

April 8, 2020

## **Open Letter to State Unemployment Insurance Agencies on Uber & Lyft Drivers**

We are professors and researchers, each of whom has expertise relevant to the question of whether drivers of transportation companies Uber and Lyft are employees for purposes of state unemployment insurance.

Due to the Covid-19 global pandemic and shelter-in-place orders across the United States, Uber and Lyft drivers have seen their incomes fall dramatically. Those who risk infection by continuing to work report that their earnings are a net negative. Uber and Lyft drivers rely on these earnings to meet basic needs, including to pay for food, housing, and medicine. These workers are in desperate economic straits and need immediate access to unemployment insurance.

Based on our collective expertise, we write to persuade state agencies that Uber and Lyft drivers are employees under the unemployment insurance (hereinafter, “UI”) laws of most states and should be treated presumptively as such.

States should determine weekly UI payments based on income data provided by Uber and Lyft. In the absence of such data, state agencies should establish the claimant’s benefit rights based on claimants’ own statements of wages.<sup>1</sup> This can be supplemented and verified at a later date by other evidence, including tax statements or screenshots of gross earnings provided to workers.<sup>2</sup> The agencies should then take enforcement measures against companies that shirk their reporting and contribution obligations under state law.<sup>3</sup>

### **I. Whether workers are misclassified as independent contractors is important even though the CARES Act makes unemployment benefits available to true contractors.**

The CARES Act guarantees that true independent contractors have some protection against income loss, but states should still ensure that workers who are eligible for state-level UI benefits receive those benefits. It would be a mistake to ignore companies’ decisions to misclassify their

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<sup>1</sup> Precedent for this practice exists in a number of contexts, across a variety of state benefits. For example, the Department of Housing and Urban Development uses self-verification of wages for purposes of interim and annual re-certifications of assisted tenants. See HUD Handbook 4350.3, paragraph 5-13.B and Appendix 3.

<sup>2</sup> Notably, in states like Massachusetts, the existing regulations already provide for this: “Whenever an employer has failed to provide wage information within the time limit prescribed in 430 CMR 5.04(1), the Commissioner shall establish the claimant's benefit rights on the basis of the claimant's own statement of wages received in such employment with said employer supplemented by such other evidence as may be available and satisfactory to the Commissioner.” 430 CMR Division of Unemployment Insurance, 5.04.

<sup>3</sup> New Jersey has already taken this step. <https://www.forbes.com/sites/jackkelly/2019/11/15/new-jersey-hit-uber-with-a-650-million-tax-bill-for-misclassifying-workers-is-this-the-start-of-a-war-against-gig-economy-companies/#7da941b646ea> (last accessed April 6, 2020).

workforces or to treat the CARES Act as though it makes companies' misclassifications of their workforces irrelevant.

The CARES Act provides all documented citizen and non-citizen workers with UI and \$600 per week in Federal Pandemic Unemployment Compensation (hereinafter, "PUC").<sup>4</sup> The Act treats state UI as a first line of defense, requiring eligible employees to receive state UI first.<sup>5</sup> Those workers who state agencies deem to be independent contractors are entitled to unemployment assistance, but only through the end of the calendar year.<sup>6</sup>

The employee status of workers who receive unemployment assistance under the CARES Act carries practical implications and raises issues of fairness. If ride-hailing drivers are treated as independent contractors, they may not receive assistance in a timely manner, nor will they receive it after the expiry of the Act. The financial assistance itself will come from a federal unemployment insurance trust, which is funded through the taxes of law-abiding employers. To date, ride-hailing companies Uber and Lyft have not paid into unemployment insurance funds on either the state or federal level. Nothing in the CARES Act provides that the companies must reimburse the federal government for the money spent providing unemployment assistance. States, however, can seek reimbursement and penalties from the companies who have not contributed their share, as New Jersey did in 2019.<sup>7</sup>

## **II. State UI tests for worker classification should be interpreted and applied with a purposive approach in mind.**

The purpose of unemployment insurance in the United States, as articulated by the U.S. Social Security Board in 1936 soon after the Social Security Act was passed, is to provide financial stabilization and protection "against the greatest hazard of our economic life": the "crushing force [of poverty] upon the unemployed worker and his family."<sup>8</sup> In an unemployment insurance handbook written soon thereafter, William Cohen, one of the key architects of the New Deal and Great Society Programs, and his co-authors reflected, "[I]t seems fair to say that relieving or forestalling financial hardship for the unemployed worker by partial replacement of wage loss is the central aim of the program."<sup>9</sup>

With this purpose in mind, states use versions of two tests to determine eligibility for unemployment insurance. Most states use a version of the ABC test which casts a large net over workers who are eligible to receive unemployment insurance despite misclassification by their employer. Some states use a version of the "control" test, rooted in the common law. Under both tests, Uber and Lyft drivers are employees for purposes of unemployment insurance. An appendix of state law on UI employment classification is attached to this letter.

