





Remote Control: The Truth and Proof About Gig Companies as Employers

Gig companies sell themselves to the public, to policymakers, and to their own workers as mere facilitators of business relationships between users of their services and independent businesspeople offering services. The facts are otherwise. The companies exert, via algorithm and via their contracts with workers, control over the important details of work. These controls mean that their workers are forbidden from operating as an independent business would: They cannot build a client base, often know little about the details of a job before they accept it, and cannot set prices so that they have an opportunity to profit. This table compares what the companies say with their actual practices.

 <p>App-based companies argue:</p>	 <p>THE TRUTH IS:</p>	 <p>THE PROOF IS:</p>
 <p>We exert no control over workers.¹</p>	<p>Labor platforms use technology to exert control over workers in order to deliver that service.</p>	<p>Workers are surveilled, their every move tracked by GPS.² Through the use of GPS, Uber and Lyft monitor excessive speed, whether each individual instance of braking or acceleration is sufficiently smooth, and how often drivers are moving their phones around. This data is collected, analyzed, and retained by the apps. Technology even monitors whether or not drivers are “feeling tired” and need “to recharge,” or whether they have taken an “inefficient route.”³</p>
	<p>Platforms exert strong control over how the work is done.</p>	<p>Uber and Lyft direct drivers in how to handle passenger pick-ups, including how long to wait, and how and when to communicate with passengers regarding pick-ups and drop-offs.⁴</p> <p>Uber and Lyft control which models of vehicles drivers may or may not use while working for the companies.⁵</p> <p>Like other companies, Handy assures customers that workers are top-quality and pre-screened.⁶ Exacting standards ensure a uniform, branded experience for users.⁷</p>

Platforms discipline workers who do not meet their standards.

Workers are penalized, via the app, for refusing or cancelling jobs,⁸ including some **Handy** workers who left because they were being sexually harassed or assaulted.⁹

Workers are disciplined based on data collected—**Doordash** deactivates workers who don't meet a 4.2 star rating.¹⁰ **Uber** unilaterally sets and modifies the acceptable star ratings.¹¹

Platforms unilaterally control, and unilaterally alter, workers' pay, but leave workers in the dark about how pay is calculated.

Algorithmic pricing leaves workers in the dark about pay and pay structure.¹² **Doordash** and **Grubhub** workers do not see full pay details.¹³

Drivers for **Shipt** say a new algorithm has slashed earnings by 30-50%.¹⁴

Uber's new "Set Your Own Price" feature discourages drivers from using the feature, warning them they could lose work if they set a price that exceeds **Uber's**. In effect, they can be deactivated for setting their own price.¹⁵



Our workers are running their own separate businesses.¹⁶

Platforms make it impossible for workers to run their own business.

Labor platforms largely forbid workers from establishing regular customers.¹⁷ Labor platforms penalize workers for communicating with customers off-app.¹⁸

Workers have little to no ability to set prices, so they cannot make a profit from their labor.

Workers cannot evaluate a job before they accept it: **Postmates** gives few order details before workers must accept a job. In most states, **Uber** drivers are unable to see a passenger's destination until they accept a ride, and must accept a ride within a few seconds of an offer, so that they cannot meaningfully evaluate it.¹⁹

Workers cannot negotiate their contracts: Contractual terms can change mid-assignment, locking workers out of the app until they agree to the changes.

