

Prop 22 Leaves Workers Vulnerable to COVID-19

For many, work is a source of dignity, identity, and purpose—a way to provide for a family and support a community. All work should be safe, be free from discrimination, and provide a fair wage, benefits, and the ability for workers to join together and bargain with their employer for more stability and security. Yet, on Election Day in November, California voters will be presented with an **unprecedented and dangerous** ballot initiative—Proposition 22—that would put workers further from that goal.¹

Advanced by Uber, Lyft, DoorDash, Instacart, and Postmates,² Prop 22 aims to strip workers of core protections such as overtime pay, unemployment insurance, and paid sick leave—benefits required by law but which these companies have flouted.³

As the COVID-19 pandemic continues to devastate California, Prop 22 means that workers, their families, and whole communities will lose important safety and security protections. In order to defeat the virus, we must ensure that all of us have workplace safety and income protections, so that none of us is forced to risk our lives just to pay the bills.

Many Californians have rightly expressed deep appreciation and support for the drivers and delivery people who have played a critical role in sustaining families. These workers were designated as essential in California in April.⁴ But gig companies have a different view, expressed in Prop 22. **As described below, the gig companies' only apparent concern is for their own profits; they are content to leave essential workers to fend for themselves.**

WHAT DOES PROP 22 MEAN IN THE CONTEXT OF COVID-19?



SAFETY: California law requires that gig company employers, like all employers, offer personal protective equipment to drivers, ensure that they have access to sanitary facilities, and develop a plan to prevent illnesses and injuries on the job. Current law also allows workers to file complaints with Cal/OSHA if their employers are not abiding by the law.⁵

Under Prop 22, however, the companies would not be required to follow any of these California health and safety laws. They would take only the safety measures they alone decide are appropriate to protect workers and drivers would have limited ways of reporting safety violations by their employer.

The companies' self-centered response to the pandemic shows how little they care about protecting workers and consumers. For example, California law requires employers to provide

personal protective equipment (PPE)—like masks, partitions, or hand sanitizer—free of charge to workers. Yet, several of these companies, including Lyft,⁶ DoorDash,⁷ and Postmates,⁸ make workers pay for PPE. If Prop 22 is passed, the companies won't be liable for these expenses going forward.

In January I got the flu and tried to stop working. But because I didn't have sick leave, I was forced to continue driving, even while I wasn't 100%. Now in a pandemic, it's inexcusable that workers are left without this basic protection. We shouldn't be forced to choose between our health and the safety of customers like this.

—Edan Alva, Lyft Driver





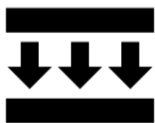
PAID SICK DAYS/PAID FAMILY LEAVE: California law provides workers eight weeks of paid family leave to bond with a child or care for a family member's health condition. On top of this, the state and major cities require employers to provide sick leave to workers, and several cities in California have extended COVID-19 emergency paid sick leave to workers, including app-based workers (on top of the mandatory three days of sick leave required by the state). In addition, the governor has mandated that essential food sector workers across the state—specifically app-based food delivery drivers working for companies such as DoorDash, Instacart, UberEats, and Postmates—have access to 80 hours of sick leave during the pandemic.⁹ **Yet, Prop 22 fails to offer drivers and delivery workers a single day of paid sick leave (emergency or otherwise) or paid family leave.**

What's more, **Prop 22 would effectively cancel every local emergency sick leave law** passed in cities such as San Francisco, Oakland, San Jose, and Los Angeles that explicitly apply to app-based workers today.¹⁰ Uber and Lyft's response to the coronavirus pandemic, for example, simply illustrates its lack of concern for its workers and for the spread of the disease. While the companies offered their workers paid sick leave, workers report that it was a "bait and switch," with promised expensive benefits that lulled them back to work, but which became nearly impossible to access when workers actually needed them.¹¹



UNEMPLOYMENT INSURANCE: Unemployment insurance has been a lifeline for millions of California workers during the pandemic. More than half of Bay Area drivers and delivery workers have lost more than \$500 a week in earnings during COVID-19, with more than one-third losing all of their income.¹² Even before the pandemic, drivers consistently rated unfair "deactivations," i.e., firings, as a major concern in their financial stability. In both of these circumstances, workers are entitled to unemployment benefits.

