

THE “RIGHTS ON DEMAND” SERIES

## Ensuring Fairness in Background Checks for On-Demand Work

By Nayantara Mehta

**O**n-demand companies, like Uber, claim to value opportunities for workers, especially workers from areas and communities with high unemployment. Many of these companies fall short, however, when it comes to compliance with the civil rights and consumer laws that regulate criminal background checks for employment. These companies need to comply with these laws by implementing common-sense screening procedures to ensure customer safety and non-discriminatory hiring practices.

Regardless of how they classify their workers—as independent contractors or employees—on-demand companies should follow fair-chance hiring and other civil rights and consumer protection laws to ensure that workers are assessed based on their qualifications, and not solely on their records.

In addition to our recommendation that on-demand companies fully embrace the civil rights and consumer protection laws that protect jobseekers with arrest and conviction records, we urge policymakers to do the following:

- **Issue Guidance Regulating On-Demand Employers:** Enforcement agencies, like the U.S. Equal Employment Opportunity Commission and the Consumer Financial Protection Bureau, can issue guidance to establish that most on-demand workers, even those classified as independent contractors, are explicitly entitled to the protections of these laws. State labor agencies can issue guidance that workers for specific on-demand companies or sectors are in fact employees subject to the protections of the state’s labor and employment laws.
- **Reform Occupational Licensing Procedures and Consideration of Records:** States should reform their occupational licensing laws—in particular, those that regulate industries in the on-demand economy—to reduce barriers for people with arrest and conviction records.
- **Ensure Protections Apply Regardless of Worker Classification:** Any state or local policy that applies to workers in the on-demand economy should ensure that the law is not written narrowly to exclude workers classified as independent contractors from labor or fair-chance hiring protections.

*With more people engaging in work for on-demand companies such as Uber (driving), Care.com (child care and home care), TaskRabbit (home services), and Postmates (delivery), the question of worker rights and consumer safety has been at the forefront of the public debate. Strong protections regulating the use of criminal background checks are needed to ensure that all workers have fair access to work opportunities.*

- **Ensure Any Restrictions Are Reasonable and Transparent:** Whenever policymakers consider laws that impose work and licensing restrictions on people with specific criminal histories, those restrictions should be reasonable and transparent, with a clear and rational connection between the past criminal conviction and the work the applicant is seeking, such that the restriction is legitimately justified to protect consumers and the public.

## **Worker Classification in the On-Demand Economy**

---

In the on-demand economy, online and app-based companies connect workers with short-term jobs that involve driving, cleaning, delivering food, doing odd jobs, or performing tasks online, often for very little money, and often with no job security and no labor protections at all. The on-demand sector is a tiny part of the economy overall, but it has grown ten-fold in the last three years.<sup>1</sup>

While a growing number of on-demand companies are embracing their responsibilities as employers,<sup>2</sup> most on-demand businesses affirmatively deny workers their rights under labor and employment laws by labeling their workers “independent contractors.” On-demand workers, however, are not running their own separate business—the hallmark of independent contractor status. Instead, the workers perform tasks that are integrated into the company’s business, which is a key characteristic of employee status. And the businesses typically screen, train, supervise, dictate pay and assignments, and discipline and fire workers, just like any other employer.

In addition, many on-demand employers claim they are not covered by the civil rights and consumer laws that strictly regulate criminal background checks for employment.<sup>3</sup> They ignore the fact that many anti-discrimination and consumer protection laws are written broadly to either explicitly cover independent contractors or the work arrangements found in the majority of on-demand companies.

## **Key Concerns with Background Checks for Employment**

---

Many on-demand companies seek to assure their customers and the public that they conduct thorough background checks on any prospective workers for their platform. While ensuring public and customer safety is a valid and important concern, and in some cases conducting a background check is warranted or even required by law, company practices that categorically rule out hiring people with records are bad for business and bad public policy.

