Remarks by Senator Elizabeth Warren
"Strengthening the Basic Bargain for Workers in the Modern Economy"
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Thank you, Ann Marie, for that kind introduction. And thank you to the New America foundation for inviting me to come and speak today about the so-called "gig" economy.

Across the country, new companies are using the Internet to transform the way Americans work, shop, socialize, vacation, look for love, talk to the doctor, get around, and track down a 10-foot feather boa—which was my latest Amazon search. These innovations have improved our lives in countless ways, reducing inefficiencies and leveraging network effects to help grow our economy. This is real growth. For example, increasing broadband penetration boosts GDP and increasing 3G connections increases mobile data use, which, in turn, increases GDP.[i]

The most famous example is the rise of ride-sharing platforms in our cities. The taxicab industry was riddled with monopolies, rents, and inefficiencies. Cities limited the number of taxi licenses and charged drivers steep fees for taxi medallions.[ii] They required drivers to pay additional fees to pick up passengers at airports.[iii] They micromanaged the paint jobs for individual cars and even outlawed price competition.[iv] Uber and Lyft, two ride sharing platforms that came onto the scene about 5 years ago, radically altered this model, enabling anyone with a smartphone and a car to deliver rides.[v] They also enabled customers to find a ride any time of day, with the touch of a button. The result was more rides, cheaper rides, and shorter wait times.[vi]

The ridesharing story illustrates the promise of these new businesses—and the dangers. Uber and Lyft fought against local taxicab rules that kept prices high and limited access to services.[vii] But as the dispute in Austin, Texas, has demonstrated, the companies fought just as vigorously against local rules designed to create a level playing field between themselves and their taxi competitors, and they have also resisted rules designed to promote rider safety and driver accountability.[viii] While their businesses provide workers with great flexibility, companies like Lyft and Uber have often resisted the efforts of those same workers to access a greater share of the wealth generated from their work. Their business model is, in part, dependent on extremely low wages for drivers.[ix]

It's exciting—and very hip—to talk about Uber and Lyft and Taskrabbit, but the promise and risks of these companies isn't new. For centuries, technological advances have helped create new wealth and have increased GDP. But it is policy – rules and regulations – that will determine whether workers have a meaningful opportunity to share in that new wealth.

A century ago, the industrial revolution radically altered the American economy. Millions moved from farms to factories. These sweeping changes in our economy generated enormous wealth.

They also wreaked havoc on workers and their families. Workplaces were monstrously unsafe. Wages were paltry and hours were grueling.[x]

America's response wasn't to abandon the technological innovations and improvements of the industrial revolution. We didn't send everyone back to their farms. No. Instead, we came together, and through our government we changed public policies to adapt to a changing economy – to keep the good and get rid of much of the bad.

The list of new laws and regulations was long: A minimum wage.[xi] Workplace safety.[xii] Workers compensation. [xiii] Child labor laws.[xiv] The 40-hour workweek. [xv] Social Security.[xvi] The right to unionize.[xvii]

But each of these changes made a profound difference. They put guardrails around the ability of giant corporations to exploit workers to generate additional profits at any cost. They helped make sure that part of the increased wealth generated by innovation would be used to build a strong middle class.[xviii]

The changes weren't all focused on workers. Antitrust laws and newly-created public utilities addressed the new technological revolution's tendency toward concentration and monopoly and kept our markets competitive.[xix] Rules to prevent cheating and fraud were added to make sure bad actors in the marketplace couldn't get a leg up on folks who played by the rules. [xx]

These changes didn't happen overnight. There were big fights – over decades – to establish that balance. But once in place, these policies underwrote the widely shared growth and prosperity of the 20th Century. [xxi] From 1935-1980, the 90% -- everyone outside the top 10% -- got 70% of all income growth. As the economy grew and became more productive, so too did the average worker's wages.[xxii] Instead of all the wealth going to a handful of giant companies, factory owners, and investors—the robber barons of the early 20th Century—the growth created by our manufacturing economy supported the growth of a strong, prosperous middle class. That distribution happened because of a newly-emerging basic bargain for workers.

