is responsible for providing paid sick days, vacations and holidays. The multiemployer model for construction workers, in which the joint labor-management trust becomes the repository for any funds paid by the employer for these purposes, provides a template for this situation. However in this proposal the Individual Security Account would assume the trust’s role for the individual worker. So each employer would deposit funds into the worker's ISA, pro-rated to the number of hours worked or a percentage of gross wages, needed for providing paid sick, vacation and holiday leave. In short, the Individual Security Account would assume the joint labor-management trust’s role for the individual worker, and form the foundation for this multiemployer safety net.

This is an elegant way to address this, because then it’s not necessary to argue over whether the worker is actually an employee of that company or an independent contractor. That point becomes largely irrelevant (in terms of the safety net, though not for other issues such as job security). Either way, the employer allocates the necessary financial resources that are then set aside

for each employee's safety net, pro-rated according to the number of hours the employee works for that employer, or for those workers paid by the job, a percentage of gross wages earned.

So for example, suppose Donna is employed 20 hours a week by a hairdresser, contracts for 10 hours a week with TaskRabbit, and drives 10 shifts for Uber. She would earn 50 percent of her benefits from the hairdresser, 25 percent from TaskRabbit, and another percentage based on her wages driving for Uber. That would amount to earning over three-fourths of her full benefits (based on a 40 hour work week). Or suppose George contracts for 14 hours a week with Upwork, drives 10 shift for Lyft, makes 15 deliveries for Postmates and does seven gigs cleaning houses for Handy. He would earn a percentage of his benefits from each company, prorated to the number of hours worked or a percentage of his wages.

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## A multiemployer safety net based on Individual Security Accounts would not be that expensive. In some circumstances, less than two dollars per hour per employee.

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The Individual Security Accounts could be overseen by the government (much as it does for an individual's Social Security account today, tracked with a personalized number) or private entities (regulated by the government), much as insurance companies or agencies like MBO Partners do today for health care and other safety net features, or labor unions like IUOE, Teamsters, SEIU and others currently do. These Individual Security Accounts would be collected into a larger insurance pool and professionally managed. This would form the basis for a safety net that the worker would draw upon as needed, just as any regular, W-2 employee would.

So that means when an individual worker loses her or his job (which happens many times a year for these types of 1099 workers), she/he would have some unemployment compensation to fall back on; the same if she/he was injured on the job, or became too disabled to work, or suddenly fell ill and could not work a shift. It also could be structured to provide some paid vacation days per year, just as regular employees have. In many ways, this would work in a similar fashion to the way Social Security and Obamacare work now, in which a retirement account or a health care account is established for individuals who work for multiple employers. But with the Individual Security Account, each employer who hires that worker would pay a pro-rated amount into the ISA and existing safety net programs to cover the various components of that worker's safety net.

What it comes down to is this: there's absolutely no reason why, just because a business decides to outsource a job to a temp worker, freelancer, independent contractor or a franchise, instead of hiring regular, W-2 employees who are covered by standard labor laws and contracts, that the employer should be able to evade paying a few dollars more per hour for each worker to provide a safety net. Similarly, regardless of how many employers a person works for, a worker should not be denied the civilized and modern-day necessity of having access to a support system she needs for herself and her family. The principle of this system is simple: the employer contributes (as does the employee), no matter what the employee's classification as a worker. The 1099/independent contractor loophole would be closed.

## HOW MUCH WILL IT COST? AFFORDABILITY AND IMPLEMENTATION

Surprisingly, implementing such a multiemployer safety net based on Individual Security Accounts would not be that expensive. In some circumstances, less than two dollars per hour per employee. We can make pretty decent estimates as to what the costs would be, and the amount of employers' contributions for each independent worker, by looking at how much employers pay now for their regular employees. The Bureau of Labor Statistics, which is an arm of the US Department of Labor, calculates such things on a regular basis.

Using data from September 2014, we can see that the wages and salaries for all workers in the United States averaged \$22.13 per hour. Besides paying their employees that hourly income, employers also paid a certain amount toward a basket of worker supports with a number of safety net components. In the following example, I include these features: Social Security, Medicare, federal and state unemployment insurance, and state injured workers compensation (all legally required for regularly-employed, W-2 workers); health insurance and long and short-term disability insurance; and paid sick days, vacation and holidays.