---

**Company practices that categorically rule out hiring people with records are bad for business and bad public policy.**

---

Hiring policies that place undue emphasis on a criminal record disproportionately impact communities of color, which have been hardest hit by decades of over-criminalization.<sup>4</sup>

People with records also suffer from pervasive discrimination in other areas of life, including housing, education, and eligibility for social service benefits. To prevent these stereotypes from encroaching on the hiring process, anti-discrimination and fair-hiring laws make clear that criminal history information found in background checks should only be considered after the employer has weighed the individual's overall qualifications for the job, and that criminal history information should be considered in the context of the applicant as a whole person.

### **Problems with Accuracy of Background Checks**

In addition to the stigma and discrimination that people with records face in employment and other areas of life, they also have to contend with the problem of inaccuracies in background checks. As more companies than ever are conducting background checks on their prospective employees, relying on private background check companies or on government databases, errors in these background checks have a profound effect on the ability of millions of people with arrest or conviction records to obtain jobs.<sup>5</sup>

### **What Laws Should Protect On-Demand Workers from Unfair and Inaccurate Background Checks?**

---

There are a variety of laws that specifically protect workers against unfair and inaccurate background checks, both on the job and those applying for jobs. As we discuss below, some laws only apply to those workers who are classified as employees, while other laws are broader and expressly apply to contract workers.

#### **Civil Rights Laws Prohibiting Discrimination Against People with Records**

A number of federal and state civil rights laws protect workers with records from discrimination. When challenged by workers who assert that their rights have been violated, some on-demand companies claim they are not subject to these anti-discrimination laws, even though these statutes have especially broad language defining employer coverage.<sup>6</sup>

#### ***Federal Civil Rights Law: the EEOC Criminal Records Guidance***

In 2012, the U.S. Equal Employment Opportunity Commission (EEOC) issued guidance on the consideration of criminal records in employment decisions. Because of the “disparate impact” of criminal background checks on people of color, the protections of Title VII of the Civil Rights Act of 1964 are triggered.<sup>7</sup>

The guidance directs employers, as well as employment agencies, to consider certain factors—the nature of the crime, time since the criminal conduct occurred, and the nature of the job in question—when deciding whether to hire someone with a record, in order to avoid making hiring decisions that violate Title VII. Most importantly, the EEOC strongly disfavors blanket bans on hiring people with records and the consideration of arrest records in hiring decisions, because of the disproportionate number of African Americans and Latinos with arrest and conviction records.

There is strong evidence that several on-demand companies are “employers” or “employment agencies,” and that they fail to comply with the basic protections of Title VII. Most notably, Uber’s website indicates that its California policy disqualifies those individuals

with “any felony” dating back seven years,<sup>8</sup> a blanket restriction that violates the EEOC standards. Some legal service providers have discovered additional company hiring practices that likely violate the anti-discrimination provisions of Title VII.

For example, in 2015, a Philadelphia man was denied employment at two on-demand companies, Lyft and Deliv, even though he had only two misdemeanor arrests on his record, one from 2009 and one from 2011, both of which were withdrawn and did not result in convictions. Both companies terminated the applicant due to the two arrests that appeared in his background check.<sup>9</sup> In March 2016, a North Carolina woman was summarily denied the opportunity to drive for Uber due to a misdemeanor conviction on her record.<sup>10</sup>

### **State and Local “Fair Chance” Hiring Laws**

Across the nation, elected officials at all levels of government have embraced the movement to remove criminal history questions from employment applications (“ban the box”) and adopt “fair chance” hiring policies modeled on the EEOC guidelines. Today, the United States government, 24 states, and more than 100 cities and counties have adopted these policies. Nine states extend their policies to private employers, as do numerous cities.<sup>11</sup> In addition, a growing number of major employers have also adopted fair-chance hiring policies, including Starbucks, Facebook, Walmart, Target, and Koch Industries.

