



Senator Diane Savino
Chair
Committee on Internet and Technology
315 Legislative Office Building
Albany, New York 12247

RE: Public Hearing on the Examination of the Gig Economy

Dear Chair Savino and Members of the Committee,

It may seem out of the ordinary for a non-profit trade industry association based in Washington State to submit testimony to the New York State Legislature. However, I think the members of the committee may find that our organization of over 2000 gig economy business owners has a unique perspective on the issues facing gig economy workers like our members and the gig-economy as a whole.

Drive Forward was formed by a group of activist rideshare drivers in 2016 who organized themselves to oppose legislation in the City of Seattle that would have fundamentally changed how they operated their business. This legislation would have forced unionization and collective bargaining without a vote of all drivers. Since our formation we have grown into a statewide organization representing thousands of driver/business owners contracting across multiple app-based platforms, like Uber Lyft, Postmates, GrubHub, Caviar, and AmazonFlex. While we understand that there are some divisions and disagreements within the gig-economy community, our goal has always been to make sure that the voices of all drivers are heard by those who regulate the industry. Additionally, our organization provides educational and informational resources to our members, on topics such as industry best practices, small business formation, insurance requirements, tax preparation, and more. Most importantly, and what makes us unique, is that we are led by gig-economy business owners. Not only is our Executive Director a current rideshare driver, but our day-to-day policy and activities are led by a Member Advisory Committee that meets twice monthly to discuss issues facing our members, set our policy and legislative priorities, and plan our programming.

When it comes to policy and regulations affecting the industry we firmly believe that there is a “Third Way” solution to many of the issues surrounding classification of the gig-economy workforce. This “Third Way” involves taking a new approach to considering how the business owners in the gig-economy negotiate pay, access benefits, pay into social safety net programs like workers compensation and unemployment insurance, and maintain their freedom and flexibility as independent contractors.

Our members, as individual business owners, feel the traditional labor collective bargaining process is not the best way to ensure a fair pay structure. While that model is excellent at establishing a guaranteed fixed payment for labor given, an overwhelming proportion of drivers would tell you it is the flexibility to earn as much or as little as needed to meet the individual's goals that they most desire. Therefore, we feel that regulators setting a minimum-earnings guarantee, based on a reasonable net hourly pay per week plus a reasonable amount in operating costs is the best approach. It safeguards those who simply had a bad week or are newer to the platforms from not being able to make rent or pay bills, while not preventing other drivers from maximizing earnings above that minimum guarantee. As an example, Drive Forward has publicly stated that we are supportive of a \$27.50/hour minimum earnings guarantee for rideshare trips originating in the City of Seattle, which, like New York City, is one of the top 5 most expensive cities in the United States. This guarantee would assure drivers would net more than Seattle's current \$16.00/hour minimum wage. But what is an adequate minimum in larger cities like New York City or Seattle may not be appropriate for lower cost areas of a state. Therefore, it is incumbent on the state legislatures to craft regulations that take into account those discrepancies by allowing some local control, particularly in the larger, more expensive regions and cities, which need to set these guarantees higher in proportion to their higher minimum wages and costs.

Access to traditional employer-provided benefits like healthcare, vision, dental, short and long term disability, sick and safe leave, and paid time off, is difficult for the gig-economy business owners, as all of those costs come directly out of our pockets, reducing net earnings. However Drive Forward takes a broader approach to this issue and sees it as an issue for all independent contractors, regardless of industry. A freelance non-profit grant writer, tech worker or journalist deserves access to these benefits just as much as our members in the gig-economy do. Therefore when we talk about an earnings guarantee we do not include costs of benefits in that calculation. Instead, the best approach would be the creation of a state-managed state-wide portable benefits system that would require companies or individuals hiring independent contractors to pay a small fee based on the value of the contract into a fund that the contractor could access to offset costs traditionally paid by employers. This is a more equitable approach, as each contractor's needs are different. Some receive healthcare through a spouse or partners employment. Others need to take sick leave to care for a child or elder. Still more want to have income during parental leave after the birth of a child. Through a portable benefits system independent contractors would have the flexibility to apply those funds in the way that best suits them. The details of how much of the value of the contract the company or individual hiring a contractor may need to be set on an individual industry basis, but having one fund state-wide would make it easy on contractors working in multiple local jurisdictions. This type of system may impact some companies' choice to use independent contractors as the cost to do so may be more in line with hiring a traditional W-2 employee, but given the upside this would have for gig-economy independent contractors, we feel that this is a reasonable trade-off.

For access to social safety net benefits like workers compensation, unemployment insurance, or other state run programs (like the Washington State Paid Family and Medical Leave program), there are two approaches states could adopt to aid independent contractors. First would be to include these in the portable benefits systems described above, either as an optional or mandatory requirement for the independent contractor to pay into. The benefit to this option is the simplicity it provides to both the contractor and the state by only having one system. The alternative would be to create a specific fund for the app-based gig-economy workers that a fee from each service, such as a ride or delivery, would be collected and used to pay traditional Labor & Industries benefits like workers compensation. New York has a great example of this solution in the Black Car Fund. Additionally it may be possible to expand the Black Car Fund to operate more like a portable benefits system. In this respect New York is already in the forefront of helping gig-workers' access to social safety nets.

Implementation of these types of systems achieves two desired results: Providing the independent contractor with access to workplace protections normally associated with W-2 based employment; and ensuring contractors maintain the flexibility that they demand in the work they perform. How people think about work is undergoing a change from the traditional shift work and "nine-to-five" norms to a more flexible model where workers are more able to choose when and where they work, and are measured more on work product than simply being present in the office during specific times. The gig-economy does take this flexibility to a new level of complexity, but with simple solutions like the ones outlined above legislators and regulators can find a resolution to the classification problems that in principle companies and their independent contractor partners can agree to.

Drive Forward is committed to continuing to pursue this "Third Way" set of solutions, not only in Washington State but increasingly in other states and cities. We would be happy to continue to participate in the discussion of new regulations in New York State, including appearing in person before the committee if desired. If you or any of the members of the committee would like to contact us directly, please do reach out.

Thank you for allowing us to submit written testimony on this important matter.

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