

TOP 10 WAYS

Proposition 22 Harms Workers and Communities



Proposition 22 – a ballot initiative funded by Uber, Lyft, DoorDash, Instacart, and Postmates – will be on the November 3rd General Election ballot. Far from protecting workers, the initiative would broadly deregulate the industries in which app-based delivery and transportation companies operate, eviscerate worker protections by deliberately misclassifying workers, and prevent the California legislature or local governments from doing anything about it.

Proposition 22 would allow Uber, Lyft, DoorDash, Instacart, and Postmates to:

1 PAY WORKERS LOWER WAGES: Proposition 22 would steal hundreds of dollars from workers every week. Workers would not be paid for the time they spend logged in, ready to work, but without a passenger or package and would only receive limited mileage benefits. As a result, app-based transportation and delivery workers stand to lose as much as \$500 per week compared to current law.¹

2 UNDERMINE ANTI-DISCRIMINATION PROTECTIONS: The initiative dramatically weakens discrimination and harassment protections. The initiative fails to give workers a clear remedy if

they experience harassment from a passenger on the job. It contains zero mention of protection against discrimination based on immigration status.² Moreover, the measure dramatically narrows protected characteristics,³ makes it harder for a worker to bring a discrimination claim,⁴ and provides no clear protection against retaliation for those who speak up.⁵ All this as a recent survey indicated that 78% of app-based workers are Black, Latinx, Asian or multi-racial and a majority are immigrants.⁶

3 JEOPARDIZE WORKER SAFETY: The initiative cancels critical worker safety protections, especially in the face of the COVID-19 pandemic. The initiative shifts the burden of safety on to workers by not requiring the companies to ensure access to personal protective equipment or reimburse for necessary cleanings. Moreover, it puts the companies in sole charge of worker safety, with minimal oversight.⁷

4 DENY WORKERS LEAVE: Workers wouldn't be able to access a single day of California's sick leave, Paid Family Leave, or any local emergency sick leave if they contract COVID-19. With the money Uber and Lyft are spending on the ballot initiative (approx. \$60 million combined) they could fund 500,000 sick days for workers.⁸

5 BLOCK ACCESS TO UNEMPLOYMENT BENEFITS: Workers who lose their jobs through no fault of their own would lose access to state unemployment insurance. Uber and Lyft have already failed to follow the law by not reporting worker wages to the state, thereby preventing workers from accessing state unemployment benefits.⁹ One study found that both companies saved a combined \$413 million by ignoring their unemployment insurance obligations.¹⁰

6 CAP INJURY BENEFITS: If a worker is hurt on the job, these app-based companies could deny a worker's claim and limit their benefits. California workers' compensation law protects workers, regardless of fault, and offers lifetime disability benefits if a worker is severely injured. Under Proposition 22, workers could be denied coverage and their benefits would be capped.¹¹

7 CANCEL CITY AND COUNTY PROTECTIONS: The initiative cancels nearly every local law that would protect workers on app-based platforms. Under the initiative, local governments would not be able to enforce existing laws or pass new ones that would offer sick leave, regulate pay, safeguard tips, protect workers against termination or do anything to offer a "stipend, subsidy, or benefit" to an app-based transportation or delivery worker.¹² This includes emergency sick leave laws passed in cities like Los Angeles, San Francisco, and San Jose to protect workers during the COVID-19 pandemic.

8 PREVENT FUTURE AMENDMENT: Once passed, Proposition 22 would likely never be undone. By the explicit terms of the initiative, it would take a 7/8th vote of the legislature to amend the law,¹³ an unprecedented provision based on a review of recent ballot measures.¹⁴

9 UNDERMINE COLLECTIVE BARGAINING: Proposition 22 would make it almost impossible for workers to have legal protections if they want to collectively bargain. The initiative applies its 7/8ths threshold to any state law that would help app-based transportation and delivery workers bargain with their companies over wages, benefits, and workplace conditions.¹⁵

10 PUT CORPORATIONS FURTHER ABOVE THE LAW: By letting them ignore rules that everyone else has to live by, Proposition 22 saves these companies hundreds of millions of dollars at the expense of workers and communities. And no doubt their corporate allies are watching intently. If these five app-based companies can buy their way out of the law, there is no telling how many more companies will seek to do the same.

