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.

<table>
<thead>
<tr>
<th>App-based companies argue:</th>
<th>THE TRUTH IS:</th>
<th>THE PROOF IS:</th>
</tr>
</thead>
<tbody>
<tr>
<td>We exert no control over workers.¹</td>
<td>Workers are surveilled, their every move tracked by GPS.² Through the use of GPS, <strong>Uber</strong> and <strong>Lyft</strong> 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</td>
<td></td>
</tr>
<tr>
<td>Labor platforms use technology to exert control over workers in order to deliver that service.</td>
<td><strong>Uber</strong> and <strong>Lyft</strong> 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</td>
<td></td>
</tr>
<tr>
<td>Platforms exert strong control over how the work is done.</td>
<td><strong>Uber</strong> and <strong>Lyft</strong> control which models of vehicles drivers may or may not use while working for the companies.⁵</td>
<td></td>
</tr>
<tr>
<td>Like other companies, <strong>Handy</strong> assures customers that workers are top-quality and pre-screened.⁶ Exacting standards ensure a uniform, branded experience for users.⁷</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

¹ Exacting standards ensure a uniform, branded experience for users.
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 **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 **Uber** and **Lyft** control which models of vehicles drivers may or may not use while working for the companies.
⁵ Like other companies, **Handy** assures customers that workers are top-quality and pre-screened. Exacting standards ensure a uniform, branded experience for users.
## Platforms discipline workers who do not meet their standards.

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

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

## 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. *Doordash* and *Grubhub* workers do not see full pay details. Drivers for *Shipt* say a new algorithm has slashed earnings by 30-50%.

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.

## Our workers are running their own separate businesses.

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

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.

Workers cannot negotiate their contracts: Contractual terms can change mid-assignment, locking workers out of the app until they agree to the changes.
<table>
<thead>
<tr>
<th>Our drivers don’t want to be “employees.”</th>
<th>Workers want stability, security, and social benefits.</th>
<th>When workers are asked what they want from their jobs, they say they want stability, security, and social benefits. They also fear the companies’ potential response.</th>
</tr>
</thead>
<tbody>
<tr>
<td>If classified as employees, workers would have to lose the flexibility they enjoy.</td>
<td>People who are properly classified as employees can still enjoy flexibility.</td>
<td>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. 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.</td>
</tr>
<tr>
<td>We are merely technology companies, not employers.</td>
<td>This argument has been nearly universally rejected by the courts.</td>
<td>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.”</td>
</tr>
<tr>
<td>The law is unclear about whether we are actually employers.</td>
<td>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.</td>
<td>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. 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.”</td>
</tr>
</tbody>
</table>

---

### 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](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://fleetc.postmates.com/legal/agreement](https://fleetc.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/u5qXRH](https://pastebin.com/u5qXRH) (last visited Sep 30, 2020); Shipt, [https://help.shipt.com/being-a-shopper](https://help.shipt.com/being-a-shopper) (last visited Sep 30, 2020); Lyft, [https://www.lyft.com/terms](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](https://www.handy.com/terms) (last visited Sep 30, 2020).


21 Dubal, Uber Ambivalence.


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).