But **gig companies have never paid into the state's unemployment insurance system** (Uber and Lyft alone are calculated to owe the state \$413 million in unpaid premiums).¹³ Rather than pay their taxes or provide the state with the payroll data needed to process claims,¹⁴ gig companies lobbied to have the federal government—and taxpayers—foot the bill for a temporary unemployment program that has less generous benefits.¹⁵ Proposition 22 would enshrine this lawbreaking into statute and absolve the companies of any responsibility to their drivers.



FAMILY INCOME: Of all Bay Area drivers and delivery workers, 46 percent support others with their earnings, including 33 percent who are supporting children. And contrary to popular perception, a majority of the work performed on these apps is done by full-time workers, with 63 percent of workers telling researchers that the money they earn on the app was all or nearly all of their income in the prior month.¹⁶ **Yet, Prop 22 would result in app-based workers losing as much as \$500 per week in wages,** since it would allow app-based companies to avoid paying for time spent waiting for a package or passenger, and would only reimburse workers for two-thirds of the federal mileage reimbursement rate.¹⁷ Under Prop 22, workers would have to choose, on a daily basis, between their family's physical health and their financial health.¹⁸

WHY ARE THE COMPANIES PUSHING THIS INITIATIVE NOW?

In 2019, workers won a watershed victory with the passage of AB 5, a law that ensured that workers who are core to the business model of these companies can access vital workplace protections.¹⁹ Uber and Lyft spent more than one million dollars to lobby for an exemption to the law.²⁰ They failed. Now, several app-based companies are subject to dozens of lawsuits, including by the cities of San Diego (Instacart)²¹ and San Francisco (DoorDash)²² and by the State Attorney General (Uber & Lyft).²³ Prop 22 would give these companies the exemption they failed to obtain and undermine enforcement efforts.

Far from protecting flexibility or offering “historic” benefits to workers—as its proponents suggest—Prop 22 means precisely the opposite, reversing AB 5 and taking away essential worker protections. Through forced misclassification, Prop 22 would **strip hundreds of dollars in wages from workers** each week;²⁴ **deny them paid family leave**;²⁵ and **upend workers' compensation protections** for injuries on the job.²⁶ Indeed, while Prop 22 was spurred on by recent changes to the law, by any fair measure, these workers were employees long before AB 5 was enacted.²⁷

WHAT ELSE WILL PROP 22 DO?

But the initiative doesn't stop there. With their \$181 million investment, the companies are seeking, once and for all, to **deregulate the industries in which they operate**.²⁸ Prop 22 would gut labor protections; deprive courts, state agencies, and local jurisdictions of the ability to enforce or raise standards; and ensure that the Legislature can never authorize these workers to bargain for better quality jobs.²⁹ **If passed, it will signal to corporate America that, with enough cash, they can buy permanent deregulation and establish a perpetual underclass of workers.**

Simply put, as app-based companies raise nine-figure sums from private investors³⁰ and mint new billionaires in the midst of this crisis,³¹ their diverse frontline workforce would be left out in the cold—**permanently**—if the companies are able to pass Prop 22.

Workers, their families, and our communities deserve better.

¹ See Protect App-Based Drivers and Services Act (hereafter “PADSA”) (Dec. 9, 2019) available at: <https://www.oag.ca.gov/system/files/initiatives/pdfs/19-0026A1%20%28App-Based%20Drivers%29.pdf>.

² Ryan Byrne, “With funding from Uber, Lyft, and Doordash, campaign behind California Proposition 22 tops \$180 million” Ballotpedia, (Sep 9, 2020), <https://news.ballotpedia.org/2020/09/09/with-funding-from-uber-lyft-and-doordash-campaign-behind-california-proposition-22-tops-180-million/>.

³ See, generally Rey Fuentes, Rebecca Smith, and Brian Chen, “How Uber, Lyft, and DoorDash's Ballot Initiative Would Put Corporations Above the Law and Steal Wages, Benefits, and Protections from California Workers,” Partnership for Working Families and National Employment Law Project (July 2020) (hereafter “Rigging the Gig”) available at <https://www.forworkingfamilies.org/resources/publications/rigging-gig>.

⁴ Cal. Dep't of Public Health, Essential Workforce, at 10 (April 28, 2020), <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>.

⁵ See “Rigging the Gig,” Section IV(B)(8).

⁶ Lyft blog, Lyft Expands its Health Safety Program, Strengthening Commitment to Driver Safety, July 17, 2020, <https://www.lyft.com/blog/posts/lyft-expands-health-safety-program>.

⁷ See https://help.doordash.com/dashers/s/article/Dasher-Supplies-for-Covid-19?language=en_US, last visited July 31, 2020.