Some of these local laws and policies apply both to employees and to independent contractors, temp employees, and other broader categories of workers. For example, **San Francisco’s Fair Chance Ordinance** applies to temporary, part-time, contract, and contingent work.<sup>12</sup> Additionally, **New York City’s Fair Chance Act** covers not just employees but also independent contractors.<sup>13</sup>

### **Consumer Protections Laws Related to Background Checks**

Private background check companies and the employers who rely on their reports are regulated by a federal consumer protection law called the Fair Credit Reporting Act (FCRA). FCRA gives jobseekers a number of protections to promote the accuracy of the information in background checks,<sup>14</sup> and is enforced by the Consumer Financial Protections Bureau and the Federal Trade Commission (FTC).<sup>15</sup> A broad reading of the law, recommended by the FTC, covers prospective employees and contractors.<sup>16</sup> For purposes of FCRA, a company’s characterization of its workers as “employee” or “contractors” is irrelevant.

Despite strong consumer protection laws that should apply to all jobseekers with records, some of the major on-demand companies are not complying. Drivers for both Uber and Lyft, for example, filed suit in San Francisco federal court, alleging major violations of federal and state consumer protection laws related to background checks.<sup>17</sup>

## Laws That Apply Specifically to On-Demand Workers

---

### State and Local Occupational Licensing Laws

In addition to the worker protections described above, the criminal background check mandates found in many occupational licensing or occupation-specific laws may apply to on-demand workers. Indeed, in response to the expansion of on-demand services, the issue of background checks has generated significant state and local attention in recent years, mostly with regard to ride-hailing companies, as described below.<sup>18</sup> In some cases, state occupational licensing laws also apply to industries, such as home care and child care, which may be offered through on-demand companies.

### State and Local Laws Regulating Ride-Hailing Companies

Focusing specifically on the ride-hailing industry, there are a patchwork of state and local laws requiring background checks of drivers and clarifying insurance coverage.<sup>19</sup> Many of these laws dictate what databases must be accessed to screen for criminal history and what types of arrests or convictions may be considered disqualifying by the ride-hailing company in order to authorize the worker to be a licensed driver.<sup>20</sup>

For example, at the local level, the **New York City** Taxi and Limousine Commission (TLC) governs the operation of For-Hire Vehicles (FHVs) in the city, which includes workers driving for Uber, Lyft, and other on-demand companies. A driver seeking a TLC license must submit fingerprints as part of the application, and the fingerprints are submitted to a state database.<sup>21</sup> TLC application materials advise individuals not to apply for a FHV license if they have certain offenses on their record within the past three years, or have pending criminal charges that will not be resolved in 90 days.<sup>22</sup>

At the state level, **California** charges the state's Public Utilities Commission (PUC) with regulating transportation network companies (TNCs) throughout the state, including Uber, Lyft, and other on-demand companies, and requires potential TNC drivers to undergo background checks based on name and Social Security number.<sup>23</sup> Some cities in California also issue rules that are specific to taxi drivers; in San Francisco, an applicant must submit fingerprints to access the federal criminal record databases as part of the background check process, and specific past convictions are a barrier to becoming a taxi driver.<sup>24</sup>

Thus, different jurisdictions apply different standards to those who seek to drive for payment, with different criminal convictions being a bar to driving depending on the location and the type of company the driver works for.<sup>25</sup>

## To Fingerprint or Not to Fingerprint: That's Not the Question<sup>26</sup>

The issue of background checks for transportation-network-company drivers has become a debate over whether or not drivers should be fingerprinted. "Fingerprinting" is a shorthand way of saying that a potential driver's history should be compared to state criminal history repositories or the FBI database. Some background checks required by state and local laws regulating taxi drivers require fingerprint checks. Most background checks that are not required by state or local laws are name-based checks conducted by commercial background check companies.

The civil rights of transportation workers should not come down to a debate between fingerprints and names. The real question is whether information provided by the background checks is accurate, and whether workers have the opportunity to contest inaccurate information. It is clear that the FBI system has serious limitations. On the other hand, there is no proof that databases used by private agencies are any more accurate than the FBI's information. The real answer is to comply with existing labor and civil rights laws and support legislation that would ensure the accuracy of the FBI database.