In addition to paying all their workers an average of \$22.13 per hour, US employers also paid an additional \$7.44 per hour – about a third more – to make sure all of those workers had access to a safety net (with the components described above). If we focus just on service sector workers and sales and office workers – which are the vast majority of 1099 and part-time workers – it's even less expensive. Sales and office employees earned an average of \$16.83 per hour per hour, and employers paid an extra \$5.67 per hour (33%) to provide that safety net. For service workers, who made an average of \$11.97 per hour, employers paid an extra \$3.76 per hour (31%) to provide that safety net.

But if we leave out government-employed workers and focus even more narrowly on *private sector employees*, which is where most 1099 workers are employed today, it gets even less expensive.

For sales and office employees, they earned \$16.74 per hour and their employers kicked in another \$5.37 per hour – less than a third more than their base pay. For service sector workers, they made \$10.81 per hour on average and employers spent another \$2.91 per hour – less than 27% – to give them the security of a comprehensive safety net. That's a small amount of money to provide for every worker, regardless of her or his employment status, health insurance, Social Security, Medicare, unemployment, injured workers compensation, disability, paid sick leave, holidays and vacation.<sup>15</sup>

But those numbers based on BLS tables are likely the upper limit of what this will cost. By carefully designing the safety net, we could make this even less expensive.

For example, the scenario above assumes about two weeks/10 paid vacation days (since that's what the BLS figures are based on), which could be scaled back initially to four or five days (and would still provide far more than the zero vacation days currently received by tens of millions of working Americans). The same with paid holidays, which could be scaled back, or even not included initially. The number of sick leave days could be limited initially to cut that cost. Scaling back the safety net basket in various ways would reduce the overall cost, so that employers would pay only an extra \$2.27 per hour for private sector workers in the services industries, and \$4.19 per hour for private sector sales and office workers.<sup>16</sup> That's a small amount of money to provide for millions of workers their health insurance, Social Security, Medicare, unemployment, injured workers

compensation, disability, paid sick leave and vacations (but no paid holidays, in this example) —regardless of their employment situation.

And it likely would cost even less to employers. Low income wage-earners are eligible for Obamacare subsidies for health care, reducing that cost even more for the employer. Health care is by far the greatest expense of this proposed safety net basket, consuming 34% of the overall basket. The breakdown of the other costs are: Social Security (21%), vacations (16%), holidays (9%), injured workers compensation (6%), Medicare (5%), sick leave (4%), unemployment (4%), long and short- term disability (1%). With these numbers as our guide, we could propose different mixes to make it even more affordable, phasing in certain benefits over time to get a program like this up and running, and then build on it over the years (that model reflects the history of Social Security, which initially in the 1930s had modest benefits. But over the years, as it proved itself to be economically useful, as well as popular, it was expanded).

For example, simply providing a minimum basket composed of worker supports that already are legally required for regular W-2 employees (in other words, Social Security, Medicare, federal and state unemployment insurance, and injured workers compensation) would cost a mere \$1.50 per hour for service workers and \$1.87 per hour for sales and office workers in the private sector. That's less than two bucks per hour to provide a basic safety net to millions of workers who currently have nothing. The world's lone remaining superpower cannot afford that?

Also, once the vast insurance pools of previously uncovered workers are formed, with billions of dollars in play, and insurance companies bid to supply these parts of the safety basket, the impact of "economies of scale" are likely to reduce costs even further. Indeed, one can envision a whole new business springing up of "central administrator companies" that do nothing but administer safety net plans for 1099 workers, offering in a competitive market a package deal of benefits that is purchased by individual workers, with each employer of that worker kicking in a certain pro-rated amount into the worker's Individual Security Account to help pay for it. A minimum level of coverage would be mandated by law, with more expensive plans providing more benefits/coverage also being available, i.e. Gold, Silver and Bronze Plans, much like the Affordable Care Act's setup for health care. Each worker would shop for the safety net package she/he can afford. Of course, the rules, products and services would have to be regulated and closely monitored by the government, to ensure quality, fairness, cost effectiveness and no fraud. But economies of scale resulting from a competitive market of insurance - type companies offering more than health or life insurance, and acting as central administrators offering an entire package of safety net features, would further reduce costs.

And of course, if the US could ever reduce the terribly expensive price we pay for health care (especially when compared to other developed nations, which deliver far better health care metrics to a greater proportion of their populations for half the cost), that also would be a great help in bringing down the expense of this safety net basket. Politicians and experts from both the right and the left all agree that long-term health care costs are threatening to bankrupt the nation.

