

Arts Worker Supports

Cultural Advocacy Group Issue Brief

Background:

Many arts workers are independent workers, and as such, lack access to safety net benefits and protections. Our current employer-based benefit system is insufficient to adequately protect not only arts workers, but the many gig workers and micro-businesses who share their precarious working conditions. Meanwhile, many arts businesses are microbusinesses and lack access to business support and protection. Policymakers should pass a full suite of worker and business protections to ensure everyone has the safety net they need, regardless of how they earn income.

Many arts workers are self-employed gig workers or micro-businesses

There are approximately 3.7 million arts workers in the United States, and they are self-employed at a much higher rate than traditional workers. According to a recent study, 31% of arts workers are self-employed, compared to just 10% of the total workforce. Moreover, this figure doesn't account for arts workers who combine income from multiple sources, for example earning their primary income via full-time, part-time, or temporary employment, and supplementing that work with income from work in the arts.

In some cases, the very nature of arts work demands both W2 and 1099 income. For example, many employers in the performing arts field are required to employ actors or dancers for a single performance or a limited run as W-2 workers, while directing and choreography gigs are often structured as a 1099 contract. The same individual might hold both types of jobs at the same time.

If one considers arts businesses separate from arts workers, the proportion of self-employed is even greater. 91% of all Arts, Entertainment, and Recreation Sector businesses are non-employer businesses, meaning that they are self-employed businesses of one. This is a far greater portion than the economy as a whole, in which 75% (26.5 million) of all businesses in the U.S. are non-employer businesses. The bulk of the remaining 9% of arts businesses have 3 or fewer employees. These businesses tend to have similar vulnerabilities to nonemployer businesses and often fall through the cracks in business relief and support programs.

Current measures of the economy and workforce fail to account for the fact that—as primarily self-employed individuals—arts workers often operate in the grey area between worker and business. In many cases, they are both. Like many other self-employed gig workers in other sectors, they tend to be excluded from policies intended to support workers, while also falling through the cracks of programs intended to support businesses. We need a system of protection that covers all workers, regardless of how they work. And we need a system of protection that covers all businesses, regardless of their size.

Arts workers lack access to social safety net protections

Arts workers share many of the same precarious working conditions that other gig workers face. In fact, one might argue that artists were the original gig worker. The term gig worker even originates in the arts—from gig musicians. Yet to date, arts workers have largely been absent from larger conversations about work and social protections.

Like other gig workers, self-employed arts workers lack access to major social insurance programs and protections, including large group health insurance, automatic retirement savings, unemployment insurance, disability insurance, and paid leave. In instances where the self-employed do have access to the same benefits and protections as employees—for example with Social Security—the self-employed must pay twice as much into the program than traditional employees. Policymakers should seek to ensure universal, equitable coverage for social insurance programs that protect workers and their families from economic insecurity.

Health Insurance: Most independent workers and self-employed individuals lack access to large-group health insurance. Although the Affordable Care Act expanded health insurance coverage dramatically, the cost of coverage remains out of reach for many. Lacking the ability to organize group-rate health insurance outside of employer or union models, arts workers must access health insurance on the individual market, and pay the associated higher costs. Even with government subsidies, these plans are out of reach for many. Further, many low-income arts workers rely on Medicaid for coverage, meaning threats to that program or lack of Medicaid coverage in many states result in lower coverage among arts workers.

Unemployment Protection: In general, independent workers are not eligible for unemployment insurance. The notable exception was the Pandemic Unemployment Assistance program, which extended unemployment coverage to independent contractors during the COVID-19 pandemic. PUA marked the first time self-employed individuals could access unemployment insurance, and it was a lifeline to many arts workers. The FPUC payment of \$600/week (later \$300/week) helped bring the minimum unemployment compensation up to approximately \$15/hour. However, PUA was also flawed in its implementation.

The program was based upon unemployment compensation for W-2 workers, so it made no allowance for business expenses that almost all non-employer business owners have to pay before clearing any money. In most cases, state unemployment compensation was based on a business's net profit (or loss) rather than on gross business receipts. Coupled with low minimum and maximum state unemployment compensation rates in many states, this left little or nothing after business expenses for many workers.

Further, despite the fact that Disaster Unemployment Assistance has been in effect for many years, many states were unprepared to deal with both non-employer businesses and the volume of applications from workers of all kinds. Small business owners were subjected to requirements to seek employment, even while they were already trying to find ways to reestablish income from their businesses.