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<sup>4</sup> Coronavirus Aid, Relief, and Economic Security Act, H.R.748, 116th Cong. § 2104(b)(1)(B) (2020).

<sup>5</sup> Id. at § 2104(b)(1)(A).

<sup>6</sup> Id. at § 1102(a)(2)(D)(ii)(I); § 1102(a)(2)(G)(i)(IV).

<sup>7</sup> <https://news.bloomberglaw.com/daily-labor-report/uber-hit-with-650-million-employment-tax-bill-in-new-jersey> (last accessed Apr. 6, 2020).

<sup>8</sup> Social Security Board 1936, p. 1, as cited in Blaustein, Saul J., Wilbur J. Cohen, and William Haber. "Unemployment Insurance in the United States: the First Half Century." (1993) Available at [https://research.upjohn.org/cgi/viewcontent.cgi?article=1086&context=up\\_press](https://research.upjohn.org/cgi/viewcontent.cgi?article=1086&context=up_press).

<sup>9</sup> Blaustein et al. at 48.

### III. Uber and Lyft drivers perform work in the usual course of the businesses they work for.

For states that use the ABC test, whether Uber and Lyft drivers perform work that is within the usual course of the companies' business will typically be dispositive of their status as employees. For states that use the "control" test, this inquiry will also be relevant.

A key question, therefore, is whether Uber and Lyft are in the transportation business, or whether – as the companies often assert – they are technology companies that only provide a platform to be used by drivers who are in the transportation business. First, courts and tribunals that have considered the question of what business Uber engages in have likewise found Uber to be a transportation company. The court in *O'Connor v. Uber Techs., Inc.* found the notion that Uber was not in the transportation business to "strain[] credulity," noting that Uber is no more a technology than Yellow Cab, because that company uses CB radios to dispatch its taxis. 82 F. Supp. 3d 1133, 1144 (N.D. Cal. 2015). Similarly, the court in *Cotter v. Lyft* wrote that the company's argument that it "merely furnish[ed] a platform that allows drivers and riders to connect" was "obviously wrong." 60 F. Supp. 3d 1067, 1078 (N.D. Cal. 2015). More recently, the Advocate General of the European Court of Justice issued an advisory opinion holding that Uber is indeed a transportation company and "cannot be regarded as a mere intermediary" between drivers and passengers. Case C-434/15 (May 11, 2017). The U.K. Employment Tribunal found the notion that Uber's London operation is merely a mosaic of 30,000 independent businesses, and not a transportation company, to be "faintly ridiculous."<sup>10</sup> The decision was later upheld by the Employment Appeal Tribunal and the Court of Appeal.<sup>11</sup>

The *O'Connor* and *Cotter* courts relied in part on the companies' own marketing materials. For example, Uber has referred to itself as "everyone's private driver" and "the best transportation service in San Francisco," 82 F. Supp. 3d at 1142, and Lyft referred to drivers as "driving for Lyft," 60 F. Supp. 3d at 1078. And while the companies' marketing materials have changed over time, those materials still reveal the obvious: the companies are in the transportation business. For example, as of April 6, 2020, Uber's website states that the company gives "riders a way to get from point A to point B."<sup>12</sup> Similarly, Lyft's "Investor Relations" website page promises "the next generation of transportation services that will be led and created by our team," and touts its service as "unlocking affordable transportation access."<sup>13</sup>

But even if the companies had not marketed themselves as transportation companies, their operations demonstrate their true nature. As discussed below, the companies carefully manage many aspects of the services that drivers provide; this fact distinguishes Uber and Lyft from platforms that are not in the same business as their users. The Facebook group "Arcade City

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<sup>10</sup> <https://www.theguardian.com/technology/2016/oct/28/uber-uk-tribunal-self-employed-status> (last accessed Apr. 6, 2020).

<sup>11</sup> <https://www.theguardian.com/technology/2018/dec/19/uber-loses-appeal-over-driver-employment-rights> (last accessed Apr. 6, 2020).

<sup>12</sup> <https://www.uber.com/us/en/about> ("In addition to giving riders a way to get from point A to point B, we're working to bring the future closer with self-driving technology and urban air transport, helping people order food quickly and affordably, removing barriers to healthcare, creating new freight-booking solutions, and helping companies provide a seamless employee travel experience.")

<sup>13</sup> <https://investor.lyft.com> (last visited Apr. 6, 2020).