So Travis Kalanick (Uber), Leah Busque (Task Rabbit), Stephane Kasriel (Elance-Upwork) and all the other CEOs of companies involved in the hiring of armies of 1099 workers and part-timers would be legally required to bank the allotted amount of money per worker into each worker's Individual Security Account, pro-rated according to the number of hours worked or as a percentage of gross wages. The excuse that these workers are independent contractors or freelancers who are not actually employed by them would be moot -- if you contract with these workers, *the employer pays*. Over time, employers even might



want to attract more high-quality workers by sweetening the pot a bit, paying into each worker's ISA enough for a few more vacation or sick days, or a small amount towards ongoing training and education, or paid parental leave (after the birth of a child, or due to sickness in the family), housing assistance, and other possibilities.

## **EXTENDING LEGAL PARITY TO ALL WORKERS**

In short, what we are talking about is extending legal parity to 1099 workers and part-timers so that they are on the same safety net footing as regular and full-time workers. That's a better, pro-active strategy than mounting lawsuits over misclassification of workers, which is the current method used for redress. The goal of such litigation is to win a court ruling that says the workers have been misclassified as contractors instead of W-2 employees. These are tough lawsuits to win, and also hugely expensive, time consuming, a drain on resources and ultimately a forum in which there are few winners. It creates a hodgepodge legal landscape in which no one is quite sure of the rules. "Worker misclassification is going to become weaker and weaker" as more workers migrate from regular jobs into the 1099 category, says Denise Cheng, a researcher at MIT and expert on the sharing economy. "It doesn't make sense to hinge everything on that. What we should think through is, 'What should the protections be for an independent contractor?'"<sup>17</sup>

That's exactly what this proposal does. And fortunately, it turns out this is not exactly rocket science, as it is already being done elsewhere. The European Union, for example, has passed legislation that makes it illegal to treat part-time or temporary employees differently than regular, full time employees.<sup>18</sup> The EU guarantees that those working through temporary employment agencies receive equal pay and conditions as regular employees in the same business that do the same work, starting on Day 1. The principle of equal treatment applies not only to pay but also to the basic working and employment conditions, including the duration of working time, overtime, breaks, rest periods, night work, vacations and holidays.<sup>19</sup> Other nations such as Japan, Korea, Israel and Brazil also provide greater levels of legal parity between different classifications of workers.<sup>20</sup>

But this proposal would do even more than create legal parity – it also would create universality. Even during the height of the New Deal era, a certain number of workers were always left out of the safety net support system. Farm workers, for example, were excluded from the National Labor Relations Act (though California years later included its ag workers via state law). The American labor force has always had "insiders" and "outsiders," so this structure of universal Individual Security Accounts would bring everyone into the fold to a much greater degree than they are now.

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**By enacting laws and regulations that extend the concept of multiemployer plans and legal parity between different categories of workers, we would shut down the "independent contractor loophole."**

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An important consequence of this proposal is that, by putting nearly all employees on a similar footing, we would greatly reduce the incentives for employers to resort to 1099 employees as a way of avoiding paying for benefits and worker supports. Employers would still have the freedom to use a temp, freelancer, part-timer or individual contractor, and might have good reason to do so because that would still allow the flexibility to ramp up their workforce, depending on customer demand.

Flexibility is a recognized good in the labor market, to some extent, and this proposal would not prevent that. But by enacting laws and regulations that extend the concept of multiemployer plans and legal parity between different categories of workers, we will go a long way towards removing the corrosive antagonism and perverse incentives created by these vastly unequal categories of workers. We would shut down the 1099/independent contractor loophole.

It also liberates workers to seek their own creative space in the labor market, driven by their passions and individual genius instead of being in job-lock at a particular company because it happens to be one of the remaining few that provide a level of worker support that they and their families need. Liberating employees like this would unleash the innate genius and talent of the American work force. This would be the basis for a “truly sharing” economy worth sharing.

## **REFORM OPPORTUNITIES AT LOCAL, STATE AND FEDERAL LEVELS**

Social Security, which is one of the most popular government programs ever enacted—even a majority of Republicans say they don’t want to see benefits cut—already is structured like a limited Individual Security Account, in which the employer and worker both pay into the worker’s personal account. Ideally the upgrades and modernizations proposed in this paper would be implemented at the national/federal level, so that all businesses and employers are subjected to the same rules. But it’s not essential. These changes can be implemented at the local and state level as well.

