

## **California, Reject Prop 22**

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### **Body**

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Gig workers deserve the dignity of fair compensation.

Are gig workers employees or freelance contractors? It's been a question for companies like Uber, Lyft, Instacart and DoorDash for nearly as long as "gig work" itself - or at least the Silicon Valley version - has existed. California voters next month may finally help settle the matter.

California lawmakers last year passed legislation that reclassified gig workers as employees. The backlash from gig economy companies was immediate, and Uber and similar app-based businesses have committed nearly \$200 million to support a state ballot measure - making it the costliest in state history - that would exempt them from the law.

Voters should reject the measure, known as **Prop 22**.

A state court already upheld the merits of the current state law, and a federal judge dismissed Uber and Postmates' suit against it. And **Prop 22** is designed to exempt a few industry players from a statute that those same companies have improperly ignored since it was put in place. The ballot measure also would codify a system that denies workers full benefits, local minimum wage guarantees and stability - things that are especially crucial during the coronavirus pandemic.

Gig industry giants long ago settled on treating their workers as independent contractors, which allows flexible hours for workers but spares the companies the expense of extending benefits like employer-paid health insurance and reimbursement for fuel and vehicle expenses. That structure - along with not having to pay severance, payroll taxes and for unemployment insurance - helps to keep their costs low. It's a decision that is essential for these companies' bottom lines, especially given that the industry continues to lose billions annually anyway.

What happens in the battle over **Prop 22** will cast a long shadow. Yes, there will be financial consequences for businesses driven by gig workers, but California is not the only state considering legislation to secure benefits for app-dependent drivers and delivery people. The year's election and the ensuing legislative sessions could mean meaningful standards put in place for gig workers around both minimum wages and benefits. They could also result in protection from the market power amassed by a few industry players.

Nearly three-quarters of gig laborers work 30 hours a week or more - they are already effectively full time, but they enjoy virtually none of the protections that full-time employees do. Uber, DoorDash and others have spent lavishly to keep things that way.

The state law in question stems from a 2018 California State Supreme Court ruling that holds companies to a three-part test to demonstrate that workers are independent contractors: Companies must show that workers have control

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over how they work, that they are free to seek work elsewhere and that their labor isn't central to a company's business.

Rather than abide by the law, the gig companies turned to the courts, which agreed with legislators and ordered the companies to convert their workers to employees, with benefits. A subsequent stay to the ruling ahead of the election forestalled a cynical threat by Uber and Lyft to halt operations in the state.

Uber's chief executive, Dara Khosrowshahi, summed up the situation well in a recent interview: "Once you employ someone, you essentially have to become responsible for their productivity," he said. With reams of data at their disposal, it's hard to argue that these companies' taking on more responsibility for their workers' output isn't mutually beneficial.

Uber and Lyft especially have exerted meaningful control over their workers, including by setting base fares, dictating which routes to take and even denying drivers access to the apps - all without recourse.

If the ballot proposal fails, the companies appear poised to increase prices after years of keeping them artificially low. A price increase should be viewed as a good thing, helping both the gig companies and the workers share in a more profitable system.

Companies backing **Prop 22** insist that drivers aren't central to their businesses because they are technology companies. But what exactly is Lyft without its rides, or Instacart without grocery deliveries? Uber Eats orders don't deliver themselves.

**Prop 22** would maintain workers as independent contractors, with some wage guarantees and a pool of money that certain workers could use for health care costs and sick days. Gig workers would be eligible for hourly pay 20 percent higher than local minimum wage, plus 30 cents per mile - but only during engaged times, meaning after they've accepted a fare and before they've dropped off a passenger. By some estimates, drivers spend more than one-third of their shift awaiting a fare, time the companies wouldn't have to pay for. The full health care benefits would be accessible only to workers driving 25 hours per week of engaged time, suggesting they'd need to log nearly 40 hours on the app to be eligible.

One study estimated that, under **Prop 22**, drivers would be guaranteed to take in just \$5.64 per hour, after factoring in down time and expenses. (Uber and Lyft have contested those findings.)

In ubiquitous advertisements, including on the Uber and Lyft apps, the industry has argued that, without the passage of **Prop 22**, drivers will lose the flexibility to log in and out of the app as they wish. But the California law at issue does not require that flexibility go away, and at any rate, the companies have had ample time since the 2018 State Supreme Court ruling to devise a workable shift system.

To further entrench the current system, the gig companies wrote into the ballot proposal an unnecessarily onerous requirement that amendments to the proposed law must pass by seven-eighths of the Legislature.

It seems that these companies would sooner destroy their own businesses than grant workers the dignity of comprehensive benefits, guaranteed wages or unemployment insurance. Rejecting **Prop 22** is a chance finally to ensure gig workers the protections all workers deserve.

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