The problems were compounded for so-called multiple-income earners—those who earned both W2 and 1099 income—many of whom work in the arts. For example, many states decided to compensate workers who had sufficient W-2 income to qualify, based only on the amount of their W-2 income—even if that was the smallest source of income. The impact varied state-to-state depending on the compensation schedules in place within those states, but arts workers and others consequently suffered inadequate unemployment compensation.

Paid Leave: Paid leave coverage varies by state. In most states, paid leave is a benefit offered by employers only, meaning independent workers lack access to coverage. However, 12 states and Washington DC have passed some form of paid family leave coverage, with varying coverage for the self-employed. While a few states, such as Rhode Island, exclude the self-employed altogether, many allow the self-employed to opt-in to the program. However, these same programs may require the self-employed to pay significantly more than traditional employees, or require long waiting periods that reduce the usefulness of these benefits for independent workers. Notably, the first COVID relief bill included a paid sick time benefit for the self-employed in the form of a refundable tax credit, though this benefit also expired with other forms of COVID relief.

Disability Insurance: As a common employer-sponsored benefit, most independent workers lack access to short-term disability insurance. Similar to the health insurance market, the individual market for short-term disability coverage is cost prohibitive. Some self-employed workers are able to access disability insurance via the Social Security Insurance or Social Security Disability Insurance programs. However, asset and income caps on the SSI program severely limit disabled individuals from being able to earn income or work, preventing many would-be entrepreneurs and arts workers from engaging in productive work, for fear of losing the benefits they rely on.

Income Supports: While self-employed individuals have equal access to income support and poverty programs, such as Temporary Assistance for Needy Families (TANF) or Supplemental Nutrition Assistance Program (SNAP), among others, low-income individuals who are self-employed face greater barriers demonstrating both their income for the means testing these programs require. The income volatility these individuals experience further complicates access to these programs.

Retirement Savings: Many self-employed arts workers lack access to an employer-sponsored retirement plan, including the automatic deductions and employer matching programs that enable individuals to build sufficient savings to retire. Because employer contributions are tax-advantaged, these employer plans amount to a significant government subsidy of retirement savings that independent workers cannot access. Meanwhile, many new state automatic enrollment plans do not include the self-employed.

Micro-businesses in the Arts Lack Access to Business Support and Protection

Even as the self-employed lack access to the worker protections their traditionally employed peers have, so too are they excluded from the business supports and protections meant to enable small businesses in the United States to thrive. Though these gaps are apparent in non-crisis times, the COVID-19 pandemic made them even more apparent. For example:

Economic Injury Disaster Loans (EIDL grants) were the first and most efficient forms of support that many businesses could access during COVID 19. However, the grant was based on the number of employees a business had. A business with zero employees other than the owner might qualify for a maximum of \$1,000, far less than other similarly situated businesses.

The Paycheck Protection Program (PPP) was novel in its explicit inclusion of the self-employed and independent contractors. However, the details of implementation limited its effectiveness for many small and microbusinesses. For example, PPP loans were based on payroll with an additional 25% allowance for business expenses. Businesses with larger numbers of employees and higher payroll were able to get more assistance for business expenses. For non-employer businesses, payroll was interpreted as the net profit (or loss) of the business from Schedule C.

Like other businesses, non-employer businesses must pay their rent, utilities, insurance, interest on debt, transportation expenses, etc. before showing any profit. And like larger businesses, especially in early years, non-employer businesses often defer as much income as possible in order to build up their businesses. Those businesses suffered an extra penalty in the PPP program because they showed an even lower net profit.

Only in the final round of PPP loans with much encouragement from the arts sector, the PPP formula for non-employer businesses was changed to allow owners to calculate loan amounts based on gross business receipts (before expenses). This was a game-changer for many non-employer businesses, including many artists, who were previously eligible for zero or very small loans, and consequently lacked access to the assistance with fixed business expenses that were available to larger businesses.

