



The Honorable Paul Feeney, Chair  
Joint Committee on Financial Services  
Room 215  
State House  
Boston, MA 02133

The Honorable James M. Murphy, Chair  
Joint Committee on Financial Services  
Room 254  
State House  
Boston, MA 02133

Dear Chairpersons Feeney, Murphy, and distinguished members of the Joint Committee on Financial Services:

Thank you for the opportunity to testify on this important matter.

I stand in opposition to House bill ([H.4375/H.4376](#)), *An Act defining and regulating the contract-based relationship between network companies and app-based drivers*.

Every worker in Massachusetts deserves a living wage and the benefits and protections that our parents, grandparents and great-grandparents fought hard, for decades, to win and maintain.

These bills would undermine this progress by classifying all app-based drivers and delivery workers operating in the Commonwealth as independent contractors rather than employees for all purposes under Massachusetts law.

The bills in question would create a loophole in employment law, enabling some companies to avoid their obligations to their workers. By re-classifying all app-based drivers and delivery workers as independent contractors rather than employees, these bills would remove a significant and growing part of the Massachusetts workforce from the protections afforded by employment status.

Companies like Uber or Lyft that assign tasks to their workers via cell phone app should not be excused from providing the full benefits and protections due under Massachusetts Wage and Hours Laws, including those granted by the Wage Act, Minimum Wage Law, Overtime Law, Earned Sick Time Law, and Anti-Retaliation Statutes.

The bill's minimum wage assertions are deeply compromised by excluding so many of the hours of work performed. A [review](#) by the University of California Berkeley determined that the arrangement sought by Uber and Lyft would fail to deliver on its promises. Unlike employees who are paid for their working time, app-based workers' wages would only compensate them

for time they are “engaged.” This arrangement would be akin to not paying nurses for the time they are not directly interacting with patients. The independent analysis of the projected earnings for Uber and Lyft workers would be between \$4.82 to \$6.74 per hour when considering various loopholes, unpaid time, and unreimbursed expenses.<sup>1</sup> This is a fraction of the \$15 hourly minimum for wage employees that will be in effect in 2023.

This deterioration of wage and benefit standards would also increase and shift fiscal costs onto the Commonwealth. Being an employee creates access to a variety of protections against risks that workers may not imagine they’ll ever need. These protections include unemployment insurance, emergency leave, sick leave, parental leave, disability payments, retirement benefits, and health insurance.

Under this legislation, gig workers would not contribute to employment-based social insurance programs. An academic study from the University of California estimates that if Uber and Lyft had contributed to the California’s unemployment insurance fund, as the law at the time mandated, they would have paid \$413 million to the unemployment fund between 2014 and 2019.<sup>2</sup>

Gig workers who are inadequately provided for by app-based companies and face misfortune will seek other means of public support to sustain themselves and their families. This additional support will constitute a form of public subsidy for gig-companies. In doing so, the Commonwealth would create an unlevel playing field between companies, creating an artificial competitive advantage for companies that assign work tasks through an app. Therefore, this legislation would also artificially encourage other employers to introduce app-based interfaces with their employees to avoid paying for worker benefits and protections. The proliferation of remote work arrangements and workplace task management platforms make it plausible that virtually any worker could become misclassified with the aid of an app-based interface.

The shortcomings of the gig companies’ compensation arrangements and the inferior social supports provided to these workers under these bills would transfer greater pressures on the Commonwealth’s social safety net programs.

In fact, rather than expose independent contractor workers to income loss, during the pandemic, the federal government was compelled to provide extraordinary benefits at tremendous cost.<sup>3</sup> Under the CARES Act in March 2020, Congress for the first time ever made independent contractors temporarily eligible for unemployment payments by creating a new

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<sup>1</sup> See Ken Jacobs and Michael Reich, “Massachusetts Uber/Lyft Ballot Proposition Would Create Subminimum Wage: Drivers Could Earn as Little as \$4.82 an Hour” Berkeley Labor Center (September 2021), available at <https://laborcenter.berkeley.edu/mass-uber-lyft-ballot-proposition-would-create-subminimum-wage/>

<sup>2</sup> Ken Jacobs and Michael Reich, “What Would Uber and Lyft Owe to the State Unemployment Fund,” Berkeley Labor Center, available at <https://laborcenter.berkeley.edu/pdf/2020/What-would-Uber-and-Lyft-owe-to-the-State-Unemployment-Insurance-Fund.pdf>

<sup>3</sup> Albiston, Catherine R.; Fisk, Catherine L., “[Precarious Work and Precarious Welfare: How the Pandemic Reveals Fundamental Flaws of the U.S. Social Safety Net](#),” 42 *Berkeley J. Emp. & Lab. L.* 257 (2021)

temporary Pandemic Unemployment Assistance (PUA) program paid for by the federal government, which lasted for eighty-six weeks until it expired in March 2021. Uber and Lyft reportedly advised their workforce to apply for the new federal Pandemic Unemployment Assistance benefit because they were ineligible for employment-based Unemployment Insurance.<sup>4</sup> By depriving gig-workers of these protections, the responsibility to protect workers and their families falls on public programs and the taxpayers that support these programs.

In closing, the wide-ranging changes being proposed in these bills to existing law will have a broad range of severe negative impacts both on the affected workers, their families, and communities as well as the Commonwealth's system of employment-related safety-net programs.

Thank you for your time and consideration.

Respectfully submitted,

Marie-Frances Rivera  
President, Massachusetts Budget and Policy Center

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<sup>4</sup> See note 329 on page 309, citing Fisk, .... Berkeley citing Greg Iacurci, *Some Uber, Lyft Drivers Fear Companies Will Use Unemployment Benefits Against Them*, CNBC (May 23, 2020, 10:15 AM), <https://www.cnbc.com/2020/05/23/uber-lyft-driversfear-unemployment-benefits-will-be-used-against-them.html> [https://perma.cc/99H8-WRV3]; *How the CARES Act Can Help Drivers Who Are Unemployed Due to COVID-19*, LYFT (Apr. 20, 2020), <https://www.lyft.com/hub/posts/how-the-cares-act-can-help-drivers-who-are-unemployed-due-to-covid-19> [https://perma.cc/3VLU-3N7C].