Austin/Request A Ride” illustrates the difference between transportation companies like Uber and Lyft, and other platforms.<sup>14</sup> “Request A Ride” sprang up on Facebook in the wake of Uber’s and Lyft’s decisions to temporarily stop operating in Austin, TX. That group allowed potential drivers and passengers to find each other and negotiate a trip – but the group did not match drivers and riders, set nonnegotiable prices for rides, or vet drivers or passengers. In this scenario, Facebook is not in the transportation business, nor does it employ any drivers who arrange to sell a ride through the “Request A Ride” group. The difference is that Facebook provides a platform that is (within reasonable limits) open to users to exchange all sorts of commodities and services under a wide range of conditions. In contrast, an Uber driver could neither log onto Uber to offer rides under different terms and conditions than the ones Uber sets, nor could they use Uber to offer housecleaning. The reason for this is that Uber and Lyft use their apps to sell the transportation services that their drivers then provide.

#### **IV. Ride-hail platforms Uber and Lyft exercise sufficient direction, supervision, and control over the drivers to support finding an employment relationship.**

Whether a company satisfies the “control” test is usually a factual determination based on evidence of the employer’s control over and right to control the work, worker, and/or results produced. Uber and Lyft direct, control, and supervise how drivers do their work. That these companies offer drivers some flexibility in some aspects of their work – such as when they are available to drive – does not change the fact that these companies exercise control over fundamental aspects of drivers’ work. These aspects include when drivers will be engaged to pick up a passenger, who that passenger will be, and how much the fare will be.

**A. Uber and Lyft direct drivers’ interactions with customers:** Uber and Lyft provide detailed instructions on all aspects of drivers’ contacts with customers. They 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.<sup>15</sup> Both companies have established the minimum wait times required for a driver to receive a cancellation fee.<sup>16</sup> Uber and Lyft also provide detailed instructions to drivers on how they should interact with customers, including what topics of conversation are considered “inappropriate.”<sup>17</sup> The companies also give specific instructions to drivers as to when and how they can accept tips.<sup>18</sup> In addition, the contract between the drivers and the companies require drivers not to hold themselves out as employees and breach of this provision could lead to termination.<sup>19</sup> Both companies instruct their employee drivers that

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<sup>14</sup> The original Facebook page can still be visited. <https://www.facebook.com/groups/ArcadeCityAustin> (last accessed Apr. 6).

<sup>15</sup> <https://help.uber.com/riders/article/picking-up-riders?nodeId=3babfaf5-9075-4f62-b0de-b104c0e9af13>; <https://help.lyft.com/hc/en-us/articles/115013080028-How-to-give-a-Lyft-ride#info> (last accessed Apr. 6).

<sup>16</sup> <https://help.uber.com/driving-and-delivering/article/how-are-rider-cancellation-fees-charged-?nodeId=eebc0564-5228-4d70-997c-0fe63f0753c2>; <https://help.lyft.com/hc/en-us/articles/115012922847> (last accessed Apr. 6).

<sup>17</sup> On the Uber Premium services, the company directs drivers to either stay silent or to chat with the rider, based on the stated preference of the rider. <https://venturebeat.com/2019/05/14/uber-now-lets-premium-riders-opt-out-of-conversations-with-drivers> (last accessed Apr. 6, 2020).

<sup>18</sup> <https://www.uber.com/us/en/drive/driver-app/how-tips-work>; <https://help.lyft.com/hc/en-us/articles/115013080028-How-to-give-a-Lyft-ride#how> (last accessed Apr. 6).

<sup>19</sup> Reviewing Uber’s terms for drivers requires logging in, but Lyft’s language is public. <https://www.uber.com/us/en/safety/uber-community-guidelines> (“Drivers and delivery people can access their legal

they should keep their car clean, have bottled water for the passengers, and take the route that passengers request.<sup>20</sup>

- B. Uber and Lyft direct what vehicles are appropriate for drivers to use:** Uber and Lyft control which models of vehicles drivers may or may not use while working for the companies.<sup>21</sup> For Uber’s luxury service, UberBLACK, Uber decides which vehicles are sufficiently high-end and requires such vehicles to have a black interior and exterior. Uber and Lyft require drivers to report accidents and only allow a vehicle to return to service after a satisfactory inspection of the vehicle’s condition.<sup>22</sup>
- C. Uber and Lyft dictate when and how the work is to be done:** To deny their legal status as employers, Uber and Lyft often rely on the fact that drivers can theoretically decide when to make themselves available for rides by logging onto the Uber and Lyft apps. But more relevant to this inquiry is the reality that the companies determine whether and when any individual driver is actually assigned to pick up a passenger.<sup>23</sup> Further, drivers and riders are contractually prohibited from arranging pickups and payments outside of the apps (such as through a cash transaction), and a driver and a rider cannot arrange to be matched to each other within either app.<sup>24</sup> In other words, drivers might determine when they are available for work, but the companies determine whether drivers work.

Beyond that, the companies tell drivers how long it should take the driver to get to the passenger’s pick-up point. They set standards for on-time arrivals by sending waiting passengers an estimated time of arrival for each trip. Drivers’ failure to meet the ETA set by Uber or Lyft can lead to lower star ratings, which in turn can lead to deactivation or termination.