Policy Recommendations:

1. Improve data collection for independent workers and microbusinesses

- Align [taxonomy](#) to accurately and consistently describe the various types of businesses across federal and state rules and programs.
- Improve workforce data collection to better capture multiple income earners working across sectors
- Adapt workforce data collection methods to align data collection and analysis of information about the self-employed, independent contractors, gig workers, nonemployer businesses and micro-businesses

2. Expand safety net programs to cover the self-employed and independent contractors

- **Health Insurance:** Expand and improve public health insurance programs including Medicaid, Medicare, and Obamacare to deliver affordable, portable health insurance coverage to all Americans.
- **Health Insurance:** Allow independent contractors to group together for the purposes of offering health insurance and other forms of social insurance
- **Unemployment Insurance:** Reinstate Pandemic Unemployment Assistance, with improved rules to improve implementation and prevent fraud, potentially using a reformed Disaster Unemployment Assistance program as a model. Study whether and how unemployment benefits can be made permanent for all self-employed workers. Canada and other countries provide models for this.
- **Unemployment Insurance:** Reform antiquated unemployment delivery systems in the states to better accommodate the needs of self-employed, non-standard, and multiple-income earners. Base state compensation on actual income lost from all sources and not on net profits (or losses).
- **Unemployment Insurance:** Expand [Self-Employment Assistance programs](#) to enable self-employed individuals to use unemployment benefits to launch a new business.
- **Disaster Unemployment Assistance (DUA):** Update DUA, which supports the self-employed after disasters, to include pandemic-style federal add-ons to provide families with bridge income while they recover. Expand the program beyond self-employed individuals whose economic losses after disasters are a “direct result” of the disaster (which has been interpreted to mean there is a physical nexus with the disaster that results in the loss of income, such as the place of work being destroyed), to include those whose income has disappeared as a secondary economic effect of the disaster, as was the case with PUA.
- **Paid Family Leave:** Pass comprehensive, affordable paid family leave that includes the self-employed, eliminates onerous opt-in periods, does not require them to pay both the employer and employee portions of premiums, and allows them to carry their coverage from job to job. [Canada](#) has a program that provides sick leave, maternity leave, caregiver leave, etc. It is an opt-in program that the worker must register for 12 months before receiving any benefits and must pay into based on income, which could provide a model.
- **Paid Time Off:** Reinstate and make permanent the Families First self-employed paid time off tax credit.
- **Retirement:** Allow the self-employed to opt into state SECURE CHOICE retirement plans.
- **Portable Benefits:** Allow independent workers to access large social insurance risk pools—including for health insurance, pensions, disability, unemployment, and paid leave—outside of employment models. Such benefit programs should be

universally available, portable from job to job, and allow both individuals and employers to contribute to the funds.

- **Portable Benefits:** Allow states to experiment with portable benefits pilots by passing The Portable Benefits for Independent Workers Pilot Program Act (S.1696/ H.R.3482)
- **Income supports:** Shift implementation of income support and protection programs to better serve self-employed workers
- **Guaranteed Income:** Ensure a guaranteed minimum income floor for all adults via a reformed Earned Income Tax Credit, Child Tax Credit, or alternative new policy measure.

3. Expand small and microbusiness support programs to better meet their unique needs

- **Forgivable loan programs:** Create forgivable or partially forgivable loan programs similar to PPP for the smallest, most disaster-vulnerable businesses such as non-employer businesses and small employer businesses. For the smallest businesses base loan amounts on gross business receipts or another formula that takes into account the actual business expenses of these businesses.
- **Simplification:** Make SBA and other applications and reporting as simple as possible, taking into account that the smallest businesses consist of one person who does not have the resources to meet complex requirements, especially while navigating a disaster.
- **Facilitate Access to Federal Resources That Are Available to Other Businesses and Workers** For example, FEMA's Other Needs Assistance (ONA) program provides grants to replace tools, equipment, and protective gear lost in disasters and necessary to earn a living. However, this assistance is currently available only to workers employed by others, and self-employed workers are ineligible. Make this assistance available to non-employer businesses which, by definition, consist of a single worker, and to small employer businesses for those tools used by the owner (they are already available to her employees).

4. Include arts and other gig worker voices in all aspects of policy development and implementation

- Incorporate Participatory Action Research methods into workforce and economy data collection methodology to better adapt government data collection and analysis with the changing nature of the workforce
- Integrate arts workers, microbusinesses, and experts from the arts field into the design of future programs as technical assistance providers for Congress and

agencies such as the Small Business Administration, DOL, and FEMA to ensure that these programs meet the depth and breadth of the arts sector's needs.

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