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THEMATIC BRIEFING #8

The debate on Portable Benefits and social security in the gig economy

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INTRODUCTION

Continuing the series of publications of the “Future of Labor and Gig Economy” project, this thematic briefing analyzes the concept of “portable benefits”, seeking to understand how they could contribute to the debate surrounding the construction of social security instruments aimed at protecting gig workers. Based on an analysis of the literature on the subject, we explore some challenges and opportunities for its implementation in different contexts and its adherence to the Brazilian social security system.

Key findings

- 1) Portable benefits emerged in the US, in the context of the expansion of the gig economy;
- 2) They are characterized by three main elements: (i) portability; (ii) proportional costing; and (iii) universality.
- 3) This model makes it possible to expand discussions around the granting of complementary benefits, such as day-care assistance, training, etc.
- 4) The Brazilian social security system already fulfills the characteristics of this model, but is faced with the challenge of facilitating the contributions of workers in informal conditions, which is the case for most workers who work on digital platforms;
- 5) The debate around portable benefits aims to resolve issues related to social security for gig workers, but it is not enough to face the challenge of promoting better working conditions in the gig economy, another theme highlighted in regulatory discussions on the matter.

INTRODUCTION

As work on digital platforms becomes more common throughout the world, there are several discussions about how to fit gig economy workers into a social security system capable of guaranteeing them social protection. A discussion that arises, mainly in the United States, involves the portable benefits model as an answer to this need.

According to the Aspen Institute, one of the main references for this research, the idea of portable benefits arises to fill a gap in the social protection of self-employed workers in a context, such as the North American, in which pension, health and social assistance systems are still very restricted.

In this regard, this thematic briefing seeks to understand the structure of portable benefits, as an instrument capable of generating protection for workers in the gig economy, as well as possible resistance and challenges to its implementation. Furthermore, it is also dedicated to understanding whether and how portable benefits could be used in the Brazilian context, considering the challenge of understanding *whether and to what extent* the Brazilian pension model can be applied to individuals who work in an atypical manner considering traditional forms of work. However, it is noteworthy that foreign regulatory proposals need to be analyzed sparingly, given the political, social, cultural, economic and regulatory differences that may exist between different scenarios.

METHODOLOGICAL NOTES

The research consisted of a bibliographic survey carried out by searching the following keywords “*benefícios portátil*”, “*benefícios portáteis*”, “*benefícios portáteis*”, “portable benefits” and “*benefícios portatiles*” in the academic databases Google Scholar, Periodicals CAPES, Scielo.org, Scielo.br, Scopus and Web of Science. In addition, publications were also mapped on the consulting platforms (e.g. Ernest Young, PwC, Deloitte, KPMG, McKinsey & Company and

Accenture). In both, the identified documents highlighted the US scenario.

Finally, news and repercussions on the subject in the Brazilian context were also considered. For this, a survey was carried out on the websites of the following newspapers and organizations: Jota, Consultor Jurídico (Conjur), Migalhas, Piauí, Le monde, Carta Capital, Estadão, Folha, among others.

WHAT ARE PORTABLE BENEFITS?

The concept of portable benefits emerged in the United States (USA), in the context of the expansion of the gig economy, characterized by more flexible, temporary work relationships, commonly established with multiple service takers. It has been presented as a complementary system to the social security system, which could be adopted regardless of the legal nature of the contractual relationship of the work, which would allow to include under its coverage independent contractors,¹, whose activities are not covered by labor legislation (AZAR, 2020, p. 416).

This system was proposed in the sector's Open Letter ("[Common ground for independent workers](#)"), published in November 2015 and signed by different actors (executives, investors, representatives of associations and unions, think tanks, etc.). The Letter defends the gig economy's flexible hiring model, stressing the importance of ensuring minimum benefits and protections to workers, guaranteeing them some degree of security against misfortunes (for example, against work accidents).