Uber and Lyft highly incentivize when and where drivers work. Both companies offer payment incentives to work during specified hours, and to work a minimum number of hours.<sup>25</sup> Uber and Lyft drivers must work a minimum number of hours per week, perform

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agreement with Uber here.”); <https://www.lyft.com/terms> (“As a Driver on the Lyft Platform, you acknowledge...the relationship between the parties under this Agreement is solely that of independent contracting parties.”) (last accessed Apr. 6).

<sup>20</sup> <https://help.uber.com/driving-and-delivering/article/how-to-improve-ratings?nodeId=b7625579-3e02-42ae-b7ad-8795f0b36bd4>; <https://help.lyft.com/hc/en-us/articles/115013081708-Keeping-your-car-clean>; <https://help.lyft.com/hc/en-us/articles/115012926147-How-to-navigate-a-ride> (last accessed Apr. 6).

<sup>21</sup> Note that Uber has different vehicle eligibility standards in different cities, whereas Lyft does not. <https://www.uber.com/us/en/drive/new-york/get-started/eligible-vehicles>; <https://help.lyft.com/hc/en-us/articles/115012923147-Lyft-Lux-Lux-Black-and-Lux-Black-XL-rides-for-drivers> (last accessed Apr. 6).

<sup>22</sup> <https://help.uber.com/driving-and-delivering/article/i-was-in-an-accident-?nodeId=2264ea72-98f0-4c87-a990-d931b9237263>; <https://help.lyft.com/hc/en-us/articles/115013077888-Report-a-safety-incident-or-citation> (last accessed Apr. 6).

<sup>23</sup> <https://marketplace.uber.com/matching>; <https://help.lyft.com/hc/en-us/articles/115012926847-How-drivers-and-passengers-are-paired> (last accessed Apr. 6).

<sup>24</sup> <https://www.uber.com/legal/en/document/?country=united-states&lang=en&name=general-community-guidelines> (“To enhance the safety of each experience, off-app pickups are prohibited.”); <https://help.lyft.com/hc/en-us/articles/115013081688-Ensuring-passenger-safety-as-a-driver#app> (“For safety and legal reasons, you can only pick up passengers matched directly through the Lyft app.”) (last accessed Apr. 6).

<sup>25</sup> <https://www.uber.com/us/en/drive/promotions>; <https://help.lyft.com/hc/en-us/sections/115003494568-Bonuses-and-Incentives> (last accessed Apr. 6).

a specific number of jobs per week, and accept a number of trips per hour in order to qualify for the companies' hourly fare guarantees. These terms create strong incentives for drivers to work hours that the companies prefer, as they greatly impact drivers' net earnings.

**D. Uber and Lyft supervise and evaluate their drivers' most basic driving habits:** Uber and Lyft monitor their drivers' driving habits to the smallest detail. Through the use of GPS technology, the companies 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 presented by the apps. Such technology even monitors whether or not drivers are "feeling tired" and need "to recharge."<sup>26</sup> Uber and Lyft have admonished drivers for feedback regarding driving habits, and even threatened termination over continued reports of bad driving.

Uber and Lyft indicate to drivers where to find passengers and where the work is to be done. Uber and Lyft inform drivers of where to find customers through a real-time, color-coded "heat map" that indicates the purported customer demand in marked zones.<sup>27</sup> These zones become red to indicate when high pricing (called "surge pricing" by Uber and "prime time" by Lyft) is in effect, a process by which the companies raise prices, ostensibly based on customer demand, to higher multiples of the base fare rates. Because the consumer fare price increases during these price hikes, Uber and Lyft's revenue also increase when drivers head to these zones to work.

**E. Uber and Lyft exert significant control over termination and promotion:** Uber and Lyft maintain the authority to terminate drivers for any reason or for no reason at all.<sup>28</sup> Uber and Lyft communicate to drivers that several activities may put their accounts at risk of immediate deactivation, such as accepting cash. Uber and Lyft also terminate drivers if the companies believe that drivers' documents, such as vehicle registration or proof of insurance, are out of date. Drivers who believe the companies are mistaken about the status of the drivers' documents cannot make the decision to continue to drive based on their own assessment of their qualifications.

Once a trip is complete, the Uber and Lyft apps prompt the rider to rate the driver on a scale of one to five stars. Passenger ratings of drivers are the main source of employee performance data that Uber uses when deciding to suspend or terminate one of its drivers.

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<sup>26</sup> <https://www.washingtonpost.com/news/dr-gridlock/wp/2018/02/12/uber-mandates-a-six-hour-rest-period-for-frequent-drivers> (last accessed Apr. 6).

<sup>27</sup> <https://help.uber.com/driving-and-delivering/article/when-and-where-are-the-most-riders?nodeId=456fcc51-39ad-4b7d-999d-6c78c3a388bf>; <https://thehub.lyft.com/blog/2014/08/20/heat-maps-for-everyone> (last accessed Apr. 6).

