

Prop 22 Rolls Back Rights for Women

For many, work is a source of dignity, identity, and purpose—a way to provide for a family and support a community. All work should be safe, be free from discrimination, and provide a fair wage, benefits, and the ability for workers to join together and bargain with their employer for more stability and security. Yet, on Election Day in November, California voters will be presented with an **unprecedented and dangerous** ballot initiative—Proposition 22—that would put workers further from that goal.¹

Advanced by Uber, Lyft, DoorDash, Instacart, and Postmates,² Prop 22 aims to strip workers of core protections such as overtime pay, unemployment insurance, and paid sick leave—benefits required by law but which these companies have flouted.³ The initiative would also erode basic anti-discrimination and workplace safety protections that app-based workers desperately need. **Women, as customers and workers, would lose important rights regarding their safety and economic security on the job if Proposition 22 were to become law.**

WHY ARE THE COMPANIES PUSHING THIS INITIATIVE NOW?

In 2019, workers won a watershed victory with the passage of AB 5, a law that ensured that workers who are core to the business model of these companies can access vital workplace protections.⁴ Uber and Lyft spent more than one million dollars to lobby for an exemption to the law.⁵ They failed. Now, several app-based companies are subject to dozens of lawsuits, including by the cities of San Diego (Instacart)⁶ and San Francisco (DoorDash)⁷ and by the State Attorney General (Uber & Lyft).⁸ Prop 22 would give these companies the exemption they failed to obtain and undermine enforcement efforts.

I'm opposed to Prop 22 because as a woman driver, I've been verbally abused, inappropriately touched, and even solicited for sex. Without employee status, the companies have no responsibility to keeping me safe, and I have no recourse to fight back. Prop 22 would exempt Uber and Lyft from any responsibility for driver safety. That puts women in a particularly vulnerable position in an already dangerous environment.

—Erica Mighetto, Uber & Lyft Driver

Far from protecting flexibility or offering “historic” benefits to workers—as its proponents suggest—Prop 22 means precisely the opposite, reversing AB 5 and taking away essential worker protections. Through forced misclassification, Prop 22 would **strip hundreds of dollars in wages from workers** each week;⁹ **deny them paid family leave**;¹⁰ and **upend workers' compensation protections** for injuries on the job.¹¹ Indeed, while Prop 22 was spurred on by recent changes to the law, by any fair measure, these workers were employees long before AB 5 was enacted.¹²



WHAT DOES PROP 22 MEAN FOR WOMEN WORKERS AND THOSE WHO USE APP-BASED SERVICES?



ANTI-DISCRIMINATION: Prop 22 eliminates access to, or dramatically narrows, nearly all existing employment laws for app-based transportation and delivery workers, including laws prohibiting employment discrimination and sexual harassment and those ensuring equal pay.¹³ Instead, the initiative offers narrow anti-discrimination protections that are all but a mirage on closer inspection.¹⁴ For example, while 43 percent of ride-hail workers report being harassed on the job by a passenger, the initiative offers no protection against third-party discrimination.¹⁵ It offers only narrow anti-retaliation protection to workers who report such discrimination.

Moreover, even these minimal protections offered by the initiative are meaningless without strong enforcement. **Prop 22** contains **no enforcement mechanism** if a driver experiences harassment or discrimination by a passenger.¹⁶ In addition, the initiative **would make it harder for a worker to bring a discrimination claim** against these companies by rolling back how long a worker has to file a claim.¹⁷ Without clear enforcement provisions, workers are left to question how gender, sex, and other forms of discrimination will ever be effectively rooted out of their workplace.¹⁸



SAFETY: Gig companies want to ensure that they cannot be held accountable for the safety of their passengers or their drivers. This is because they know that app-based work is unsafe and would expose them to significant liability. Last year, Uber released a report documenting 3,045 sexual assaults, with both riders and drivers as victims, during its rides in the United States in 2018. While passengers were more often victims, drivers reported other types of sexual assaults at roughly the same rate as riders.¹⁹ According to OSHA research, **taxi and for-hire drivers are over 20 times more likely to be murdered on the job than other workers.**²⁰ Yet, Prop 22 would do nothing serious about curbing these alarming trends.

I once had a man refuse to leave my car without getting my phone number. Thankfully he was so drunk I could just pull him out of my car onto the sidewalk. When we don't have any employee rights, we don't have any protection.