A hundred years ago, nobody grappling with the rapid changes in technology and work seriously entertained the idea of banning manufacturing advances. And today, nobody seriously entertains the idea of pulling the plug on the Internet. Massive technological change is a gift – a byproduct of human ingenuity that creates extraordinary opportunities to improve the lives of billions. But history shows that to harness those opportunities to create and sustain a strong middle class, policy also matters. To fully realize the potential of this new economy, laws must be adapted to make sure that the basic bargain for workers remains intact, and that workers have the chance to share in the growth they help produce.

The challenge today is doubly difficult. At the same time that we need to adapt to new work relationships of a gig economy, the basic bargain of the old work relationships has become badly frayed. Over the past three decades, workers have been under merciless attack. For decades, big business has tried to squeeze more profits out of workers by ducking and dodging regulations and by taking advantage of loopholes in employment policy, by skirting enforcement efforts, and even by flagrantly violating the law.[xxiii] Giant corporations have deployed armies of lobbyists and lawyers to freeze, limit, or dismantle as many worker protections as they could. The result is that for decades, the guardrails that once served to build a robust middle class no longer offered the same kind of protection.

More and more of today's jobs have sharply limited protections and benefits.[xxiv] Long before anyone ever wrote an article about the "gig economy," corporations had discovered the higher profits they could wring out of an on-demand workforce made up of independent contractors.[xxv] Labor law makes a sharp distinction between employees and 1099 independent contractors, and many employers figured out how to exploit that distinction.[xxvi] They hired people who do the work once done by people characterized as employees, but then re-characterized them as independent contractors or as somebody else's employees.[xxvii] The result was that these workers lost their benefits, lost the stability of guaranteed work, and lost the ability to form a union and bargain collectively.[xxviii]

But the employee-1099 divide is not the only way the basic work bargain is fraying. Employees, particularly low-wage employees, face challenges that are not unlike challenges facing gig workers and independent contractors. They too have lost both benefits and the stability of a guaranteed work schedule and a steady income. As employers have moved to just-in-time staffing, more hourly workers are trapped in part-time jobs or stripped-down full-time jobs.[xxix] An increasing number of workers are in sub-contracting or franchise arrangements where their employment conditions are controlled by firms they can't bargain with or hold accountable for meeting basic wage or safety obligations. They may not even know the name of their actual employer.[xxx]

At the same time that the bargain with workers has become increasingly one-sided for millions of independent contractors and hourly employees, yet another part of the basic economic bargain has also begun to fray. The safety net—unemployment insurance, workers comp, Social Security—hasn't been updated to fill in the holes that employers have created. Temporary workers, contract workers, seasonal workers, permatemps, and part-time workers rarely have access to these benefits, which means that the workers who most need that safety net are least likely to have it.

The gig economy didn't invent any of these problems. In fact, the gig economy has become a stopgap for some workers who can't make ends meet in a weak labor market. The much-touted virtues of flexibility, independence, and creativity offered by gig work might be true for some workers under some conditions, but for many, the gig economy is simply the next step in a losing effort to build some economic security in a world where all the benefits are floating to the top 10%.

The problems facing gig workers are much like the problems facing millions of other workers. An outdated employee benefits model makes it all but impossible for temporary workers, contract workers, part-time workers and workers in industries like retail or construction who switch jobs frequently to build any economic security.

Just as this country did a hundred years ago, it's time to rethink the basic bargain between workers and companies. As greater wealth is generated by new technology, how can we ensure that the workers who support this economy can share in that wealth?

I believe we start with one simple principle: all workers--no matter when they work, where they work, who they work for, whether they pick tomatoes or build rocket ships–all workers should have some basic protections and be able to build some economic security for themselves and their families. No worker should fall through the cracks. Here are some ideas about how to rethink and strengthen the workers' bargain.