<sup>28</sup> <https://www.uber.com/legal/en/document/?country=united-states&lang=en&name=general-terms-of-use> ("Uber may immediately terminate these Terms or any Services with respect to you...at any time for any reason."); <https://www.lyft.com/terms> ("Lyft may terminate this Agreement...immediately in the event: (1) you no longer qualify to provide Rideshare Services...(2) you fall below Lyft's star rating or cancellation threshold; (3) Lyft has the good faith belief that such action is necessary to protect the safety of the Lyft community or third parties...For all other breaches...you will be provided notice and an opportunity to cure the breach.") (last accessed Apr. 6).

The companies unilaterally set and modify the acceptable star ratings.<sup>29</sup> Unlike true independent contractors, this in effect means that drivers do not know what performance standards they must meet under their agreement with Uber or Lyft to avoid termination (or to satisfy their contractual obligations to maintain access to the app). The companies maintain a high level of discretion to determine contractual obligations as they go along, which is consistent with an employment relationship, but not an independent contractor relationship. Drivers report that any kind of negativity results in an immediate low rating for a driver.

In addition to suspending or terminating drivers for low ratings, Uber and Lyft discipline drivers, including by deducting pay and threatening deactivation based on specific negative feedback from passengers.<sup>30</sup> This structure creates a high level of supervision.

Uber and Lyft also control the type of work and access to jobs that drivers receive through a system of rewards based on passenger ratings. Evidence suggests that both companies reward drivers with high ratings by upgrading their status to allow these drivers more opportunities to pick up passengers and to pick up more lucrative classes of passengers, based on location.<sup>31</sup>

**F. Uber and Lyft set all fare rates for service, driver payment formulas, and handle all billing:** Uber and Lyft unilaterally set and modify the base rates charged to the riders; and in doing so, they control drivers' earning potential.<sup>32</sup> Uber and Lyft set the rates to be charged to customers. They decide those rates through their own sole discretion. Upon hiring, drivers are informed of the rates to be charged and how they would be paid a percentage of those rates. The companies have changed their fare rates unilaterally at various times. As with all terms of their contract with drivers, such changes are offered on a take-it-or-leave-it basis.

Uber and Lyft also determine the share of the fare taken without any input from the driver. The companies maintain all billing information for riders, process payments, collect fees from rider fare payments, and then remit the remainder to the driver, who is paid on a weekly basis.<sup>33</sup> Drivers who require a fare adjustment when the fare has been improperly calculated in instances such as the loss of GPS signal or making extra stops during a flat rate ride, must request such adjustment through the Uber or Lyft App. A driver cannot seek such an adjustment directly from the passenger, as the driver has no way of refunding a payment made through the rider's credit card.

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<sup>29</sup> <https://www.businessinsider.com/leaked-charts-show-how-ubers-driver-rating-system-works-2015-2>; <https://help.lyft.com/hc/en-us/articles/115013079948-Driver-and-passenger-ratings> (last accessed Apr. 6).

<sup>30</sup> <https://ride.guru/lounge/p/deactivation-issues> (last accessed Apr. 6).

<sup>31</sup> Passengers who reach a higher Uber Rewards status "will be paired with Uber's highest-rated drivers." <https://techcrunch.com/2019/01/22/uber-loyalty-program>; <https://thehub.lyft.com/preferred> (last accessed Apr. 6).

<sup>32</sup> <https://help.uber.com/riders/article/how-are-fares-calculated/?nodeId=d2d43bbc-f4bb-4882-b8bb-4bd8acf03a9d>; <https://help.lyft.com/hc/en-us/articles/115013080308-How-to-estimate-a-Lyft-ride-s-cost> (last accessed Apr. 6).

<sup>33</sup> <https://www.uber.com/us/en/drive/basics/how-payments-work>; <https://help.lyft.com/hc/en-us/articles/115013080008-How-and-when-driver-pay-is-calculated> (last accessed Apr. 6).

**G. Uber and Lyft handle customer complaints:** Uber and Lyft solicit customer feedback through their apps and handle customer complaints. Uber and Lyft discipline drivers based on these complaints. Uber and Lyft provide drivers with their weekly aggregated star ratings, which compare a driver’s performance regarding star ratings and other metrics to their previous performance and also to that of drivers who the companies classify as “top drivers.”<sup>34</sup> Uber and Lyft control access to customer complaints and feedback, creating a barrier between the drivers and passengers. Only the companies hold the power to suspend or deactivate a driver after receiving a customer complaint. The Uber and Lyft apps allow for riders to ask for refunds, leave complaints, and rate drivers through the star rating systems.<sup>35</sup> The companies’ control over customer complaints allows them to control the provision of driver services and to ensure that only those drivers who can successfully deliver remain on the app.

**H. Uber and Lyft provide the necessary tools and support staff to provide service:** The essential tool needed to perform work for Uber or Lyft is their app, without which drivers would not be able to receive trip requests, access in-app navigation, or submit fare reviews.

