

The New York State Senate Standing Committee on Internet and Technology

October 16, 2019

Written Testimony for Uber Technologies, Inc.

Uber welcomes the opportunity to provide written testimony to the New York State Senate Standing Committee on Internet and Technology, and we are eager to work with leaders in New York State to address the needs of workers and businesses that operate outside of the traditional employee-employer relationship, or the “gig economy.”

Uber in New York State

Uber first launched in New York City in 2013 using regulated for-hire vehicle bases and licensed black car operators. Since that time, Uber launched a transportation network company in 2017 and rapidly expanded statewide. Now, each week more than 1 million people take rides after being connected with one of the 150,000+ drivers on the platform. Uber has also launched new business lines like Uber Eats and JUMP bikes, and continues to invest in New York as its footprint expands across the state.

Over the next several months, stakeholders in tech, labor, and government have a unique opportunity to come together to create a first-of-its-kind structure that can expand worker protections using a sustainable, long-term funding stream while maintaining their flexibility, and provide industry with necessary certainties. This model should not be created from a blank slate. New York already has industry benefit funds with a record of success that furnish a roadmap for how it can protect workers while also preserving the flexibility that draws so many New Yorkers to work independently in the first place.

Uber as a Global Platform

The ability to access work easily and perform it flexibly has led millions around the world to seek opportunities through Uber and technology platforms like it. But for all the virtues of independent work, it also presents challenges. We believe that together we can improve the quality and security of independent work, while preserving the flexibility independent workers value.

Today, Uber offers economic opportunities to more than four million people around the world, in 65 countries, including a growing number of people in New York State who choose to use the Uber app to earn when and how it best suits them.

While on-demand work represents only a small portion of New York's broader independent workforce, the flexibility Uber offers is proving an attractive option for retirees, parents, immigrants, students and entrepreneurs, among many others. Some use Uber to earn supplemental income, while others are logging on more regularly to support their families. Uber can also be a powerful tool to surface work opportunities to people who lost their previous jobs.

For all the benefits of flexibility that independent work brings, we also recognize that all workers, irrespective of employment status, should have core protections. As CEO Dara Khosrowshahi wrote last year¹, "At a basic level, everyone should have the option to protect themselves and their loved ones when they're injured at work, get sick, or when it's time to retire." Achieving this requires wider policy changes, and must be approached thoughtfully - in order to protect the flexibility that independent workers value, while also expanding protections.

Flexibility and Classification

Drivers and couriers who use Uber are independent. They choose if, when, where and for how long to work. There is no exclusivity, so many drivers find clients through multiple apps or offline dispatchers. There is no selection process. Anyone who passes a background check and meets the regulatory requirements to work as a driver or courier can join the app. There is no minimum commitment or obligation to work. Drivers provide their own vehicles, and are responsible for the costs of running their business. In the United States, 45% of active drivers spend less than 10 hours per week online with Uber.

Independent workers value the freedom of being their own boss and choosing if, when and where they drive or deliver. Unlike most traditional jobs, individuals using Uber can log in and out of the app to suit their preferences. The work can accommodate times when they need to run an errand, pick up children from school, or travel.

The term "flexible work" is often used to describe a diverse range of working models. While some forms of work may provide flexibility to employers or the contracting party, they do not offer much control and flexibility for individuals themselves. Even in the most informal flexible engagements, employers may establish rosters dictating when, where and for how long a casual employee must work - restricting an employee's ability to enjoy true and absolute flexibility.

¹ <https://www.uber.com/newsroom/building-portable-benefits-system-todays-world/>

Similarly, among the different kinds of independent work, there are significant differences in the level of control felt by the individuals. For example, in the taxi industry independent operators are often required to pay an upfront fee to the operator, are required to accept jobs, and to work certain shifts or in certain locations. Under franchise arrangements, franchisees are subject to the terms of the applicable franchise agreement.