As highlighted in the model formulated by the [Aspen Institute](#), "**portable benefits**" are characterized by three main elements (FOSTER et al, 2016):

- **Portability:** Benefits are tied to an individual worker rather than a single employer, which would make it possible to transfer from one job to another without interruption of coverage or loss of funding.
- **Proportional costing**²: Benefits can be financed from contributions from various sources, including different employers, customers, government and the workers themselves, simultaneously or cumulatively. These contributions can be collected in proportion to hours worked or other relevant units of work. That is, if a worker has several employers, they can share the cost of benefits.
- **Universality:** benefits accessible to a larger group of workers, regardless of the hours worked or the type of work regime.

One of the inspirations behind the concept of "portable benefits" is the Affordable Care Act (2010). Better known as *Obamacare*, this law reformed the US healthcare system and instituted funding mechanisms shared with employers (proportional costing) but not tied to employment itself (portability). That is, the termination of the employment relationship does not discontinue or interrupt the worker's coverage (HANAUER and ROLF, 2015).

¹ The name independent contractors is often used by gig economy *companies* to refer to service providers registered on their platforms. In relation to these professionals, civil and commercial, and not labor legislation, would apply. The *Proposition 22*, which regulates work on digital platforms in the State of California (USA), recognizes the right to "freedom to work independently" and adopts this terminology to refer to workers who work in the sector, provided that certain requirements are met to fit into this category (cf. BT4, pp. 5 and 6).

² In the Aspen Institute reports, the term "pro-rated" is used" (from the Latin "pro rata").

In the following diagram, it is possible to visualize the set of benefits, the beneficiaries, the forms of funding and their management, according to the design proposed by the Aspen Institute:



What would the benefits be?

Portable benefits would encompass a set of social security benefits, with a view to providing greater security and stability for workers not covered by the employment relationship. The portable benefits would have a core composed of health insurance, retirement and aid against temporary disability. From this basic protection, benefits could be expanded to several other types, such as paid vacations, education and training.



Who would be the beneficiaries?

Portable benefits were designed for the universality of workers. The gig economy workers would be a potential target audience.



How would they be funded?

Funding through multiple sources is proposed, including multiple employers, workers themselves and the state. The apportionment among employers would be proportional, based on relevant calculation units (e.g., hours worked, remuneration, tasks performed, etc.).



Who would manage these benefits?

In the model formulated by the Aspen Institute, in addition to State institutions, non-governmental entities (with or without profit purposes) are also proposed as alternatives for the administration of benefits.

Source: own preparation (adapted from Aspen Institute (2019)).

BARRIERS TO THE ADOPTION OF PORTABLE BENEFITS

Liya Palagashvili (2020) points out “barriers” to the adoption of portable benefits. From the perspective of companies in the sector, the main concern would be the legal **risk of labor exposure**, since the granting of benefits could raise questions about the existence of a bond with the benefited workers, weakening, in

turn, the thesis supported by many platforms, when claimed in court, that they would be independent professionals, theses supported by Proposition 22 (California). However, according to Justin Azar (2020), the institutionalization of portable benefits has been proposed as a way for digital platforms to grant

benefits, meeting workers' demands, without drastically increasing their labor costs and reducing their exposure in relation to the characterization of the employment relationship.

Another relevant challenge concerns the **lack of organization in the sector to open social dialogues aimed at building the model**. Justin Azar (2020) draws attention to this when analyzing the solution proposed by Steven Hill and entities such as the Aspen Institute for the apportionment of contributions between platforms: they are based on the Multi-Employer Plans model, established by Taft-Hartley Act (1947)³, through which each employer collects a share of the social contribution owed to a multi-employer fund. However, although there are several well-known examples of Multi-Employer Plans (such as the Screen Actors Guild-Producers Pension and Health Plan, the American Federation of Musicians Pension Fund and the Western Conference of Teamsters Pension Trust), the author points out that they characterize each