## The Uber Case Study

---

Uber has initiated a pilot program in California in which they will consider accepting drivers with certain convictions, when in the past they would have rejected those drivers based solely on their having a felony convictions.<sup>27</sup> Meanwhile, the company fought in federal court to deny its drivers the basic rights guaranteed to all workers by federal and state consumer laws regulating criminal background checks for employment.

While the new policy Uber announced in California would be an improvement over its previous approach of rejecting all drivers with any felony conviction, it is not clear what the mechanism would be for drivers to hold the company accountable for violating this new internal policy. And despite the new policy being announced in January 2016, Uber's current website still clearly indicates that its policy in California is to disqualify any potential driver with any felonies within the past seven-year period, regardless of the crime, without conducting an individualized assessment of the factors required by the EEOC, and going well beyond what is required under state law by the Public Utilities Commission.<sup>28</sup>

## Recommendations for Reform

---

On-demand companies, like companies in any industry, benefit when they are able to select workers from the widest pool of applicants possible. Policymakers, regulators, and enforcement agencies should ensure that the laws already on the books to protect workers with records are enforced, clarified where necessary, and even strengthened. The companies themselves should follow existing laws, and further, can take voluntary steps to demonstrate their commitment to providing second chances and ensuring new work opportunities are widely available.

## **How Should On-Demand Companies Screen Their Workers?**

With the growing number of fair-chance hiring protections applying to private employers, including the above-mentioned laws in San Francisco and New York City, companies in the on-demand economy should take a leadership role in complying with the strongest of these fair-chance policies, even if they are operating in jurisdictions where they are not yet required to.

On-demand companies should be leaders in embracing compliance with the nation's strongest fair-hiring laws, and incorporating those standards into company-wide policies. Such a move is not just good for workers, but allows the companies to standardize their hiring processes across the country, by conforming to the most rigorous state and local laws.

At a minimum, a fair policy should include the following key components:

- Carefully determine what convictions might be disqualifying for specific positions, and whether there are any positions for which an applicant's prior criminal conviction history is not relevant;
- Implement a "ban the box" policy to remove questions about criminal history from applications, and to avoid asking about criminal history until making a conditional job offer;
- Perform any inquiry into an applicant's prior criminal conviction history through a reputable background screening company in full compliance with federal and state consumer protection laws (e.g., FCRA requires employers to receive an applicant's permission, usually in writing, before asking a background screening company for a criminal history report);
- Provide the applicant with a copy of the criminal history record generated by the background check company, and allow the individual an opportunity to correct any errors in the information;
- Follow federal civil rights law by eliminating any blanket hiring restrictions based on criminal history, and instead evaluate the age and nature of the offense and whether it is directly related to the specific position;
- If after this analysis, the conviction is still considered disqualifying, inform the applicant of the reasons underlying the company's determination, and allow the individual to produce evidence of rehabilitation and other mitigating information relevant to the determination;
- Provide transparency to workers and the public regarding the policy, and a mechanism allowing workers to hold the company accountable if the policy is not followed.

## **What Should Agencies, Lawmakers, and Policymakers Do?**

### ***Issue Guidance Regulating On-Demand Employers***

As discussed above, federal anti-discrimination and consumer protection laws apply to broad categories of workers. Federal enforcement agencies, like the EEOC and the Consumer Financial Protection Bureau, should issue guidance and take on litigation to establish that most on-demand workers, even those classified as independent contractors by the companies they work for, are explicitly entitled to the protections of these laws.<sup>29</sup>

State and local agencies that enforce laws regulating criminal background checks for employment can similarly issue guidance regulating on-demand employment, as some have

when enforcing other employment protections. State agencies can also follow the example of the Oregon Bureau of Labor and Industries (BOLI), which in October 2015 issued an Advisory Opinion that found that Uber drivers are employees under Oregon labor law.<sup>30</sup>

### ***Reform Occupation-Specific and Licensing Procedures***

Any laws or policies that impose restrictions on a person's ability to hold a job based on a criminal record should do the following:

- Provide a clear and rational connection between the past criminal conviction and the work the applicant is seeking, such that the restriction is legitimately justified to protect consumers and the public, and
- Provide a clear and transparent process to allow jobseekers to understand what past convictions are disqualifying, what notice is required, and what appeals process exists to correct inaccurate records and produce evidence of rehabilitation.