The independent worker model is not new and is common in for-hire and taxi industries around the world. The challenges faced by independent workers have long predated Uber and the so-called on-demand economy.

Why a Third Way Is Needed

It is important to find a third way for gig economy workers that maintains flexibility valued by independent workers and also expands crucial protections and benefits, and on-demand economy platforms must play a role. In countries where labor law allows, or where reforms have been introduced, Uber has been able to improve working conditions and access to a safety net.

The success of combining flexibility and benefits in other places can be seen across the globe and New York can be a leader in offering all gig workers similar protections.

In Europe, Uber, in partnership with AXA, offers a number of guarantees for on and off trip accidents. For accidents occurring during a trip (including approach time): drivers and couriers are covered for medical costs, disability (up to €50,000 lump sum), hospitalization (€1,000 lump sum) and death (€50,000 lump sum and up to €6,000 funeral costs reimbursement). Off-trip injuries and illnesses are also covered for active drivers and couriers (revenue replacement for 15 days) as well as life events such as maternity/paternity benefits (€1,000 lump sum) and jury service (€500 lump sum).

Focus: policy reforms in France

Uber has been able to pioneer social coverage for independent workers because of reforms pursued by governments, like in France.

In 2016, the French socialist government passed labor reforms requiring platforms like Uber to provide injury protection insurance to independent workers using their services². The law also stated that independent workers using platforms have the right to unionize, strike or protest without fear of consequences (the right to constitute a union and to protest were already constitutional rights, but were confirmed explicitly for independent workers using platforms).

In September 2019, President Emmanuel Macron's Government passed a new law (*Loi d'orientation des mobilités*) which allows platforms to provide "socially responsible actions" to

² *Loi relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels* - August 2016.

independent workers using their services, via a 'social charter.' Under the French social charter, each platform provider may list benefits, training and other conditions provided to independent workers in a written grant where workers would be consulted, and which would be verified by the administration. The law states explicitly that drafting the charter and performing such actions cannot be seen as an indicator of an employment relationship.

One of the requirements of the social charter is guaranteeing the non-exclusive nature of the relationship between the worker and the platform and the freedom for the worker to use (or not use) the platform.

The same law also imposes new obligations on platforms including:

- Displaying the price and distance of the ride request;
- Earnings transparency;
- Sharing drivers and delivery partner earnings data with the tax and social administrations;
- Contributing to the national vocational training fund;
- Representation of platform workers

Elisabeth Borne, the French minister of Transportation said: "We must accept that a certain number of young people wish to enter the job market and to work (...) under the status of independent worker. Therefore, we must build the protections and define the guarantees that can go with this status without wanted to go back to salaried employment, which is not necessarily adapted and does not match with their aspirations."³

Third way reforms are needed in the United States

In the United States, however, existing employment law means platforms like Uber are constrained in providing additional support to those who use the app to find work. Current labor law provides only two options:

- Self-employment, which allows total flexibility, but at the expense of security and protections, and
- Salaried employment, which (for some) allows protections and benefits, but limits flexibility (as employers need to select workers, organize and control their work).

We do not believe the solution lies in restricting how people choose to work, or pushing them into traditional modes or definitions of work that serve as barriers to entry. Preserving one of the key reasons why people choose to use Uber -- complete flexibility -- is critical for the majority of those choosing to use the app.

³http://www.senat.fr/seances/s201903/s20190326/s20190326011.html#Niv3_art_Article_20

A third way is possible. The frameworks to support people in independent work are largely out of date and do not reflect the way people are choosing to work today.