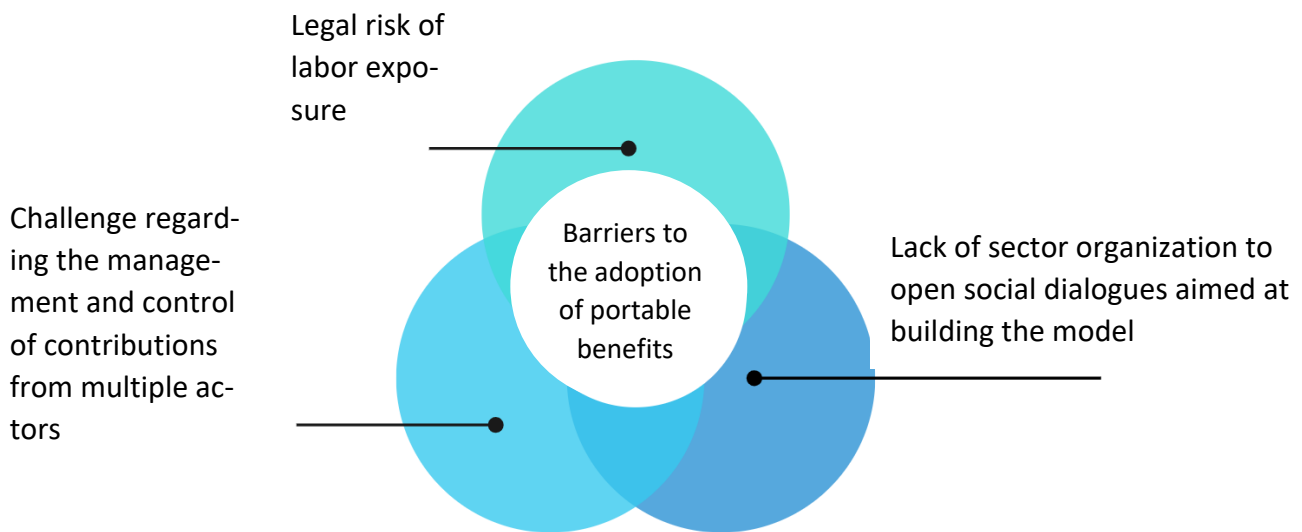
other by: (i) bringing together workers from the same sector and geographic area; and (ii) having been implemented by a union representing the class, based on a collective agreement

From an operational point of view, the **challenge is imposed in relation to the management and control of contributions from multiple actors, both with regard to the calculation of proportional values for each of them and with regard to the functioning of the system and inspection of the quotas duly collected**. This debate, in turn, is associated with uncertainties, such as the calculation of hours worked (whether logged time or ride time should be considered, for example, in the case of drivers and delivery drivers).

There were no manifestations of other actors in the gig economy – workers, unions, international organizations, etc. – on other possible barriers to the implementation of portable benefits.

³ Many benefits can be negotiated under a Taft-Hartley plan, including benefits like the traditional ones that are usually part of the public social security system (such as retirement – in this case, in the private modality). The Taft-Hartley Act requires the fund to be managed by trustees with fiduciary duties and invokes the protections of the National Labor Relations Act (NLRA) and the Employee Retirement Income Security Act (ERISA) (AZAR, 2020).

Figure 1 Barriers to the adoption of portable benefits



Source: own preparation.

To learn more...

To learn more about the debate surrounding the concept of “portable benefits” and the issues surrounding its applicability, read:

- [Designing Portable Benefits: a Resource Guide for Policymakers](#), published by the Aspen Institute;
- [Shared Security, Shared Growth](#), by Nick Hanauer and David Rolf;
- [New Economy, New Social Contract: A Plan for a Safety Net in a Multiemployer World](#), by Steven Hill;
- [Barriers to Portable Benefits Solutions for Gig Economy](#), by Liya Palagashvili;
- [Portable Benefits in the Gig Economy: Understanding the Nuances of the Gig Economy](#), by Justin Azar.

WHAT IS THE APPLICABILITY OF THE PORTABLE BENEFITS MODEL IN BRAZIL?