More than one quarter of U.S. workers require a state license to practice their occupation, and passing a criminal background check is a common requirement to obtain a state license. Some of these occupations are in the on-demand economy. A state policy that seeks to reduce barriers to occupational licensing and employment should ensure that applicants are not prevented from receiving a license based solely on their criminal record, unless there is a conviction that directly relates to the occupation, and the licensing board should consider factors similar to what the EEOC recommends in its guidance for employers.<sup>31</sup>

These recommendations are consistent with the best practice recommended for for-hire drivers by Professors Matthew Duas and Pasqualino Russo in their report, "One Standard for All," which recommends that any criminal conviction that serves as a ban on driving have a "direct nexus" to the work of driving for hire. The report calls for clarity and transparency around what offenses disqualify a driver, how long those offenses will be a barrier to working, and recommends that drivers should have an opportunity to correct any inaccuracies in their criminal record, and to offer evidence of rehabilitation.

### ***Ensure Protections Apply Regardless of Worker Classification***

A state or local policy that applies to workers in the on-demand economy, such as drivers or home care workers, should be written broadly to provide workers classified as independent contractors with labor protections. For example, they should follow the lead of San Francisco, New York City and other jurisdictions where fair-chance hiring laws expressly cover employees *and* independent contractors.

Similarly, state or local policies should not explicitly define whole categories of workers as independent contractors, as some states legislatures did in 2015 and continue to consider in 2016, in order to exclude them from protections available to employees. For example, Uber and other ride-hailing companies have supported efforts in a number of states to erase or limit the obligations of transportation network companies to comply with state labor standards or contribute to workers' compensation or unemployment compensation funds. They have been successful in some states.<sup>32</sup>



---

**Regardless of whether a company classifies its workers as employees or independent contractors, it should apply fair-hiring standards to all applicants.**

---

When it comes to fair consideration of background checks, states and localities can take an important step to open work opportunities by adopting fair-hiring policies that mirror some of the strongest ones in the country, such as in New York City, San Francisco, and Philadelphia, which apply the protections of their laws to almost all workers, regardless of whether they are employees or independent contractors. Policymakers should also ensure that these fair-hiring protections are not preempted or undermined by other laws that impose criminal records exclusions for specific classes of workers, such as TNC drivers or workers that require an occupational license.

## **Conclusion**

---

Regardless of how a company classifies its workers—as employees or independent contractors—it should apply fair-hiring standards to all applicants. These standards should comply with anti-discrimination and consumer protection laws, to ensure that job applicants with records get fair consideration and are not left behind by opportunities in the on-demand economy. By not unnecessarily and unfairly closing the door to would-be workers with records, on-demand companies can provide expanded work opportunities to a population of jobseekers that faces steep barriers to employment. In addition, policymakers should take necessary steps to pass policies and issue guidance to ensure that new opportunities for work do not leave out a large category of jobseekers already struggling with access to jobs. ■

*The National Employment Law Project (NELP) aspires to build an economy that, in its rules and rewards, embodies and advances principles of inclusion and fairness, justice, sustainability, and shared prosperity. NELP’s “Rights on Demand” series focuses on issues confronting workers in the on-demand economy, as part of our broader campaign to ensure that all workers, regardless of how their employers classify them, receive fair wages and benefits in safe and healthy work environments.*