 <p>Our drivers don't want to be "employees."</p>	<p>Workers want stability, security, and social benefits.</p>	<p>When workers are asked what they want from their jobs, they say they want stability, security, and social benefits.²⁰ They also fear the companies' potential response.²¹</p>
 <p>If classified as employees, workers would have to lose the flexibility they enjoy.²²</p>	<p>People who are properly classified as employees can still enjoy flexibility.</p>	<p>There is no law or policy that requires employers to take away flexibility if workers receive employee benefits. Many companies, including on-demand transportation and delivery services, offer their employees benefits and protections while still offering scheduling flexibility.</p> <p>By manipulating pay structures and offering bonuses for work at certain times and in certain places, Uber and Lyft limit flexibility and exert control over workers.</p>
 <p>We are merely technology companies, not employers.²³</p>	<p>This argument has been nearly universally rejected by the courts.</p>	<p>Judges, when responding to Uber and Lyft's argument that they are merely "multi-sided platforms" for whom their drivers are customers, not employees, note that this position is "flatly inconsistent" the law and "flies in the face of economic reality and common sense."²⁴</p>
 <p>The law is unclear about whether we are actually employers.</p>	<p>Companies impose arbitration clauses on their workers and prohibit group claims, which prevent open door adjudication of legal questions, so that they can continue to argue that the law is unclear.²⁵</p>	<p>When they have been able to evaluate the facts, courts have recently and consistently decided that Instacart, Postmates, Uber, and Lyft are all employers, under various state laws, in five separate cases in 2020.²⁶</p> <p>For example, federal Judge Vincent Chhabria noted that, "It's obvious that AB 5 applies by its terms to Lyft drivers and . . . that companies like Lyft who are refusing to reclassify workers despite the passage of AB 5 are really disregarding the rule of law."²⁷</p>

Endnotes

¹ Platforms' agreements with workers require workers to agree that they have control over their work. E.g., Doordash website says that Dashers have the sole right to control the manner in which deliveries are performed and the means by which deliveries are completed. https://help.doordash.com/dashers/s/ica-us?language=en_US (last visited Sep 30, 2020); Postmates uses the same "manner and means" language. <https://fleet.postmates.com/legal/agreement> (last visited Sep 30, 2020); Uber, *Narayanasamy v. Issa*, No. 1:17-CV-603-JJM-LDA, 2020 WL 242272, at *3 (D.R.I. Jan. 16, 2020). All require workers to agree that they are independent contractors. See, e.g., Amazon Flex, <https://pastebin.com/u5qxFRHj> (last visited Sep 30, 2020); Shipt, <https://help.shipt.com/being-a-shopper> (last visited Sep 30, 2020); Lyft, <https://www.lyft.com/terms> (last visited Sep 30, 2020). Handy states that its workers are "independently-established home service providers customarily engaged in a trade, occupation and/or business of providing the services requested." <https://www.handy.com/terms> (last visited Sep 30, 2020).