Four states (California, Connecticut, Oregon and Massachusetts) and 18 cities (including Washington, D.C., New York City, Philadelphia and Seattle) have passed paid sick leave policies.<sup>21</sup> San Francisco has a paid sick leave policy as well as a requirement that city contractors must provide to their covered employees twelve paid days off per year.<sup>22</sup> Also in San Francisco the city government passed a law for universal health care coverage before Obamacare was passed, which created health care accounts for uncovered workers employed by certain types of businesses which were notorious for not providing health care (especially restaurants and other service-sector jobs). The employers either had to provide insurance or pay into each worker’s health care account a certain amount of money, which could be used by the worker to purchase health insurance. The businesses were allowed to pass that cost on to their customers (San Francisco restaurants patrons saw a new charge on their bill of 4 percent, dedicated to providing health care for these workers).

A similar strategy could be used by cities and states to establish Individual Security Accounts for each 1099 or part-time worker, and require that employers pay into the ISAs, pro-rated according to the number of hours worked or as a percentage of gross wages. Those funds then would be directed into existing safety-net systems (Social Security, Medicare, unemployment, injured worker compensation) and used to purchase other safety net components (health care, paid leave, etc.) by each 1099 or part-time worker. It’s not necessary to wait for the politicians in Washington to get their act together (which could be a very long wait indeed). Passing the right laws and regulations at the local and state levels could start the transition toward the right kind of new economy.

In some cases, “angel employers” could implement these policies within their own companies, and push for it within their industries. In March 2015, Microsoft announced that it would require many of its 2,000 contractors and vendors to provide their employees who perform work for Microsoft with 15 paid days off (to be used for sick days and/or vacation time). Microsoft’s Bradford Smith explained the company’s rationale, saying “The research shows that employees who do get these kinds of benefits are far likelier to be happier, have higher morale and are far more likely to be productive.”<sup>23</sup>

So there are multiple opportunities in cities and states across the nation, where reform efforts could gain traction and begin converting the U.S. safety net into one that can work in the multiemployer world of the new economy.

## CRITICISMS OF THE PLAN

Many business leaders and lobbyists like the Chamber of Commerce of course will complain that such a requirement will be a “job killer,” that it will be expensive and hurt businesses and put them at a competitive disadvantage. But especially if the policies become national and universal, like Social Security is, then all employers are affected equally and no one is impacted more than another. For many service sector businesses their competition usually is local, so especially within a certain industry (like restaurants, for example) or occupation (like plumbers or janitors), all local employers will be affected equally by the passage of a local law. And most of the costs can be passed on to the consumer, but since the millions of workers benefitting are themselves consumers, it will create a virtuous circle in which a rising tide will lift all boats.

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**It’s not necessary to wait for the politicians in Washington DC. There are multiple opportunities for cities and states to begin converting the U.S. safety net into one that can work in the multiemployer world of the new economy.**

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Other businesses will complain that it will hurt them against their international competitors. But most U.S. businesses compete only domestically, in the huge internal market. For those competing internationally, they can rest easy knowing that most of their international competitors are from nations that already have such policies in place, and have had them for years. Are American businesses somehow less vital and competent than those in Europe, Japan, Korea and elsewhere?

Or look at it this way: sure, an employer might say that this will be expensive to take on. But policymakers need to recognize that it’s going to be increasingly expensive for society *not* to do it. For example, because Walmart pays so poorly and provides such a sparse safety net for its employees, the rest of society—read, taxpayers—have to foot the bill for things like food stamps, Medicaid, subsidized housing and expensive hospital emergency room visits (instead of doctor’s office visits) for those employees. *Forbes* reports that Walmart costs U.S. taxpayers an estimated \$6.2 billion annually in public assistance for its workers. (McDonald’s employees reportedly cost taxpayers \$1.2 billion per year).<sup>24</sup>

*Either way, we pay.*

So increasingly the numbers are on the side of modernizing the social contract in this way. Rebecca Smith, deputy director for the National Employment Law Project, asks “Why shouldn’t Uber, Lyft, and their kin be required, just like other labor brokers are...to pay the payroll taxes that ensure workers have access to basic benefits like workers’ compensation when they are injured and Social Security when they retire? Given the kind of huge revenue being generated in some of these companies, it’s not a lot to ask.”<sup>25</sup>

