

Empowering App-Based Workers Act: Urgently Needed Legislation

by Sally Dworak-Fisher

Corporations are increasingly using digital labor platforms or “apps” with electronic surveillance and automated decision systems (algorithms) to monitor and control their workforces. The apps largely determine who gets what job, when, at what pay, and who can or cannot work. They can manipulate workers with reward systems that coerce them to work longer and accept particular jobs.

Yet workers and regulators are in the dark about how these tools operate, as corporations resist transparency and deny accountability to their app-based workers.

Evidence suggests these tools can foster independent contractor misclassification—enabling wage theft and stripping workers of a suite of employee benefits and protections. This results in lower and unpredictable pay, a faster pace of work that risks workers’ health and safety, and other unsafe conditions.

And the model is spreading. Congress must act now to stop the spread of opaque, unchecked, and unregulated tech-enabled surveillance and control.

The Empowering App-Based Workers Act—Principled Solutions

- 1. Transparency is Fundamental.** The bill would ensure workers’ right to know how these management tools impact access to jobs, pay rates, and whether and why an algorithmic boss suspends or terminates them. Likewise, consumers and workers would be entitled to detailed receipts and pay statements, rather than misleading receipts designed to flatter the corporation.
- 2. Surveillance Wage-Setting Offends Equal Pay for Equal Work.** The bill would prohibit digital labor platforms from using personal or behavioral data to inform pay or otherwise offering workers different pay for the same work based on traits unrelated to the cost of the job.¹

¹ See, e.g., More Perfect Union, We Put 7 Uber Drivers in One Room. What We Found Will Shock You., YouTube (Sept. 9, 2024), <https://www.youtube.com/watch?v=OEXJmNj6SPk>; Dara Kerr, Secretive Algorithm Will Now Determine Uber Driver Pay in Many Cities, The Markup (Mar. 1, 2022), <https://themarkup.org/working-for-an-algorithm/2022/03/01/secretive-algorithm-will-now-determine-uber-driver-pay-in-many-cities> (showing how Uber used a pay algorithm resulting in wage offers varying from driver to driver, based on unknown considerations). See also, Veena Dubal, On Algorithmic Wage Discrimination, 123 Colum. L. Rev. 1929 (2023).

Corporations using these tools could still offer different pay based on cost differences between workers for performing the tasks involved; pay different amounts for different tasks; respond to changes in supply and demand; offer discretionary bonuses; or pay workers differently according to a collective bargaining agreement.

3. **Pay Shouldn't Be a Crap Shoot.** Truly flexible work doesn't require guesswork to predict how long to work to make ends meet or why pay may be drastically lower today than yesterday. Pay should be predictable and transparent. Yet recent surveys of Uber drivers reveal:

[workers] don't know how much money they will make from day-to-day or task-to-task, how long they'll need to work in order to earn that amount of money, and on what basis their variable pay is calculated, including whether it 'is the result of a game, an experiment, a punishment, or reward or changing circumstances.'

The bill's transparency provisions will enable workers to better understand what they are truly getting paid, and why. For ridehail workers, a requirement that workers receive 75 percent of the consumer charge provides a measure of transparency and predictability.

Support The Empowering App-Based Workers Act

Visit [NELP's website](#) to learn more about the bill and how to support app-based workers' demands for good jobs.