- ² Case Study: The Gig Economy and Exploitation, Privacy International, (Aug 30, 2017), <https://privacyinternational.org/case-study/751/case-study-gig-economy-and-exploitation>.
- ³ Faiz Siddiqui, "Uber Mandates a Six Hour Rest Period for Frequent Drivers," WASHINGTON POST, (Feb 12, 2018), <https://www.washingtonpost.com/news/dr-gridlock/wp/2018/02/12/Uber-mandates-a-six-hour-rest-period-for-frequent-drivers/>; Economic Policy Institute, "Uber Drivers are not Independent Contractors," (Sep 20, 2019), <https://www.epi.org/press/uber-drivers-are-not-independent-contractors-nlrbs-general-counsel-erroneously-misclassifies-these-gig-economy-workers/>; see also, *Lowman v. Unemployment Compensation Board of Review*, No. 41 EAP 2018, (Pa. Super. Ct., 2020), where Uber's monitoring, review and supervision of a workers performance were among the most "weighty and thus dispositive factors In determining the worker to be Uber's employee.
- ⁴ Picking Up Riders, Uber Help, <https://help.Uber.com/riders/article/picking-up-riders?nodeId=3babfaf5-9075-4f62-b0de-b104c0e9af13> (last visited Sep 30, 2020); How to give a Lyft ride, Lyft Help, <https://help.lyft.com/hc/en-us/articles/115013080028-How-to-give-a-Lyft-ride#info> (last visited Sep 30, 2020).
- ⁵ Note that Uber has different vehicle eligibility standards in different cities, whereas Lyft does not. Uber List of Eligible Vehicles, <https://www.Uber.com/us/en/drive/new-york/get-started/eligible-vehicles> (last visited Sep 30, 2020); Lyft Lux, Lux Black, and Lux Black XL rides for drivers, <https://help.lyft.com/hc/enus/articles/115012923147-Lyft-Lux-Lux-Black-and-Lux-Black-XL-rides-for-drivers> (last visited Sep 30, 2020).
- ⁶ Handy Terms of Use/User Agreement, <https://www.handy.com/terms> (last visited Sep 30, 2020).
- ⁷ David Weil, "Op-Ed: Call Uber and Lyft drivers what they are: employees," LOS ANGELES TIMES, (Jul 5, 2019), <https://www.latimes.com/opinion/op-ed/la-oe-weil-uber-lyft-employees-contractors-20190705-story.html>.
- ⁸ How are Rider Cancellation Fees Charged, Uber Help, <https://help.Uber.com/driving-and-delivering/article/how-are-rider-cancellation-fees-charged-?nodeId=eebc0564-5228-4d70-997c-0fe63f0753c2> (last visited Sep 30, 2020); Cancellation and No-show fee policy for drivers, Lyft Help, <https://help.lyft.com/hc/en-us/articles/115012922847> (last visited Sep 30, 2020); Trip Issues and Refunds, Uber Help, <https://help.Uber.com/riders/section/trip-issues-and-refunds?nodeId=595d429d-21e4-4c75-b422-72affa33c5c8> (last visited Sep 30, 2020); Riding with Lyft, Lyft Help, <https://help.lyft.com/hc/en-us/categories/115002006488-Riding-with-Lyft> (last visited Sep 30, 2020).
- ⁹ Kellen Browning and Kate Conger, "Cleaners Demand Harassment Safeguards from the Booking Service Handy," THE NEW YORK TIMES, (Sep 10, 2020), <https://www.nytimes.com/2020/09/10/business/handy-service-cleaners-harassment.html>.
- ¹⁰ What is DoorDash's Dasher deactivation policy?, Doordash, https://help.doordash.com/dashers/s/article/What-is-DoorDash-s-Dasher-deactivation-policy?language=en_US (last visited Sep 30, 2020).
- ¹¹ James Cook, "Uber's Internal Charts Show How Its Driver-Rating System Actually Works," BUSINESS INSIDER, (Feb 1, 2015), <https://www.businessinsider.com/leaked-charts-show-how-ubers-driver-rating-system-works-2015-2>; Driver and passenger ratings, Lyft Help, <https://help.lyft.com/hc/en-us/articles/115013079948-Driver-and-passenger-ratings> (last visited Sep 30, 2020).
- ¹² Andrew Schwartz, "Gig Working Through the Apocalypse," The New Republic, (Apr 8, 2020), <https://newrepublic.com/article/157227/gig-working-apocalypse>.
- ¹³ How Dasher Pay Works, Doordash, https://help.doordash.com/dashers/s/article/How-is-Dasher-pay-calculated?language=en_US; "Tipping as a Grubhub Driver -- Tell me About It (MIT Study)," undated post, https://www.reddit.com/r/couriersofreddit/comments/9ndwuv/tipping_as_a_grubhub_driver_tell_me_about_it_mit/; Your Grubhub pay is getting better! Learn how, Grubhub Drivers, <https://driver.grubhub.com/updated-pay-calculation/> (last visited Sep 30, 2020); see also E.P. Duhaime, and Z.W. Woessner, "Explaining the decline of tipping norms in the gig economy," *Journal of Managerial Psychology*, 233-245 (2019)
- ¹⁴ Soraon Hussain, Target Owned Shipt Sparks Worker Pay Protest, LOS ANGELES TIMES, (Jul 20, 2020), <https://www.latimes.com/business/technology/story/2020-07-20/shipt-shoppers-protest-pay-algorithm-change>.
- ¹⁵ See, *People v. Uber and Lyft*, Amicus Curiae Brief of Gig Workers Rising, Mobile Workers Alliance, Rideshare Drivers United and We Drive Progress Nos. A160701 and A160706, (Cal Ct. App. 1st Dist., Sep 22, 2020) (on file with authors).
- ¹⁶ Doordash, Uber and Instacart say workers are "independent" providers of services; Doordash Terms and Conditions Agreement effective July 13, 2020, https://help.doordash.com/consumers/s/terms-and-conditions-us?language=en_US; Why Become an Instacart Shopper?, <https://shoppers.instacart.com/> (last visited Sep 30, 2020); Amazon labels its workers "delivery partners," What Kind of Insurance do I Need, Amazon Flex, <https://flex.amazon.com/faq> (last visited Sep 30, 2020).
- ¹⁷ In California, in an effort to escape the law, Uber allows customers to "favorite" drivers. To California drivers: Keeping you In the Driver's Seat, Uber Blog, (Dec 3, 2019), <https://www.Uber.com/blog/california/keeping-you-in-the-drivers-seat-1/>.
- ¹⁸ Julia Ticona, et al., "Beyond Disruption, How Tech Shapes Labor Across Domestic Work and Ridehailing," *Data & Society*, (Jun 27, 2020), <https://datasociety.net/library/beyond-disruption/>.
- ¹⁹ Uber Blog, supra n. 15; Sasha Lekach, "Uber's New Driver Features Could Mean More Destination Discrimination," MASHABLE, (Dec 4, 2019), <https://mashable.com/article/Uber-driver-california-changes-destination-discrimination/>.