We can start by strengthening our safety net so it catches anyone who has fallen on hard times, whether they have an employer or not. There are three much-needed changes right off the bat:

First, make sure every worker pays into Social Security as the law always intended. Right now, it's a challenge for someone who doesn't have an employer to automatically deduct payroll taxes to pay into Social Security.[xxxi] This can affect both a worker's ability to qualify for disability insurance after a major injury, and it can result in much lower retirement benefits.[xxxii] If Social Security is to be fully funded for generations to come, and if all workers are to have adequate benefits, then electronic, automatic, and mandatory withholding of payroll taxes must apply to everyone—gig workers, 1099 workers, and hourly employees.

Second, every worker should be covered by catastrophic insurance. Workers who have serious accidents or suffer from illnesses that knock them out of the labor market for an extended period need a backstop.[xxxiii] Everyone means everyone – even workers who haven't built up enough credits for disability insurance, even workers who don't have traditional worker's compensation. This type of insurance could be relatively cheap if it's pooled across the entire workforce through regular, small, automatically-deducted contributions.

Finally, all workers, no matter where they work or who they work for, should have some paid leave. Any worker should be able to stay home when they are sick or take off some time to care for a sick baby without going hungry. We can debate where to draw the lines, but let's start with two ideas. First, each worker should be able to accrue proportional credits toward a certain number of days a year for any purpose. Second, workers should have some paid family and medical leave to insure against longer absences such as a more serious illness or to care for a newborn.[xxxiv]

These three—Social Security, catastrophic insurance, and earned leave—create a safety net for income. Together they give families some protection in an ever-more-volatile work environment, and they help ensure that, after a lifetime of work, people will face their last years with dignity.

The second area of change is to make employee benefits—both for health care and retirement—fully portable: they belong to the worker, no matter what company or platform generates the income, and they should follow that worker wherever the worker goes. The corollary to this is that workers without employers should have access to the same kind of benefits that some employees already have.[xxxv]

The Affordable Care Act is a big step toward addressing this problem for health care, providing access for workers who don't have employer-sponsored coverage and providing a long-term structure for portability. We should improve on that structure, enhancing its portability and reducing the managerial involvement of employers.

There is no similarly portable structure for retirement benefits. One change would make a big difference: a high-quality retirement plan for independent contractors, self-employed workers, and other workers who have no access to retirement benefits to supplement their Social Security. This plan should use best-in-class practices when it comes to asset allocation, governance structure, and fee transparency. It should be operated solely in the interest of workers and retirees, and they should have a voice in how the plan is run.[xxxvi]

Instead of an employer-sponsored 401(k), this plan could be run by a union or other organization that could contract investment management to the private sector—just as companies like General Motors contract with providers like Fidelity to offer 401(k)s in the employment setting.[xxxvii] And, because of the amazing advances in online investment platforms and electronic payroll systems, individuals could set up automatic contributions. It's time for all workers to have access to the same low-cost, well-protected retirement products that some employers and unions provide today.

The benefits to workers from gaining access to health insurance and retirement plans are obvious, but the benefits to employers are also substantial. Those employers can shed managerial responsibilities peripheral to their businesses, and small businesses and startups can compete for workers without needing to get into the health insurance and retirement benefits business.[xxxviii] That's how markets should work.

And in the third big area, it is time to create some legal and regulatory certainty in the labor market. If it is done right, it will be possible to reduce red tape for large employers, small business owners, and entrepreneurs—cutting their costs and making it easier for them to employ people. Less ambiguity will also help make sure that some employers don't exploit loopholes to gain competitive advantages. Here are four ways to make progress in this area.

First, enforce the laws already on the books. Employers shouldn't be misclassifying workers to keep labor costs down and they shouldn't be hiding behind complex arrangements like franchising and subcontracting to skirt their responsibilities to their workers. The many employers who treat their employees well shouldn't have to compete against the ones who don't. That's not a level playing field; that's a broken system.[xxxix]

Second, streamline labor laws. Currently, there are endless different legal definitions of an employee, depending on the workers' industry or occupation.[xl] The boundaries between employees, contract workers and gig workers are complex. Providing a wider safety net and more consistent access to retirement and health benefits will reduce the huge impact of different classifications. At the same time, harmonizing these definitions will mean less regulatory burden for businesses and fewer opportunities for misclassification of workers.