## ENDNOTES

---

- <sup>1</sup> JP Morgan Chase, “Paychecks, Paydays, and the Online Platform Economy Big Data on Income Volatility,” (Feb 2016), <https://www.jpmorganchase.com/corporate/institute/document/jpmc-institute-volatility-2-report.pdf>.
- <sup>2</sup> NELP, “Employers in the On-Demand Economy: Why Treating Workers as Employees is Good for Business,” (Mar 2016), <http://www.nelp.org/publication/employers-in-the-on-demand-economy-why-treating-workers-as-employees-is-good-for-business/>.
- <sup>3</sup> *E.g., Gillette v. Uber Technologies*, information available at <http://gbdhlegal.com/cases/mohamed-et-al-v-uber-technologies-inc/>; the consolidated complaint has been designated *In Re Uber FCRA Litigation*, Case No. 14-cv-05200-EMC. In mid-June, it was announced that this case had settled for \$7.6 million. Y. Peter Kang, “Uber Reaches \$7.5M Deal Over Driver Background Checks,” Law360, (Jun 15, 2016).
- <sup>4</sup> See section on disparate impact discrimination and criminal records, and arrest and conviction disparities by race, EEOC Enforcement Guidance, Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, (April 25, 2012), [https://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm). NELP, Center for Community Change, “The Wild West of Employment Background Checks” (Aug 2014); NELP, “Faulty FBI Background Checks for Employment” (Dec 2015).
- <sup>6</sup> *Gillette v. Uber Technologies*, <http://gbdhlegal.com/cases/mohamed-et-al-v-uber-technologies-inc/>.
- <sup>7</sup> Some states also have laws prohibiting discrimination in the employment context, and extend their discrimination protections to people with records. *E.g.*, New York’s Correction Law 23-A provides job applicants with criminal records with protections from employment discrimination; *See* <https://www.labor.ny.gov/formsdocs/wp/correction-law-article-23a.pdf>. In 2016, California’s Department of Fair Housing and Employment proposed regulations on the consideration of criminal records in employment. *See* <http://www.dfeh.ca.gov/res/docs/Council/2016-04-07-Meeting/AttachD-ProposedRegConcerningUseCriminalHistoryinEmploymentDecisions.pdf>.
- <sup>8</sup> “Details on Safety,” Uber Newsroom, accessed June 2, 2016, available at <https://newsroom.uber.com/details-on-safety/>.
- <sup>9</sup> April 21, 2016 email and June 9, 2016 conversation with Yvelisse B. Pelotte, Staff Attorney, Community Legal Services of Philadelphia, describing the experience of a client of Community Legal Services. The client prefers his name not be used because his arrest record was ordered expunged in May 2016, and he would like to move on in his life without the stigma of his arrest record. Deliv rejected her client in August 2015, and Lyft in November 2015.
- <sup>10</sup> April 27, 2016 email, with attached email from Uber, from Kathleen Lockwood, Legal Fellow, Southern Coalition for Social Justice in North Carolina, describing the experience of someone seeking legal services.
- <sup>11</sup> NELP, “Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies,” (April 28, 2016), <http://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/>.