Benefit Funds & Worker Protections

New York State already has a first-in-the-nation driver benefit fund through the Black Car Fund (BCF). The BCF, signed into law 20 years ago, started as a way to provide workers' compensation benefits to for-hire black car and limousine drivers. With the growth of ridesharing, the fund has expanded to cover more than 130,000 drivers statewide, including TNC drivers. The BCF provides each of these drivers with valuable benefits and protections that no other state or municipality offers, including:

- Workers' compensation
- Death benefits
- Vision benefits
- Prescription and telemedicine benefits
- Access to wellness programs
- Driver safety training

The BCF has worked well over the past 20 years, and although it provides a historic level of benefits, it can still be strengthened and expanded to provide even more coverage to its members. If S-6239A, legislation introduced by Sen. Diane Savino were signed into law, the BCF could provide additional benefits including:

- Urgent healthcare
- Dental benefits
- Mental health benefits
- Paternity leave
- Permanent disability
- Compensation for jury duty

The BCF predates the rise of digital platforms like Uber. It is proof that industry funds can work, and it should be seen as a model as New York State considers how best to create protections for other independent workers. There is no reason a similar model shouldn't exist for food delivery service, construction and repair service providers, and other industries that participate in platform-based work around the State.

In addition to the BCF, drivers in New York City have added benefits, including first-in-the-nation wage rules passed by the Taxi & Limousine Commission (TLC) last year. The rules, implemented in early 2019 guarantees minimum earnings to ensure that all TLC-licensed drivers earn a minimum wage while they are working. This rule includes a minimum per-trip payment formula which ensures drivers earn at least \$27.86 per hour before expenses, with

typical earnings after expenses of \$17.22 per hour, and also provides drivers with two weeks of paid time off per year.

New York has already been a leader and set historic precedents around providing protections for drivers. Leadership in government should consider these successful programs that have a proven track record and could help to model a larger structure for the broader gig economy that is flexible enough to work across industries and throughout the state.

New York State Is Diverse

It is vital that leaders in government take into account the incredible diversity that makes up New York State. One model that makes sense in New York City may not work as well in the suburbs of Long Island and Westchester, and would be even more challenging to fit in upstate cities like Buffalo, Albany, and Syracuse, and the less densely populated areas in between.

Workers in all corners of the state who participate in the platform economy interact with it differently. While most drivers in New York City typically work the equivalent of full time because they are commercially-licensed and pay for their own commercial insurance, drivers on Long Island and upstate sometimes drive only a few hours a day, a couple of days a week, or structure their participation around specific events, like concerts or football games. Many drivers even switch back and forth between driving with Uber and driving with Lyft.

It is very important that any legislation take into account the vast regional differences that exist across the state. While it's important to have one clear structure that can provide the needed protections and guarantees, it should be adaptable so that it makes sense for all localities and individuals who live there.

Uber Supported Increased Protections in New York

More than 150,000 individuals in New York State use Uber to connect to driving, courier work, or both, and we understand that by advocating on their behalf for better protections through government, we are creating a work model that people want. We have a track record of supporting new rules and legislation to increase protections for our users. This includes the minimum earnings rule passed by the TLC in December 2018, which created a payment floor for drivers in New York City, embracing being a part of the Black Car Fund shortly after the TLC classified Uber's e-hail vehicles as "black cars," and supporting Senate Bill 6239A which passed the Senate and the Assembly and would authorize the Black Car Fund the ability to spend an amount of money equal to a trip surcharge of 0.5% for benefits that do not fall within the strict definition of workers' compensation.

Uber has been on the forefront of supporting new regulations that work for the industry and provide important protections to drivers. As a worldwide business, and a company that works with millions of driver and delivery partners around the globe, we have insight and experience that can help form what the future of work looks like for those in the platform economy in New York State.

New York Has an Opportunity

To date, no other state or municipality in the country has come up with a third way of classification that maintains flexibility and provides protections and benefits for workers using digital platforms, while also providing certainty for businesses in the industry. New York is the only state in the nation that has industry benefit funds with successful track records already in place that we can draw from and use as a model to create something that is first-in-the-nation and extends and expands to apply not only to drivers, but to all platform economy workers. Our hope is that leaders in government understand that we should not be trying to create a whole new model for the State, but instead we should embrace the best practices we have already implemented and expand upon those to provide for all sectors of the platform economy in New York.