



SOUTH

August 2025

QofM

Question of the Month

## How are states in the CSG South region navigating worker classification and benefits for gig workers?

The gig economy's size and subsequent estimates on its impact vary widely due to the absence of a universal definition for who is a gig worker. For instance, some [studies](#) cast a wide net, including anyone who has ever performed non-traditional work. [Other analyses](#) are more restrictive, focusing only on those who have done independent contract or gig work within a recent timeframe, or those who depend on gig work as their sole source of income. Broadly, gig work consists of income-generating activities outside of traditional, long-term, direct-hire employment. A third framework is to narrow the scope to specific sectors, such as platform-based delivery or subcontracted labor. The wide range of resulting statistics directly results from these differing definitions. [Surveys](#) using a broader definition found that between 25 and 43 percent of the workforce has engaged in gig or non-standard work. Using these

estimates, it means that at least 42 million people in the United States are engaged in some form of gig work as of 2025. One thing that remains constant, from all surveys and estimates, is that the gig economy is growing, with [Business Research Insights](#) estimating a compound annual growth rate of 15.79 percent by 2034.



# Gig Worker Classification

The proliferation of the gig economy has brought the complex issue of worker classification to the forefront of debate. The distinction between an employee and an independent contractor determines a worker's eligibility for critical protections like minimum wage, overtime pay, and employer-sponsored benefits. Without a clear standard,

states have adopted various legal tests to make this determination, the most common being the common-law and the ABC tests. The legal standard in place in a state has implications for gig workers, as the ABC standard is more likely to result in classification as employee rather than contractor.

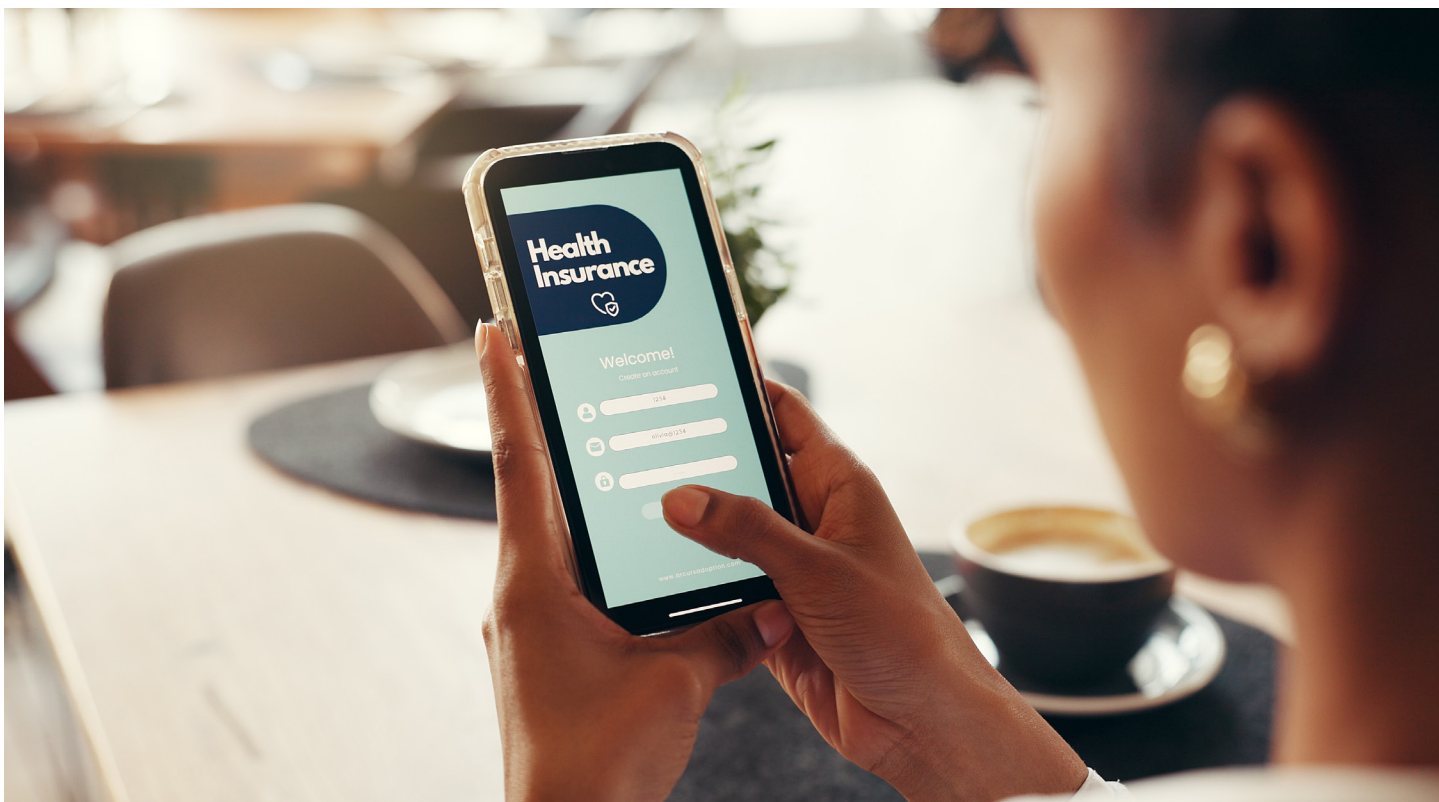
STATES THAT USE COMMON LAW	STATES THAT USE ABC
Alabama	Arkansas
Florida	Georgia
Kentucky	Louisiana
Mississippi	Tennessee
Missouri	West Virginia
North Carolina	Oklahoma (A&B or A&C)
South Carolina	Virginia (A&B or A&C)
Texas	