- <sup>12</sup> San Francisco Office of Labor Standards Enforcement, Fair Chance Ordinance Overview, available at <http://sfgov.org/olse/fair-chance-ordinance-fco>. The law prohibits employers from considering a conviction that is more than seven years old (with certain exceptions), and requires employers to give an applicant the opportunity to correct inaccuracies in his or her record and to provide evidence of rehabilitation or other mitigating factors, before the employer can refuse to hire the person based on his or her record.
- <sup>13</sup> Title 8 of the Administrative Code of the City of New York, Chapter 1 - Commission on Human Rights, § 8-102, <http://www.nyc.gov/html/cchr/html/law/nyc-human-rights-ch1.shtml>. Employers must wait until they have extended a conditional offer of employment before asking about the individual’s record and must follow certain procedures if they refuse to hire someone with a record, such as considering the relatedness of the conviction to the job, how long ago the crime occurred, and evidence of rehabilitation.
- <sup>14</sup> Fair Credit Reporting Act, 15 U.S.C. § 1681, <http://www.consumer.ftc.gov/sites/default/files/articles/pdf/pdf-0111-fair-credit-reporting-act.pdf>. The credit reporting agency must maintain accurate records and correct inaccurate or incomplete information in an applicant’s report and may not report arrests that date back more than seven years. Before requesting the background check report, the prospective employer must obtain written permission from the applicant.
- <sup>15</sup> CCRC, “Federal regulation of criminal background checking,” commentary by Michelle Natividad Rodriguez. Recently, the Consumer Financial Protection Bureau has taken action against background check companies that violate FCRA. *See* “CFPB Takes Action Against Two of the Largest Employment Background Screening Report Providers for Serious Inaccuracies,” October 29, 2015 press release, <http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-two-of-the-largest-employment-background-screening-report-providers-for-serious-inaccuracies/>.
- <sup>16</sup> Federal Trade Commission, Advisory Opinion to Allison (02-23-98), (Feb 23, 1998), <https://www.ftc.gov/policy/advisory-opinions/advisory-opinion-allison-02-23-98>.
- <sup>17</sup> Dan Selcke, “Uber driver files class action over background checks,” <http://www.employmentlawdaily.com/index.php/news/uber-driver-files-class-action-over-background-checks/>; Meredith Desautels, “Uber sued over illegal background checks and employee policies,” <http://www.lccr.com/blog/uber-sued-illegal-background-checks-employee-policies/>.
- <sup>18</sup> *See, e.g.*, San Francisco Chronicle, “Uber settles lawsuit with SF, LA over driver background checks,” (April 7, 2016), <http://www.sfgate.com/business/article/Uber-settles-lawsuit-with-SF-LA-over-driver-7235244.php>; Matthew W. Daus & Pasqualino Russo “One Standard for All: Criminal Background Checks for Taxicab, For-hire, and Transportation Network Company (TNC) Drivers,” (May 2015), <http://www1.cuny.edu/mu/forum/2015/05/27/utrc-one-standard-for-all/>.
- <sup>19</sup> According to the Property Casualty Insurers Association of America, as of May 3, 2016, 33 states have established regulations for transportation network companies (TNCs). *See* list of states at

