



The Honorable Patricia Jehlen, Chair
Joint Committee on Workforce Development
Room 424
State House
Boston, MA 02133

The Honorable Josh Cutler, Chair
Joint Committee on Workforce Development
Room 472
State House
Boston, MA 02133

Dear Chairpersons Jehlen, Cutler, and distinguished members of the Joint Committee on Workforce Development:

Thank you for the opportunity to submit written testimony in opposition to ([H1848](#)), *An Act establishing rights and obligations of transportation network drivers and transportation network companies*. **Every worker in Massachusetts deserves a living wage and the benefits and protections that the Commonwealth has collectively fought hard to win and maintain over time.** This bill would undermine this progress by classifying all app-based rideshare drivers operating in the Commonwealth as independent contractors rather than employees for all purposes under Massachusetts law.

The bill 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 rideshare drivers as independent contractors rather than employees, this bill would cause a significant and growing part of the Massachusetts workforce to lose protections afforded by employment status. The substitute benefits that could be provided by app-based companies under this bill are unambiguously inferior to existing public benefits.

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. Transportation network companies' own studies show that about one-third of a driver's time would no longer qualify for pay, cutting considerably into total earnings, even with the promise to pay 120 percent of the minimum wage. 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.¹ This is a fraction of the \$15 hourly minimum wage.

Changing how we classify these workers 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 and for which the public will ultimately be the provider of last resort. Under this bill, app-based drivers would accrue sick leave at a slower pace and their health insurance would be based on a weekly hours calculation that only applies to "engaged" hours worked. This will result in far more costs to the workers for their health care. Workers' compensation benefits would also be far inferior if this bill were to pass.

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 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 2019.² According to New Jersey's Department of Labor and Workforce Development, Uber was compelled to pay the state of New Jersey approximately \$100 million, "after an audit found the ride-share companies improperly classified hundreds of thousands of drivers as independent contractors, depriving them of crucial safety-net benefits such as unemployment, temporary disability and family leave insurance, and failed to make required contributions toward unemployment, temporary disability and workforce development."³

Gig workers who are inadequately provided for by app-based companies and face misfortune will seek other means of public support to sustain 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 could encourage other employers to introduce app-based interfaces with their employees solely 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, compounding the loss of state revenue.

¹ 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/>

² 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>

³ New Jersey Department of Labor and Workforce Development, press release, "[Uber Pays \\$100M in Driver Misclassification Case with NJ Department of Labor and Workforce Development and Attorney General's Office](#)" (Sept. 13, 2022).

The shortcomings of the gig companies' compensation arrangements and the inferior social supports provided to these workers under this bill 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.⁴ 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 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.⁵ 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 this bill 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,

Phineas Baxandall
Interim President, Massachusetts Budget and Policy Center

⁴ 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)

⁵ 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.cnn.com/2020/05/23/uber-lyft-driversfear-unemployment-benefits-will-be-used-against-them.htm> [<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>].