Third, wherever possible, streamline laws at the federal level so that employers operating across state lines don't have to jump through a crazy number of hoops when they employ workers from more than one state. A small business owner with workers in several states shouldn't have to spend her valuable time struggling to master different state regulations.

Fourth, every worker should have the right to organize—period. Full-time, part-time, temp workers, gig workers, contract workers—those who provide the labor should have the right to bargain as a group with whoever controls the terms of their work and they should be protected from retaliation or discrimination for doing so. Government is not the only advocate on behalf of workers. It was workers, bargaining through their unions, who helped introduce retirement benefits, sick pay, over-time, the weekend and a long list of other benefits for their members—and ultimately those changes benefited every other worker in America. Unions helped build America's middle class, and unions can help rebuild it.[xli]

One more thing. A 21st century economy that once again grows a thriving middle class will require other changes. It will also require making investments in education and training, in infrastructure, and in basic research and development.

Today's high-tech jobs might be located on the factory floor or in a medical lab. But whatever the work sites look like, the workers increasingly need post-secondary education.

To build the well-educated, versatile workforce that this country will need in the 21st Century, it is critical that we stop saddling tomorrow's workers with student debt. Student loan debt has ballooned to $1.3 trillion.[xlii] Today, 70% of college grads must borrow money to make it through school.[xliii] That's not a leg up – it's an anvil dragging workers down.

But this is about more than traditional college. American workers will need access to affordable lifelong learning and retooling for future jobs—jobs that emerge long after they've left school, but long before they retire. I know New America is making important contributions on this topic with both Opportunity@Work and its Education Program. People who have worked 20-plus years in a changing field should have access to education and training opportunities that will offer new ways to use their talents, creativity, and experience. America will need these workers, and these workers will need training.

For many of these proposals, government may set policies, but employers, educators, unions, non-profits, and tech innovators all have critical roles to play to rebuild America's economy by strengthening America's workers. But there's one more step in thinking about the economy of the 21st Century: Government investments are one of the most reliable sparks of technological innovation and growth around. Building basic infrastructure—roads and bridges, but also power grids, communications links, mass transit—makes it possible for the economy to flourish. Investments in basic research provide a foundation for tomorrow's advances. A stronger economy will produce the demand for workers that will help create opportunities for millions more Americans.

We can't blame the parts of the gig economy that we don't like on technology companies, software, or smartphones. There are plenty of outsourced janitors and warehouse workers, plenty of security guards and manufacturing workers who can explain that on-demand work is nothing new.

In a healthy economy, disruption is inevitable. But disruption means it's time to adapt to changing circumstances, time for new businesses and old businesses to change, time to rethink the deal for employees, contract workers, and gig workers. Disruption creates the push to rethink the basic bargain for workers who produce much of the value in this economy.

My message today is straightforward: Workers deserve a level playing field and some basic protections, no matter who they work for, where they work, or how the law classifies them. They deserve a strong safety net, dependable benefits, and the chance to bargain over their working conditions—that's the basic deal. And that's the deal that is necessary to restore a strong and sustainable American middle class.

Most workers aren't asking for the moon. They want to be able to take care of their families, buy a home, send their kids to college, and save a little money for retirement. They want some security, and they want to know their kids will have a chance to do better than they did. That's the promise of America, but that promise won't come true unless we make some real changes.

Workers have a right to expect our government to work for them, to set the basic rules of the game. If this country is to have a strong middle class, then we need the policies that will make that possible. That's how shared prosperity has been built in the past, and that is our way forward now.

Change won't be easy. But we don't get what we don't fight for. I believe America's workers are worth fighting for.

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