⁸ See <https://postmatesstore.myshopify.com/shop>, last visited July 31, 2020.

⁹ Rigging the Gig, p.15.

¹⁰ *Id.* at Section V(B)(2).

¹¹ Lia Russell, “Uber's Bait and Switch on Paid Sick Leave,” The American Prospect, May 5, 2020, available at <https://www.gov.ca.gov/wp-content/uploads/2020/04/4.16.20-EO-N-51-20.pdf>.

¹² Chris Benner, et.al., “On-demand and on-the-edge: Ride hailing and Delivery workers in San Francisco,” Institute for Social Transformation, UC Santa Cruz (May 5, 2020) available at <https://transform.ucsc.edu/ondemand-and-on-the-edge/>.

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- ¹³ Ken Jacobs and Michael Reich, "What Would Uber and Lyft owe to the State Unemployment Insurance Fund?", UC Berkeley Labor Center, (May 7, 2020), available at <http://laborcenter.berkeley.edu/what-would-uber-and-lyft-owe-to-the-state-unemployment-insurance-fund/>.
- ¹⁴ Rebecca Rainey, Millions of Gig Workers Are Still Waiting for Unemployment Benefits, POLITICO (Apr. 30, 2020), <https://www.politico.com/news/2020/04/30/millions-of-gig-workers-are-stillwaiting-for-unemployment-benefits-225844>.
- ¹⁵ Ethan Baron, "Coronavirus: Uber and Lyft Trying to Evade Driver Unemployment Costs, Critics Say," Mercury News, (April 3, 2020), available at <https://www.mercurynews.com/2020/04/03/coronavirus-uber-and-lyft-trying-to-evade-driver-unemployment-costs-critics-say/>.
- ¹⁶ See Benner at p. 21.
- ¹⁷ Rigging the Gig, p. 11.
- ¹⁸ Joshua Emerson Smith, "A COVID-19 death renews questions of Uber and Lyft's responsibility to drivers," SAN DIEGO UNION-TRIBUNE (Jul. 24, 2020), <https://www.sandiegouniontribune.com/news/transportation/story/2020-07-24/uber-driver-dies-covid-19>.
- ¹⁹ Assembly Bill 5 (Gonzalez), Ch. 296, Reg. Sess. 2019-2020 (Sept. 18, 2019).
- ²⁰ As recent data on lobbyist spending indicates, Uber and Lyft spent more than \$1 million lobbying the state legislature for an exemption from AB 5. See Cheryl Miller, "Uber and Lyft Spent More Than \$1M on State Lobbying in 2019," The Recorder (Feb. 3, 2020) available at <https://www.law.com/therecorder/2020/02/03/uber-and-lyft-spent-more-than-1m-on-state-lobbying-in-2019/?sreturn=20200117162528>.
- ²¹ See The People of the State of California v. Maplebear, Inc., Case No. 37-2019-00048731-CU-MC-CTL (Feb. 18, 2020).
- ²² See The People of the State of California v. DoorDash, Inc., Case No. CGC-20-584789 (June 16, 2020).
- ²³ The People of the State of California v. Uber Technologies, Inc., Case No. CGC-20-584402 (S.F. Superior Court, May 5, 2020).
- ²⁴ See "Rigging the Gig," Section IV(B)(1).
- ²⁵ See "Rigging the Gig," Section II.
- ²⁶ See "Rigging the Gig," Section IV(B)(3).
- ²⁷ See, e.g., O'Connor v. Uber Technologies, Inc., 82 F.Supp.3d 1133 (N.D. Cal. 2015) (finding that the question of employee status, while a contested issue of fact, likely weighed in favor of workers as employees); *Cotter v. Lyft, Inc.*, 60 F.Supp.3d 1067 (N.D. Cal 2015) (same).
- ²⁸ See "Rigging the Gig."
- ²⁹ *Id.*
- ³⁰ Kenrick Cai, "DoorDash Raises Another \$400 Million Ahead of its Public Listing," Forbes (June 18, 2020) available at <https://www.forbes.com/sites/kenrickcai/2020/06/18/door-dash-raises-400-million-ahead-of-ipo/#69fa4bc26e7f>.
- ³¹ Jennifer Wang, "Instacart Founder Apoorva Mehta Becomes a Billionaire After New Funding Round," Forbes (June 17, 2020) available at <https://www.forbes.com/sites/jenniferwang/2020/06/17/instacart-founder-apoorva-mehta-becomes-a-billionaire/#620c00597e02>.