The availability of company-provided support staff is another factor indicating an employment relationship. Drivers are able to have payment errors corrected, receive cleaning fees, and resolve issues regarding discipline and complaints through the assistance of vast email-based “support” teams, and drivers can get assistance at one of Uber and Lyft’s various “hub” locations.

**I. Drivers cannot refuse work without penalties:** Uber and Lyft penalize drivers who do not meet required acceptance and cancellation rates. There are negative consequences for drivers who fail to accept trips.<sup>36</sup> The companies only provide promotions, weekly pay guarantees, and other incentives to those drivers who have a high acceptance rate. Drivers are not free to choose which categories and types of trips they wish to conduct.

Uber and Lyft provide drivers with information about passengers’ ratings, yet a driver may not choose to pass on trip requests from poorly rated passengers without facing log-out or temporary suspension. In addition, although the “pool” services, where multiple passengers share a ride, is a different type of service than the basic transportation service, drivers who are signed up to work on UberX or Lyft are required to also perform “pool” work.

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<sup>34</sup> <https://help.uber.com/driving-and-delivering/article/how-to-improve-ratings?nodeId=b7625579-3e02-42ae-b7ad-8795f0b36bd4>; <https://help.lyft.com/hc/en-us/articles/115013079948-Driver-and-passenger-ratings> (last accessed Apr. 6).

<sup>35</sup> <https://help.uber.com/riders/section/trip-issues-and-refunds?nodeId=595d429d-21e4-4c75-b422-72affa33c5c8>; <https://help.lyft.com/hc/en-us/categories/115002006488-Riding-with-Lyft> (last accessed Apr. 6).

<sup>36</sup> <https://help.uber.com/driving-and-delivering/article/cancellation-policy?nodeId=2f1bec45-b436-4272-a766-9f5b2cf757b8> (“[W]e strongly recommend you go offline when you are not available to undertake trips. Uber reserves the right to enforce a breach of your contractual agreements or restrict access to the platform if you are found to be in breach of the cancellation policy.”); <https://help.lyft.com/hc/en-us/articles/115012922847-Cancellation-and-no-show-fee-policy-for-drivers#drivercancellations> (“Cancellations are a bad experience for all parties, so we recommend using discretion when cancelling rides.”) (last accessed Apr. 6).



- J. Uber and Lyft pay drivers for the service they provide, often irrespective of what the customer pays:** Paying workers without regard for whether or not the putative employer received payment from the customer is indicative of an employment relationship. The companies structure wages to absorb loss and gain, acting not as “mere intermediar[ies]” but as transportation companies. Uber and Lyft drivers’ pay are not directly tied to what customers are charged but instead often include additional pay in order to place drivers where they were needed at the time they were needed in order to benefit the businesses. Moreover, Uber and Lyft often pay drivers weekly, hourly, or monthly wages if drivers meet certain conditions. Drivers report that such offers are made contingent on them accepting a certain percentage of all dispatches during prescribed periods, doing a set number of trips per hour, and working in part during certain prescribed hours.
- K. Uber and Lyft contracts reserve tremendous control over their drivers:** The contracts Uber and Lyft require drivers to accept before beginning work reserve control over major elements of the employment relationship. Example driver contracts include the following requirements or prohibitions: The companies may terminate drivers at will; drivers may not refer to themselves as employees; drivers must keep their vehicles in a clean condition; the companies can set rates for payment and change those rates at any time; the companies can deactivate drivers who disparage the companies or whose minimum star ratings fall below a level determined by the companies; drivers’ fares may be reduced or cancelled if the driver took an inefficient route or a customer complains.<sup>37</sup>
- L. Drivers are integral to Uber and Lyft’s businesses:** Whether a worker’s services are integral to the business of the putative employer is a factor indicating an employment relationship, and Uber and Lyft cannot operate without their drivers. As discussed above, drivers are an integral part of the companies’ transportation businesses. Uber’s former slogan, “Everyone’s Private Driver,” for example, clearly indicates that the company is in the transportation business and is not merely a technology company. An important factor indicating that Uber and Lyft are transportation business is that the companies’ revenues are tied to the amount of rides its drivers perform. A transportation company that only receives income if the drivers pick up fares is likely to have a strong interest in what the drivers do with their cars on the road.
- M. The skill required in the occupation suggests an employee relationship:** Driving for-hire is not considered skilled work.

Whether a version of the ABC test or the control test is applied, the evidence is abundantly clear that Uber and Lyft drivers are employees of the companies for which they work.

The nation is experiencing a disaster like we have not seen in our lifetimes. For Uber and Lyft drivers across the country, this is a disaster upon a disaster. We urge you to treat these workers as

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<sup>37</sup> <https://www.uber.com/legal/en/document/?country=united-states&lang=en&name=general-terms-of-use>; <https://www.lyft.com/terms> (last accessed Apr. 6).

employees and quickly disburse them the unemployment insurance funds they have earned as drivers for Uber, Lyft, and other ride-hailing platforms.