—**Tonje Ettesvoll, Uber & Lyft Driver**

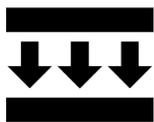
In addition, under the initiative the companies would not be required to abide by California health and safety laws, and workers would not be able to report violations.²¹ The companies would not be required to develop a plan to prevent illnesses and injuries. **They would not need to offer personal protective equipment to drivers**, would offer limited workers' compensation, and would take

only the safety measures that they alone decide are appropriate to protect workers. And they would not be required to provide the surveillance cameras and bullet-proof partitions that are often required in taxis and that have contributed to driver and passenger safety.²²



CAREGIVING: Despite the gains made in recent years, the bulk of caregiving responsibilities continue to fall on women in our society. California law provides workers, including most "gig" workers, eight weeks of paid family leave and 3 to 10 days of paid sick leave (depending on the city). **Yet, Prop 22 fails to offer drivers and delivery workers a single day of paid sick or family leave and not a minute of overtime pay.** What's more, although required for employees under California law, the

initiative offers no protections for workers who need to take leave when children and elders need care, if workers are victims of domestic violence and need time off, or, as is the case under COVID-19, when children are out of school. While the companies tout the “flexibility” app-based work provides, working women know that true flexibility means PAID time off. **Prop 22 goes further and effectively cancels every local emergency sick leave law** passed in cities such as San Francisco, Oakland, San Jose, and Los Angeles as they would apply to app-based workers.²³



FAMILY INCOME: Of all Bay Area drivers and delivery workers, 46 percent support others with their earnings, including 33 percent who are supporting children. And contrary to popular perception, a majority of the work performed on these apps is done by full-time workers, with 63 percent of workers telling researchers that the money they earn on the app was all or nearly all of their income in the prior month.²⁴ Yet, Prop 22

would result in app-based workers losing as much as \$500 per week in wages, since it would allow app-based companies to avoid paying for time spent waiting for a package or passenger, and would only reimburse workers for two-thirds of the federal mileage reimbursement rate.²⁵

FLEXIBILITY AND ELECTRONIC SURVEILLANCE

While gig companies tout the supposed flexibility of work on the apps as a boon to women workers, Prop 22 makes women's work more undervalued and more dangerous. Algorithmic management exacerbates those dangers. While workers can theoretically choose to work daytime hours, cancel a ride request in a dangerous area, or refuse to pick up a passenger who makes them feel uncomfortable, the companies' close electronic surveillance, ever-changing policies, and opaque disciplinary systems mean that workers would lose work and wages if they do.²⁶ **Women workers, like all other app-based workers, are being forced to choose between their safety and their family's income.**

WHAT ELSE WILL PROP 22 DO?

But the initiative doesn't stop there. With their \$181 million investment, the companies are seeking, once and for all, to **deregulate the industries in which they operate.**²⁷ Prop 22 would gut labor protections; deprive courts, state agencies, and local jurisdictions of the ability to enforce or raise standards; and ensure that the Legislature can never authorize these workers to bargain for better quality jobs.²⁸ **If passed, it will signal to corporate America that, with enough cash, they can buy permanent deregulation and establish a perpetual underclass of workers.**

Simply put, as app-based companies raise nine-figure sums from private investors²⁹ and mint new billionaires in the midst of this crisis,³⁰ their diverse frontline workforce would be left out in the cold—**permanently**—if the companies are able to pass Prop 22.

Women—and all workers—deserve better.