For companies raising hundreds of millions of dollars in private investment¹⁶ and minting new billionaires¹⁷ – all in the midst of the current economic calamity – their nine-figure investment in Proposition 22 is particularly galling.

1 See “Rigging the Gig,” Section IV(B)(1) (June 2020).

2 See Protect App-Based Drivers and Services Act (PADSA), proposed Bus. and Prof. Code § 7456(a)

3 The initiative creates a new anti-discrimination regime in the Business and Professions Code which would effectively untether the employee discrimination protections in the Government Code which contains broader protections against discrimination. For example, unlawful discrimination based on race includes discrimination based on “traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.” Cal. Gov. Code §§ 12926(w)-(x). In addition, unlawful national origin discrimination would include discrimination on the basis of an undocumented worker obtaining a California license. *Id.* § 12926(v). These provisions and others have no clear analog in the Unruh Civil Rights Act, which the initiative intends to be the remedial and enforcement provision of the act. PADSA, proposed Bus. & Prof. Code § 7456(b).

4 Section 52 of the Unruh Civil Rights Act allows an aggrieved party to bring a claim before the Department of Fair Employment and Housing if the alleged unlawful practice was a violation of Section 51. Cal. Civ. Code § 52(f). Yet, because app-based workers would be alleging violations of the Business and Professional Code as amended by PADSA, it is unclear that they would be able to access the administrative enforcement mechanism otherwise available under Civil Code § 52(f) and Government Code § 12948.

5 The list of protected categories under Unruh has been held to be “illustrative rather than restrictive” and arbitrary discrimination along lines similar to those listed characteristics is also prohibited. *In re Cox*, 3 Cal. 3d 205, 218 (1970). The expansion of unenumerated characteristics was however limited by *Harris v. Capital Growth Investors XIV*, 52 Cal. 3d 1142, 1159-1169 (1991) (Harris). Yet, in *Vaughn v. Hugo Neu Proler Int'l*, 223 Cal. App. 3d 1612, 1617-20 (2d Dist. 1990) and *Leach v. Drummond Medical Group, Inc.*, 144 Cal. Appl. 3d 362, 370-72 (1983), the court found that retaliation against individuals for protesting discrimination violated Unruh. However, in two decisions following *Harris – Scripps Clinic v. Superior Court*, 108 Cal. App. 4th 917 (4th Dist. 2003) and *Gayer v. Polk Gulch Inc.*, 231 Cal. App. 3d 515 (1st Dist. 1991) – the court held that Unruh did not prohibit retaliation “based on the conduct of the individual” *Gayer*, 231 Cal. App. 3d at 525.

6 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/on-demand-and-on-the-edge/>.

7 See “Rigging the Gig,” Section IV(B)(8) (June 2020).

8 Estimate arrived at based on a judicial settlement reached by Uber to value hourly driver time for the purposes of California’s paid sick leave law to be \$15 per hour. See Dara Kerr, “Uber Expands Drivers’ COVID-19 Sick Pay by a Little Bit After Being Sued,” CNET (May 1, 2020) available at <https://www.cnet.com/news/uber-expands-driver-sick-pay-by-a-little-bit-after-being-sued/>. This compared to the approximately \$60 million committed by Uber and Lyft to fund the campaign to pass PADSA. See “Rigging the Gig,” Section II (June 2020).

9 Noam Scheiber, “Drivers Say Uber and Lyft Are Blocking Unemployment Pay,” New York Times (May 5, 2020) available at <https://www.nytimes.com/2020/03/24/business/economy/coronavirus-uber-lyft-drivers-unemployment.html>.

10 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/>.

11 See “Rigging the Gig,” Section IV(B)(3) (June 2020).

12 PADSA, proposed Bus. & Prof. Code § 7464(b)(1)-(4).

13 PADSA, proposed Bus. & Prof. Code § 7465.

14 See “Rigging the Gig,” Section V(A) (June 2020).

15 See “Rigging the Gig,” Section V(B)(1) (June 2020).

16 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/doordash-raises-400-million-ahead-of-ipo/#69fa4bc26e7f>.

17 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>.