²⁰ Veena Dubal, "An Uber Ambivalence: Employee Status, Worker Perspectives, & Regulation in the Gig Economy," UC Hastings Research Paper No. 381, (November 15, 2019) Available at SSRN: <https://ssrn.com/abstract=3488009> or <http://dx.doi.org/10.2139/ssrn.3488009>; SabiaWaheed, et al., "More than a Gig: A Survey of ride-hailing Drivers In Los Angeles," UCLA Labor Center (May 2018), <https://www.labor.ucla.edu/publication/more-than-a-gig/>; 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 2020), <https://transform.ucsc.edu/on-demand-and-on-the-edge/>.

²¹ Dubal, Uber Ambivalence.

²² Dara Khosrowshahi, "I Am The C.E.O. of Uber. Gig Workers Deserve Better", THE NEW YORK TIMES (Aug. 10, 2020), <https://www.nytimes.com/2020/08/10/opinion/uber-ceo-dara-khosrowshahi-gig-workers-deserve-better.html> ("[D]rivers would lose the flexibility they have today if they became employees.").

²³ Instacart's self-description: "a technology company that provides a communications and logistics platform." <https://shoppers.instacart.com/contracts> (last visited Sep 30, 2020); Grubhub: "a virtual marketplace platform" <https://www.grubhub.com/legal/terms-of-use> (last visited Sep 30, 2020); Uber and Lyft: "multi-sided platforms" *People v. Uber and Lyft*, Order On People's Mot. for Preliminary Injunction and Related Motions No. CGC-20-584402, San Francisco County Sup Ct (August 10, 2020); Doordash: an "online marketplace connection using web-based technology" https://help.doordash.com/consumers/s/terms-and-conditions-us?language=en_US (last visited Sep 30, 2020).

²⁴ *People v. Uber and Lyft*, Order On People's Mot. for Preliminary Injunction and Related Motions No. CGC-20-584402, (San Francisco County Sup Ct., August 10, 2020).

²⁵ Charlotte Garden, "Disrupting Work Law: Arbitration in the Gig Economy," Seattle University School of Law Digital Commons, (2017), <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1794&context=faculty>.

²⁶ Rebecca Smith, "What Have the Courts Decided About Uber and Lyft Drivers as Employees?," National Employment Law Project blog (Aug 13, 2020), <https://www.nelp.org/blog/courts-decided-Uber-lyft-drivers-employees/>.

²⁷ Alaina Lancaster, "Judge Reluctant to Designate Lyft Drivers as Employees Amid Pandemic, Despite 'Obvious' Worker Misclassification," THE RECORDER, (Apr 02, 2020), <https://www.law.com/therecorder/2020/04/02/judge-reluctant-to-designate-lyft-drivers-as-employees-amid-pandemic-despite-obvious-worker-misclassification/?sreturn=20200830131638>.