- 
- <http://www.pciaa.net/industry-issues/transportation-network-companies>. Also see “Map of state-level ridesharing laws” from R Street at <http://www.rstreet.org/tnc-map/>.
- <sup>20</sup> Matthew W. Daus & Pasqualino Russo “One Standard for All: Criminal Background Checks for Taxicab, For-hire, and Transportation Network Company (TNC) Drivers,” (May 2015), <http://www1.cuny.edu/mu/forum/2015/05/27/utrc-one-standard-for-all/>.
- <sup>21</sup> See NYC Taxi & Limousine Commission, “For-Hire Vehicle Driver’s License Application Guide,” [http://www.nyc.gov/html/tlc/downloads/pdf/fhv\\_license%20guide\\_sbs.pdf](http://www.nyc.gov/html/tlc/downloads/pdf/fhv_license%20guide_sbs.pdf).
- <sup>22</sup> For example, if the driver was, in the last three years convicted of: driving a TLC licensed vehicle while intoxicated or impaired; bribery, fraud, or material misrepresentation; threats, harassment, abuse, or use of physical force; possession of a weapon in a TLC- licensed vehicle. See NYC Taxi & Limousine Commission, “For-Hire Vehicle Driver’s License Application Guide,” [http://www.nyc.gov/html/tlc/downloads/pdf/fhv\\_license%20guide\\_sbs.pdf](http://www.nyc.gov/html/tlc/downloads/pdf/fhv_license%20guide_sbs.pdf). However, the new driver application form asks applicants if they have been convicted of *any* felony or misdemeanor, then states: “A conviction does not necessarily mean you will not get a license. Factors such as the nature of the offense, the amount of time that has passed since the conviction and your age at the time of the conviction will be considered,” citing Article 23-A of the New York State Corrections Law. See “Driver New Application and Checklist,” page 4, [http://www.nyc.gov/html/tlc/downloads/pdf/driver\\_new\\_app\\_checklist\\_partb.pdf](http://www.nyc.gov/html/tlc/downloads/pdf/driver_new_app_checklist_partb.pdf). See also, discussion of the required nexus between the conviction and driving on pages 21-22 of “One Standard for All: Criminal Background Checks for Taxicab, For-hire, and Transportation Network Company (TNC) Drivers,” *supra*, n. 20.
- <sup>23</sup> See California Public Utilities Commission Transportation License Section, “Basic Information for Transportation Network Companies and Applicants,” [http://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/Licensing/Transportation\\_Network\\_Companies/BasicInformationforTNCs\\_7615.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Licensing/Transportation_Network_Companies/BasicInformationforTNCs_7615.pdf).
- <sup>24</sup> San Francisco Municipal Transportation Agency, “How to Become a Taxi Driver,” <https://www.sfmta.com/services/taxi-industry/become-taxi-driver>.
- <sup>25</sup> See Matthew W. Daus and Pasqualino Russo “One Standard for All: Criminal Background Checks for Taxicab, For-hire, and Transportation Network Company (TNC) Drivers,” (May 2015), <http://www1.cuny.edu/mu/forum/2015/05/27/utrc-one-standard-for-all/>.
- <sup>26</sup> “Uber, Lyft Halt Austin Service After Losing Vote,” USA Today (May 9, 2016) <http://www.usatoday.com/story/money/cars/2016/05/08/uber-lyft-halt-austin-service-after-losing-vote/84119554/>.
- <sup>27</sup> To our knowledge, Uber has not made a written policy publicly available. See Tracy Lien, “Uber will give people whose felonies have been reduced to misdemeanors a chance to drive,” Los Angeles Times, (Jan 13, 2016), <http://www.latimes.com/business/technology/la-fi-uber-felons-20160113-story.html>.
- <sup>28</sup> Uber Newsroom, “Details on Safety,” (July 15, 2015), last updated May 2, 2016, <https://newsroom.uber.com/details-on-safety/>. Last checked June 3, 2016.
- <sup>29</sup> With regard to the EEOC specifically, we urge the agency to issue guidance to reflect the employment relationships that govern the on-demand workforce, thus updating its 1991 guidance on the scope of the “employment agency” coverage and its 1997 guidance on coverage of “contingent” workers under Title VII (EEOC Notice #915.002, dated December 3, 1997, <https://www.eeoc.gov/policy/docs/conting.html>).
- <sup>30</sup> Oregon Bureau of Labor and Industries press release, (Oct 14, 2015), [https://www.oregon.gov/boli/SiteAssets/pages/press/10\\_14\\_15\\_BOLI%20issues%20Advisory%20Opinion%20on%20Employment%20Status%20of%20Uber%20Drivers.pdf](https://www.oregon.gov/boli/SiteAssets/pages/press/10_14_15_BOLI%20issues%20Advisory%20Opinion%20on%20Employment%20Status%20of%20Uber%20Drivers.pdf). The Advisory Opinion is available at <http://media.oregonlive.com/commuting/other/101415%20Advisory%20Opinion%20on%20the%20Employment%20Status%20of%20Uber%20Drivers.pdf>.
- <sup>31</sup> NELP, “Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records,” (April 26, 2016), <http://www.nelp.org/publication/unlicensed-untapped-removing-barriers-state-occupational-licenses/>; NELP, Council of State Government Justice Center, and the National Reentry Resource Center, “The Consideration of Criminal Records in Occupational Licensing,” (Dec 2015), <http://www.nelp.org/content/uploads/TheConsiderationofCriminalRecordsinOccupationalLicensing.pdf>.
- <sup>32</sup> For example, Arkansas passed a law in 2015 that specifies that TNC drivers are independent contractors, not employees. This and other Arkansas laws makes clear that TNC companies do not need to provide workers compensation and that these drivers classified as independent contractors are not subject to minimum wage or gender-based wage discrimination protections. Arkansas Act 1050 (2015). Indiana, North Carolina, and Ohio also passed laws in 2015 that either outright define TNC drivers as independent contractors or create a presumption of independent contractor status for TNC drivers, and deny basic workplace protections to those same drivers. Indiana Pub.L. 175 (2015); North Carolina SB 541 (2015); Ohio Sub. H.B. 237 (2015).