Sincerely,

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**Appendix of State Laws on Unemployment Insurance Worker Classification.**

STATE	AGENCY	HIGH-LEVEL WORKER STATUS TEST FOR UI
<b>Alabama</b>	<a href="#">Alabama Department of Labor</a>	“Right to Control”-Common Law Test ALA. CODE § 25-4-7
<b>Alaska</b>	<a href="#">Alaska Department of Labor and Workforce Development</a>	ABC Test ALASKA STAT. ANN. § 23.20.525(a)(8)
<b>Arizona</b>	<a href="#">Arizona Department of Economic Security</a>	“Right to Control”-Common Law Test ARIZ. REV. STAT. ANN. § 23-613.01(A)
<b>Arkansas</b>	<a href="#">Arkansas Division of Workforce Services</a>	“Right to Control”-Common Law Test ARK. CODE ANN. § 11-10-210(a)(1)(B)
<b>California</b>	<a href="#">California Employment Development Department</a>	ABC Test CAL. UNEMP. INS. CODE § 621(b)
<b>Colorado</b>	<a href="#">Colorado Department of Labor and Employment</a>	ABC Test (A&C) COLO. REV. STAT. ANN. § 8-70-115(1)(b)
<b>Connecticut</b>	<a href="#">Connecticut Department of Labor</a>	ABC Test CONN. GEN. STAT. ANN. § 31-222(a)(1)(B)(ii)
<b>Delaware</b>	<a href="#">Delaware Department of Labor: Division of Unemployment Insurance</a>	ABC Test DEL. CODE ANN. tit. 19, § 3302(10)(K)
<b>Florida</b>	<a href="#">Florida Department of Economic Opportunity</a>	“Right to Control”-Common Law Test FLA. STAT. ANN. § 443.1216(1)(a)(2)

<b>Georgia</b>	<a href="#"><u>Georgia Department of Labor</u></a>	ABC Test (A&C, modified) GA. CODE ANN. § 34-8-35(f)
<b>Hawaii</b>	<a href="#"><u>Hawaii Department of Labor and Industrial Relations</u></a>	ABC Test HAW. REV. STAT. ANN. § 383-6
<b>Idaho</b>	<a href="#"><u>Idaho Department of Labor</u></a>	“Right to Control”-Common Law Test IDAHO CODE ANN. § 72-102(17)
<b>Illinois</b>	<a href="#"><u>Illinois Department of Employment Security</u></a>	ABC Test 820 ILL. COMP. STAT. ANN. 405/212
<b>Indiana</b>	<a href="#"><u>Indiana Department of Workforce Development</u></a>	ABC Test (A&B, modified) IND. CODE ANN. § 22-4-8-1(b)
<b>Iowa</b>	<a href="#"><u>Iowa Workforce Development</u></a>	“Right to Control”-Common Law Test IOWA CODE ANN. § 96.19(18)(a)(2)
<b>Kansas</b>	<a href="#"><u>Kansas Department of Labor</u></a>	“Right to Control”-Common Law Test KAN. STAT. ANN. § 44-703(i)(1)(B)
<b>Kentucky</b>	<a href="#"><u>Kentucky Career Center</u></a>	“Right to Control”-Common Law Test KY. REV. STAT. ANN. § 341.050(1)(a)
<b>Louisiana</b>	<a href="#"><u>Louisiana Workforce Commission</u></a>	ABC Test LA. STAT. ANN. § 23:1472(12)(E)
<b>Maine</b>	<a href="#"><u>Maine Department of Labor</u></a>	ABC Test (A&C, modified) ME. REV. STAT. tit. 26, § 1043(11)(E)
<b>Maryland</b>	<a href="#"><u>Maryland Department of Labor: Division of Unemployment Insurance</u></a>	ABC Test MD. CODE ANN., LAB. & EMPL. § 8-205(a)
<b>Massachusetts</b>	<a href="#"><u>Massachusetts Department of Unemployment Assistance</u></a>	ABC Test MASS. GEN. LAWS ANN. ch. 149, § 148B(a)