SOURCE: World Population Review, "Independent Contractor Laws by State 2025", <https://worldpopulationreview.com/state-rankings/independent-contractor-laws-by-state>

HOW DO THE COMMON LAW AND ABC TEST DEFINE EMPLOYEE VS. INDEPENDENT CONTRACTOR	
<b>Common Law</b>	<p>Asserts that workers are independent contractors unless one of the following controls shows that employers wield authority. The worker is usually referred to as an employee if the employer meets these conditions:</p> <ul style="list-style-type: none"><li>• The employer has the right to direct or control how a worker performs a delegated task.</li><li>• The employer has the right to manage workers' expenses, such as reimbursement.</li><li>• Any of the contract terms, benefits, or contractual obligations suggest an employer-employee relationship.</li></ul>
<b>ABC Test</b>	<p>Asserts that a worker is considered an employee and not an independent contractor, unless the hiring entity satisfies all three of the following conditions:</p> <ul style="list-style-type: none"><li>• The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.</li><li>• The worker performs work that is outside the usual course of the hiring entity's business.</li><li>• The worker is normally engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.</li></ul>

SOURCE: IRS, "Independent Contractor", <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee#:~:text=An%20individual%20working%20remotely%2C%20for,how%20the%20services%20are%20performed.>

SOURCE: Shouse Law Group, "The 'ABC Test' in California", <https://www.shouselaw.com/ca/blog/abc-test-california/#:~:text=Instead%2C%20the%20ABC%20test%20looks,work%20as%20an%20independent%20business.>



For example, full-time app-based food delivery drivers could be considered employees in states that utilize the ABC Test (like Georgia and Tennessee). The key reason is that for a worker to be classified as an independent contractor, the company must prove that the work is performed outside the company's usual course of business. Since the app's entire business model is food delivery, a driver who delivers food for the company is performing work central to their business model. Because the app could not satisfy this second condition, its drivers would fail the ABC test and be classified as employees. Compared with the Common Law test, drivers would not be considered employees as they do not have direct control over how a driver drives or manage the driver's expenses via car payments, gas, etc.