- ¹ See Protect App-Based Drivers and Services Act (hereafter "PADSA") (Dec. 9, 2019) available at: <https://www.oag.ca.gov/system/files/initiatives/pdfs/19-0026A1%20%28App-Based%20Drivers%29.pdf>.
- ² Ryan Byrne, "With funding from Uber, Lyft, and Doordash, campaign behind California Proposition 22 tops \$180 million" Ballotpedia, (Sep 9, 2020), <https://news.ballotpedia.org/2020/09/09/with-funding-from-uber-lyft-and-doordash-campaign-behind-california-proposition-22-tops-180-million/>.
- ³ See, generally Rey Fuentes, Rebecca Smith, and Brian Chen, "How Uber, Lyft, and DoorDash's Ballot Initiative Would Put Corporations Above the Law and Steal Wages, Benefits, and Protections from California Workers," Partnership for Working Families and National Employment Law Project (July 2020) (hereafter "Rigging the Gig") available at <https://www.forworkingfamilies.org/resources/publications/rigging-gig>.
- ⁴ Assembly Bill 5 (Gonzalez), Ch. 296, Reg. Sess. 2019-2020 (Sept. 18, 2019).
- ⁵ As recent data on lobbyist spending indicates, Uber and Lyft spent more than \$1 million lobbying the state legislature for an exemption from AB 5. See Cheryl Miller, "Uber and Lyft Spent More Than \$1M on State Lobbying in 2019," The Recorder (Feb. 3, 2020) available at <https://www.law.com/therecorder/2020/02/03/uber-and-lyft-spent-more-than-1m-on-state-lobbying-in-2019/?sreturn=20200117162528>.
- ⁶ See *The People of the State of California v. Maplebear, Inc.*, Case No. 37-2019-00048731-CU-MC-CTL (Feb. 18, 2020).
- ⁷ See *The People of the State of California v. DoorDash, Inc.*, Case No. CGC-20-584789 (June 16, 2020).
- ⁸ *The People of the State of California v. Uber Technologies, Inc.*, Case No. CGC-20-584402 (S.F. Superior Court, May 5, 2020).
- ⁹ See "Rigging the Gig," Section IV(B)(1).
- ¹⁰ See "Rigging the Gig," Section II.
- ¹¹ See "Rigging the Gig," Section IV(B)(3).
- ¹² See, e.g., *O'Connor v. Uber Technologies, Inc.*, 82 F.Supp.3d 1133 (N.D. Cal. 2015) (finding that the question of employee status, while a contested issue of fact, likely weighed in favor of workers as employees); *Cotter v. Lyft, Inc.*, 60 F.Supp.3d 1067 (N.D. Cal 2015) (same).
- ¹³ See "Rigging the Gig," Section IV(A).
- ¹⁴ See PADSA, proposed Bus. & Prof. Code § 7456.
- ¹⁵ See Benner at p. 35.
- ¹⁶ See "Rigging the Gig," Section IV(B)(6).
- ¹⁷ 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, and requires the claim to be filed within two years for the administrative hearing process, compared to three years under FEHA.
- ¹⁸ *Id.*
- ¹⁹ Kate Conger, "Uber Says 3,045 Sexual Assaults Were Reported in U.S. Rides Last Year," (Dec 5, 2019), NYTimes, <https://www.nytimes.com/2019/12/05/technology/uber-sexual-assaults-murders-deaths-safety.html#:~:text=SAN%20FRANCISCO%20%E2%80%94%20Uber%20said%20on,on%20the%20ride%20hailing%20platform>.
- ²⁰ Occupational Safety and Health Administration Fact Sheet, *Preventing Violence against Taxi and For-Hire Drivers*, (April 2010), <https://www.osha.gov/Publications/taxi-driver-violence-factsheet.pdf>.
- ²¹ See "Rigging the Gig," Section IV(B)(8).
- ²² Lauren, Kaori Gurley, "Drivers say Reporting Assault to Lyft is Extremely Traumatic," VICE Motherboard, (Oct 4, 2019), available at https://www.vice.com/en_us/article/7x57zd/drivers-say-reporting-assault-to-lyft-is-extremely-traumatic.
- ²³ *Id.* at Section V(B)(2).
- ²⁴ See Benner at p. 21.
- ²⁵ Rigging the Gig, p. 11.
- ²⁶ Alex Rosenblat, "When your Boss is an Algorithm," NYTimes, (Oct. 12, 2018), available at <https://www.nytimes.com/2018/10/12/opinion/sunday/uber-driver-life.html?smid=tw-nytopinion&smtyp=cur>; Razak v. Uber Techs., Inc., 951 F.3d 137, 146 (3d Cir. 2020). Uber announced in December that it would allow drivers to see destination information before they accept a ride; Lyft does not do so. Sasha Lekach, "Uber's new driver features could mean more destination discrimination," Mashable, (Dec. 4, 2019), available at <https://mashable.com/article/uber-driver-california-changes-destination-discrimination/>.
- ²⁷ See "Rigging the Gig."
- ²⁸ *Id.*
- ²⁹ 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>.
- ³⁰ 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>.