<b>Michigan</b>	<a href="#"><u>Michigan Department of Labor and Economic Opportunity</u></a>	“Right to Control”-Common Law Test MICH. COMP. LAWS ANN. § 421.42(5)
<b>Minnesota</b>	<a href="#"><u>Minnesota Department of Employment and Economic Development</u></a>	“Right to Control”-Common Law Test MINN. STAT. ANN. § 268.035(15)(a)(1)
<b>Mississippi</b>	<a href="#"><u>Mississippi Department of Employment Security</u></a>	“Right to Control”-Common Law Test MISS. CODE. ANN. § 71-5-11(I)(14)
<b>Missouri</b>	<a href="#"><u>Missouri Department of Labor &amp; Industrial Relations</u></a>	“Right to Control”-Common Law Test MO. ANN. STAT. § 288.034(5)
<b>Montana</b>	<a href="#"><u>Montana Department of Labor &amp; Industry</u></a>	ABC Test (A&C, modified) MONT. CODE ANN. § 39-51-201(15)
<b>Nebraska</b>	<a href="#"><u>Nebraska Department of Labor</u></a>	ABC Test NEB. REV. STAT. ANN. § 48-604(5)
<b>Nevada</b>	<a href="#"><u>Nevada Department of Employment, Training and Rehabilitation</u></a>	ABC Test NEV. REV. STAT. ANN. § 612.085
<b>New Hampshire</b>	<a href="#"><u>New Hampshire Employment Security</u></a>	ABC Test N.H. REV. STAT. ANN. § 282-A:9(III)
<b>New Jersey</b>	<a href="#"><u>New Jersey Department of Labor and Workforce Development</u></a>	ABC Test N.J. STAT. ANN. § 43:21-19(i)(6)

<b>New Mexico</b>	<a href="#">New Mexico Department of Workforce Solutions</a>	ABC Test N.M. STAT. ANN. § 51-1-42(F)(5)
<b>New York</b>	<a href="#">New York State Department of Labor</a>	“Right to Control”-Common Law Test N.Y. LAB. LAW § 511 (though court-defined)
<b>North Carolina</b>	<a href="#">North Carolina Department of Commerce: Division of Employment Security</a>	ABC Test (A) N.C. GEN. STAT. ANN. § 96-1(b)(19)
<b>North Dakota</b>	<a href="#">Job Service North Dakota</a>	“Right to Control”-Common Law Test N.D. CENT. CODE ANN. § 52-01-01(17)(e)
<b>Ohio</b>	<a href="#">Ohio Department of Job and Family Services</a>	ABC Test (A) OHIO REV. CODE ANN. § 4141.01(B)(1)
<b>Oklahoma</b>	<a href="#">Oklahoma Employment Security Commission</a>	“Right to Control”-Common Law Test OKLA. STAT. ANN. tit. 40, § 1-210(1)(b)
<b>Oregon</b>	<a href="#">Oregon Employment Department</a>	ABC Test (A&C, modified, and also separate broader definition for UI) OR. REV. STAT. ANN. § 670.600(2), 657.015
<b>Pennsylvania</b>	<a href="#">Pennsylvania Department of Labor &amp; Industry</a>	ABC Test (A&C) 43 PA. STAT. ANN. § 753(k)(2)(B)
<b>Rhode Island</b>	<a href="#">Rhode Island Department of Labor and Training</a>	“Right to Control”-Common Law Test 28 R.I. GEN. LAWS ANN. § 28-42-7
<b>South Carolina</b>	<a href="#">South Carolina Department of Employment and Workforce</a>	“Right to Control”-Common Law Test S.C. CODE ANN. § 41-27-230(1)(b)
<b>South Dakota</b>	<a href="#">South Dakota Department of Labor &amp; Regulation</a>	ABC Test (A&C) S.D. CODIFIED LAWS § 61-1-11

<b>Tennessee</b>	<a href="#"><u>Tennessee Department of Labor &amp; Workforce Development</u></a>	“Right to Control”-Common Law Test TENN. CODE ANN. § 50-7-207(b)(2)(B)
<b>Texas</b>	<a href="#"><u>Texas Workforce Commission</u></a>	ABC Test (A) TEX. LABOR CODE ANN. § 201.041
<b>Utah</b>	<a href="#"><u>Utah Department of Workforce Services</u></a>	ABC Test (A&C) UTAH CODE ANN. § 35A-4-204(3)
<b>Vermont</b>	<a href="#"><u>Vermont Department of Labor</u></a>	ABC Test VT. STAT. ANN. tit. 21, § 1301(6)(B)
<b>Virginia</b>	<a href="#"><u>Virginia Employment Commission</u></a>	“Right to Control”-Common Law Test VA. CODE ANN. § 60.2-212(C)
<b>Washington</b>	<a href="#"><u>Washington Employment Security Department</u></a>	ABC Test (modified) WASH. REV. CODE ANN. § 50.04.140
<b>West Virginia</b>	<a href="#"><u>West Virginia Department of Commerce: Workforce WV</u></a>	ABC Test W. VA. CODE ANN. § 21A-1A-16(7)
<b>Wisconsin</b>	<a href="#"><u>Wisconsin Department of Workforce Development</u></a>	ABC Test (A, with A&C for subset of workers) WIS. STAT. ANN. § 108.02(12)(bm-c)
<b>Wyoming</b>	<a href="#"><u>Wyoming Department of Workforce Services</u></a>	ABC Test (A, modified) WYO. STAT. ANN. § 27-3-104(b)(i)