In the past, business hostility and deep-pocketed donor influence over politicians have prevented much headway in enacting worker supports for 1099 workers. The last time a bill to offer some benefits for private sector temp workers got even so much as a committee hearing in Congress was in 1971.<sup>26</sup> A federal bill to give all employees seven days of paid sick leave a year has been introduced into the U.S. Senate every session since 2004, but has never made it to the Senate floor<sup>27</sup> (the U.S. is still one of only a handful of nations that has no national law guaranteeing paid sick leave. Current policy leaves 43 million workers—38 percent of the private labor force—without a single paid sick day, with women and low income workers particularly vulnerable).<sup>28</sup>

“There’s a very strong strain of economic thought in the United States that one of the reasons why we are as productive and successful economically as we are is that there’s so much flexibility in the labor markets,” says Seth Harris, former deputy labor secretary. Sure, economies suffer when companies can’t get rid of employees who aren’t productive, he says, but they also suffer when employers don’t invest in training or pay living wages.

“There’s a need to find a balance,” says Harris. One of the tragedies of the temp workers’ situation is that it treats “workers as disposable inputs rather than valuable assets for their companies.”<sup>29</sup>

That’s the attitude on the part of so many U.S. businesses that needs to change – workers must be valued again, and a sense of shared partnership has to be rediscovered. Sixty years ago, most CEOs assumed some level of responsibility for all their stakeholders, including their employees. “The job of management,” proclaimed Frank Abrams, chairman in 1951 of Standard Oil of New Jersey, which was one of the largest oil producers in the world (and eventually became Exxon), “is to maintain an equitable and working balance among the claims of the various directly interested groups ... stockholders, employees, customers, and the public at large.”<sup>30</sup> Abrams’ predecessor, Walter Teagle, initiated worker representation at Standard Oil of New Jersey in 1918, which was emulated by Germany after World War II when they designed their system of economic democracy within corporations, known as codetermination.<sup>31</sup>

So American business leaders – including highly successful ones – used to think differently about these matters. Current attitudes among this group have only resulted in unleashing a race to the bottom for all. Increasingly these postures are not only damaging to workers and families but to the very fabric of American society. The major point here, which is a philosophical one about the type of society we want to live in, bears repeating: just because a business decides to outsource a job to a temp worker, freelancer, independent contractor or a franchise, instead of directly hiring a regular employee; or just because a person works for multiple employers, that’s not a good reason, economic or otherwise, that those employers should be able to wiggle out of paying a couple more dollars per hour so that each of their workers can know the civilized security of a basket of supports for herself and her family.

Businesses today are using all sorts of loopholes and tricks – hiring third-party operations like temp agencies, private contractor businesses and franchises – to turn their employees into freelancers, temps, perma-temps, rabbits, gig-preneurs, micro entrepreneurs, nano-taskers, indie contractors, contingent laborers and part-timers. It’s practically a new taxonomy for a workforce that has become segmented into a dizzying assortment of labor categories. It’s all part of a strategy by parent companies to evade responsibility for providing a decent, middle-class wage and safety net for their employees. If they have their way, apparently every worker will be turned into a 1099 employee with minimal personal infrastructure supports, just because it’s cheaper for their bottom line. But is that really what’s best for the nation?

## CONCLUSION

With legal parity between different categories of workers, combined with the proposed multiemployer Individual Security Account as the basis for a new type of safety net and social contract, every worker would have access to the following: health insurance, Social Security, Medicare, unemployment insurance, injured workers compensation, disability, and a few days of paid sick days and vacations. Basing a new social contract for the new economy on such a system holds great potential. Besides benefiting individuals, this “new kind of deal” would act as an automatic stabilizer and ongoing stimulus for the broader macroeconomy, helping to maintain the consumer spending that drives the economy and creates jobs. It would form the basis for keeping the U.S. economy plowing forward into the 21st century, enriched by technology and innovation instead of being impoverished and bedeviled by it. That would amount to a giant step in the right direction.

In this insecure age, with the threat of ongoing job loss and debility hanging like a sword over the heads of American workers, a personal safety net based on Individual Security Accounts, as well as extending greater legal parity between 1099 workers, part-timers and regular full-time workers will be increasingly necessary. It will help ensure productive and satisfied workers, healthy families, vibrant communities, prosperous businesses and a more stable macroeconomy. With this proposal as a foundation, the US economy would be placed on a more steady and secure footing for the 21st century.

*(This paper is excerpted from the author's book, **Raw Deal: How the "Uber Economy" and Runaway Capitalism Are Screwing American Workers** ([www.RawDealBook.com](http://www.RawDealBook.com)) published by St. Martin's Press in October 2015)*

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