## Impact on Worker Benefits

For most Americans, [employee-sponsored benefits](#) provide their primary source of coverage concerning illness costs, income loss in retirement, and income loss due to injury, sickness, or unemployment. However, since many states view gig workers as independent contractors due to their flexibility in spreading their hours over various

platforms, they lose out on these benefits. This puts them at significant risk, especially when it comes to long-term financial stability. For instance, many struggle with retirement savings, and a large portion of the population is [ill-prepared for unexpected expenses](#). While options like the Affordable Care Act (ACA) offer some health coverage, high premiums and out-of-pocket costs can still be a burden. The challenge of providing these benefits through traditional employer-based models is clear. The nature of gig work—where people work for multiple companies, often for short, inconsistent periods—doesn't align with benefits that require continuous, long-term employment.

## Recent Legislation

Instead of trying to reclassify gig workers, some states have created a different way of managing through portable benefits. Portable benefits are a framework where contributions to worker benefits are tied to the individual worker and not a specific employer. This means a worker can accrue benefits from multiple platforms and carry them from one gig to the next. All the legislation introduced in 2025 explicitly state that these benefits do not change the individual contractor classification of gig workers.



## 2025 LEGISLATION ON PORTABLE BENEFITS IN CSG SOUTH STATES

STATE	BILL AND STATUS	SUMMARY
AL	<a href="#">SB 86</a> - Signed by Governor April 2025	Establishes portable benefit accounts for independent contractors, allowing them to fund various benefit plans such as health benefits, income replacement insurance, life insurance, or retirement benefits. The act permits any person or entity, including internet-based entities, to contribute to these accounts. Contributions made by hiring parties to these accounts are not considered as elements of an employment relationship under Alabama law.
AR	<a href="#">SB 235</a> - Introduced, Did Not Receive Committee Vote	Allows independent contractors to open a Voluntary Portable Benefit Account to fund various benefit plans, such as health insurance, income replacement insurance, life insurance, and retirement benefits. Contributions to these accounts can be made voluntarily by the independent contractor or by a hiring party, which may include internet- or application-based companies. The legislation specifies that the contribution to these accounts does not affect the employment classification of the worker.
FL	<a href="#">HB 1067</a> - Introduced, Did Not Receive Committee Vote	Authorizes any persons & hiring parties to make voluntary contributions to portable benefit accounts for independent contractors & sole proprietors; provides requirements for such contributions. The legislation specifies that contributions cannot be used to determine a worker's employment classification.
TN	<a href="#">SB 1377</a> - Became Law April 2025	Allows independent contractors to establish portable benefit accounts, which can be funded by contributions from hiring parties or through voluntary withholdings from the contractor's compensation. The act specifies that these contributions should not affect the worker's employment classification and must be agreed upon in a clear and voluntary manner.
VA	<a href="#">SB 1276</a> - Introduced, Did Not Receive Committee Vote	Allows residents of Virginia who have worked as independent contractors during the current calendar year to open and contribute to these accounts for themselves, their spouses, and dependents. Contributions to the accounts can also be made by public or private entities, including internet or application-based companies, as a form of compensation. The legislation specifies that contributions to these accounts should not influence the classification of a worker's employment status.
WV	<a href="#">SB 714</a> - Referred to Senate Committee of Banking and Insurance	Allows for voluntary contributions to these accounts by independent contractors or entities such as internet-based companies. Contributions can be made directly by the hiring party or through a percentage of the contractor's compensation, provided there is a clear, written agreement that is prominently displayed and allows the contractor to opt in or out at any time. The legislation specifies that contributions to these accounts should not influence the classification of a worker's employment status.

Ultimately, the debate over how to classify gig workers is being met with state-level solutions that combine the flexibility of independent work with the security of benefits. Instead of engaging in a conversation over employment

status, some states in the South are charting a new path through portable benefits. This legislative model prioritizes a solution that provides a financial safety net for the millions of people who have come to rely on the gig economy.