As for access to social protection, one of the main benefits addressed in the portable benefits model includes the guarantee of a health plan. **Unlike the US system, the Brazilian**

health system is public and universal, which means that access to care, medical procedures and medicines are constitutionally and legally guaranteed to all Brazilians. As well as

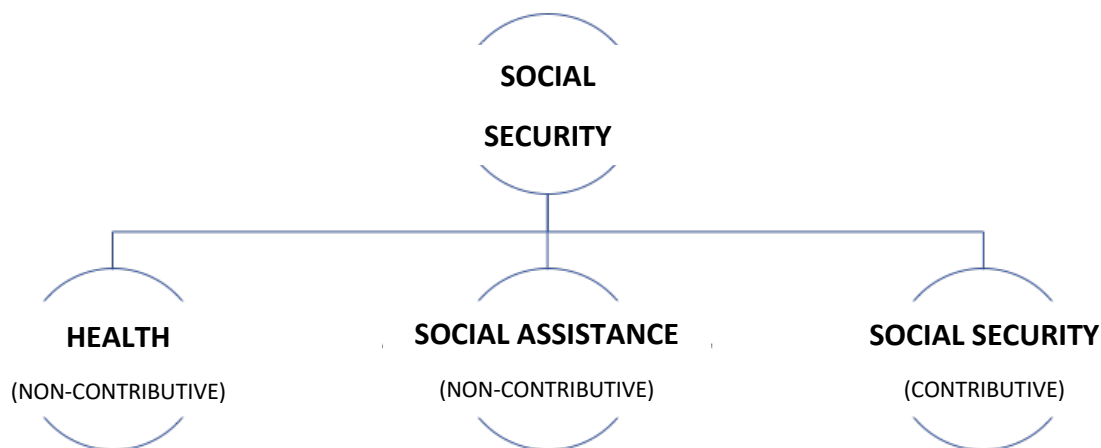
health, social assistance also corresponds to a non-contributory system, from which all those people who need assistance and who meet legal requirements, such as low income, for example, can benefit. Social security, in turn, corresponds to a contributory system, whose benefits, such as retirement, are covered by the General Social Security System (RGPS), accessible to beneficiaries of the system who meet certain legal requirements, such as contribution time, grace period etc.

In this regard, **for the Brazilian context, the centrality of the debate rests on social security**, although the importance of discussing how access to health and care is provided in the - two spheres of social security already guaranteed by law to all is not ignored

universally, regardless of the form of work - as well as in relation to the weaknesses of the existing model in the country.

However, according to the RGPS rules, gig economy workers, even if self-employed, appear as mandatory contributors. **The vulnerability of these workers does not result, therefore, from the absence of a system, but from the difficulty in making contributions.** As exposed in [BT7 on social security and working on digital platforms](#), some of the reasons behind this difficulty would be: (i) lack of knowledge about the existence of the contribution; (ii) lack of knowledge about the procedures for contributing; and/or (iii) low income and insufficient resources to be allocated to social security contributions.

Figure 2 - Pillars of Social Security



Source: own preparation.

Furthermore, in Brazil, the indefinite legal nature of the relationship between platforms and workers does not contribute to facilitating the collection of social contributions. This is because, if they were hired as employees or as self-employed directly by the platforms, there would be a requirement for withholding remuneration of the amount due to the

National Institute of Social Security (INSS). Although a large part of the workers act as self-employed workers, contractually they are providing services to the platform's end user (usually, individuals), so that the platform no longer has the legal obligation to

retain the value of the contributions⁴. The relationship of these delivery drivers and workers with the platforms are formatted in such a way by the Terms of Use, that they are generally placed as contractors of a technological intermediation service and, therefore, do not appear as workers.

As for the similarities with characteristics of the portable benefits model, when analyzing the RGPS, we noticed that they are similar in some points: (i) portability, insofar as it is linked to the insured, regardless of the work regime; (ii) proportionality, since it admits the contribution by multiple employers (e.g., intermittent regime) and, with the exception of some benefits (e.g., unemployment

insurance), it is not discontinued or interrupted in the change of employer and/or regime of work; and (iii) universality, as it is independent of the work regime (e.g., it provides that the self-employed are obligatory insured) and even allows the optional membership of people who do not perform paid economic activity (e.g., unemployed, housewives, students etc.).

Using examples, the table below illustrates the access of self-employed workers to certain types of benefits, considering the US model and the Brazilian social security system:

Table 1 - Benefits in the Brazilian and North American scenario

Types of benefit	Are self-employed workers in the United States entitled to the benefit?	Are self-employed workers in Brazil entitled to the benefit?
Health insurance	Can access health plans through the Affordable Care Act, without employer contribution.	Unified Health System available to all Brazilian citizens. There is no need for specific contribution, neither on the part of the contractor nor on the part of the worker.
Unemployment insurance	No.	No. Under the RGPS, self-employed workers are not entitled to unemployment insurance.
Retirement	Rarely. There are plans that are financed exclusively by the worker himself.	Yes. The RGPS guarantees the right to retire to self-employed workers.
Work accident compensation	Rarely.	Yes. The RGPS has the permanent disability benefit, which guarantees continued benefits to self-employed

⁴ In Colombia, some companies in the sector started to collect contributions from workers to the BEPS (Periodic Economic Benefits), a local tax regime like the MEI (Individual Microentrepreneur), through a power of attorney provided by the workers, thus avoiding the characterization of the employment relationship (cf. BT7, p. 9).

		workers who are incapable of carrying out their usual activities as a result of an accident.
Life insurance	Rarely. There are plans that are financed exclusively by the worker himself.	No. However, the RGPS guarantees the death pension to the dependents of the self-employed worker who dies.
Sickness allowance	Rarely.	Yes. The RGPS guarantees the self-employed worker with the benefit for temporary incapacity for work
Paid leave for family care	Rarely. Although it is possible to participate in some state programs that offer the benefit.	Yes, the RGPS guarantees the self-employed worker the maternity allowance.
Paid vacation	Rarely.	As a rule, self-employed workers do not have paid vacations.

Table adapted from the Aspen Institute (FOSTER et al, 2019). Information about the North American context was taken from (FOSTER et al, 2019). Information from the Brazilian context was entered by the authors.

Given these characteristics, we question whether and how the portable benefits model could contribute to the debate on social protection for workers in the gig economy in Brazil.

It seems to us that the main contribution of this model involves the discussion on setting up a system of registration and calculation of proportional apportionment among multiple actors, even though this modality already exists under the Brazilian legal system (such as the form of payment in contracts of intermittent work), the design formulated by the Aspen Institute points out some ways to make the system viable, based on a governmental institutional model, hybrid or private (depending on the sector's regulation).

The debate can also expand the discussions around the creation of other benefits not

traditionally included in the Brazilian social security, such as training for professional qualification and replacement in the labor market, for example.

The proposal of the portable benefits model, however, is not enough to face another central theme for the regulation of work in the gig economy: the working conditions of gig workers. Thus, even though it addresses means for social security (based mainly on the North American context), it leaves out labor issues, which have deserved special attention from the legislator (cf. [BT1](#) and [BT2](#)), such as the provision of protective equipment, rest breaks, length of work, etc.

Finally, it is worth emphasizing the difficulty and inappropriateness of seeking to automatically transport solutions designed for other contexts to the Brazilian reality. Although, in

the North American context, portable benefits are speculated to provide social protection for gig workers, it is necessary to analyze

in more detail to what extent they bring innovations to the Brazilian social security model and if they are actually useful for our reality.

CONCLUSIONS

- Portable benefits are characterized by three main elements: (i) portability; (ii) proportional costing; and (iii) universality;
- Portable benefits were formulated based on the reality of work in the USA, where social security, social assistance and public health systems are restricted;
- This model makes it possible to expand discussions around the granting of complementary benefits, such as day-care assistance, professional training, etc.
- The Brazilian social security system already fulfills the characteristics of this model, but is faced with the challenge of facilitating the contributions of workers in informal conditions, which is the case for most workers who work on digital platforms;
- The debate around portable benefits is not enough to face the challenge of promoting better working conditions for *gig workers*, a topic of central importance for the regulation of the *gig economy*.

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