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Attorneys for Plaintiffs Robina Contreras and Gabriel Ets-Hokin on behalf of themselves and all others similar situated, and in their capacity as Private Attorneys General Representatives

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ROBINA CONTRERAS, GABRIEL ETS-HOKIN on behalf of themselves and all others similarly situated, and in their capacity as Private Attorneys General. Representatives

Plaintiffs,

v.

ZŪM SERVICES, INC.,

Defendant.

Case No. 19STCV43062

DECLARATION OF GABRIEL ETS-HOKIN IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEE, COSTS, EXPENSES, AND SERVICES AWARDS

Hearing Date: March 25, 2022
Hearing Time: 9:00 am

I, Gabriel Ets-Hokin, hereby declare and state as follows:

1. I have personal knowledge of the facts set forth in this declaration.

2. I worked as a Zūm driver in Oakland, California, from approximately June 24, 2019, to October 2019.

3. I served as a lead plaintiff in the class action and Private Attorneys General Act case, Contreras v. Zum Services, Inc. (Los Angeles Superior Court) Case No. 19STCV43062. I was added to this case as a lead plaintiff when the First Amended Complaint was filed on March 23, 2020.

4. I decided to join this class and PAGA case as a lead plaintiff because I feel like Zūm, and other similar "gig-economy" companies are misclassifying drivers like myself as independent contractors in order to avoid paying for things like minimum wage, overtime, expense reimbursement for my phone and the car that I use to pick up riders, as well as other things that employees are typically entitled to in California. I wanted to make sure that drivers like myself are justly compensated through this class action suit.

5. Through my work on the Zūm case, I provided my attorneys with information relating to my work for Zūm, including how Zūm's platform works, its pay practices, and its control over drivers' day-to-day work. I extensively helped my attorneys with the preparation for the Plaintiffs' Opposition to Defendant's Petition to Compel Arbitration and Stay Proceedings. I was especially involved in working with my attorneys to make sure they understood how drivers like myself signed up for Zūm and why it was so difficult for drivers to access and read the Terms of Service page. I also spent a lot of time collaborating with my attorneys on our Petition for Writ of Mandate that was filed on August 13, 2020 challenging this Court's Order compelling my and other drivers' claims to individual arbitration. Plaintiffs' Writ Petition was ultimately successful. See Contreras v. Superior Court of Los Angeles County (2021) 61 Cal.App.5th 461. I believe my contributions to these filings ultimately helped put pressure on Zum and helped us reach a favorable settlement.

6. In addition to providing my attorneys with information regarding my work for Zūm, I also spoke and corresponded regularly with my attorneys and their staff about the case and about settlement negotiations. I played a very active role in understanding the terms of the settlement and what it meant for other California Zūm drivers who will benefit from it. I consulted with the attorneys during the mediation and settlement process and played a very integral part in valuing the expense reimbursement claim. I estimate that I cumulatively spent 10 or more hours in total talking with my attorneys and their staff regarding the case and negotiations with Zūm.

7. As part of my role as a class representative, I have felt that it was my duty to support the case in any way that I can. I have researched many of the issues that face "gig economy" workers on my own so I can better understand the technical aspects of my case and how it relates to all of the recent changes in the independent contractor misclassification laws, including the Dynamex decision, Assembly Bill 5, and Proposition 22.

8. I have also readily provided information to my attorneys whenever they needed it and have assisted in spreading the word about the case. I estimate that I have spent over 20 hours in total researching Zūm and corresponding, posting on social media, and speaking with other drivers about the case.

9. I have also been an outspoken advocate against the gig economy's violations of California law. I have written for The RideShare Guy blog, where I share this information with other drivers. Two of my main publications are: "What to Expect with Coming Independent Contractor Legislation" where I expand on the ABC test and Prop 22 effects (a true and correct copy is attached hereto as **Exhibit A**), and "All the Details on the Minimum Wage Uber and Lyft Want to Pay Drivers" (a true and correct copy is attached hereto as **Exhibit B**). I have brought these issues to my attorneys' attention for its relevance in the case against Zūm.

10. I have known all along that the class action would have my name on it and I have been concerned about how this might affect prospects with future employers. This is a risk that I

have been willing to take because I think that it is important that Zūm answer for their misclassification of drivers on a class-wide basis.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 17, 2022 in Oakland, California.

By: Gabriel Ets-Hokin
Gabriel Ets-Hokin

EXHIBIT A

RIDE SHARE GUY

Driver's Corner

What to Expect with Coming Independent Contractor Legislation

By Gabe Ets-Hokin October 26, 2021
6 Comments

It seems like worker classification is in the news a lot, with the government firing one salvo to make drivers employees, and the companies firing another salvo to pass laws or ballot initiatives like California's Prop 22 that makes drivers contractors.

The Trump administration was pro independent contractor status, but now the Biden administration has changed course, and the Democratic-controlled Congress has revived talk of the PRO Act, which could supersede some state laws. What does it all mean to you? Senior contributor Gabe Ets-Hokin puts on his legal and policy-analysis cap to sort it out.

Back in 2014, when I (and Harry and maybe a lot of you, too) first signed up to do Uber, Lyft and the other rideshare services, it looked like a quick and easy way to be in business for ourselves. That we were independent contractors seemed obvious—we provided our cars and labor, while the gig company provided dispatching, insurance and payment processing.

It was much more like AmWay or Mary Kay than driving for an airport shuttle service or taxi company, especially when it came to getting paid—it wasn't a salary or hourly rate. Instead, we got 80 (later 75) percent of what the customers paid, plus tips.

The years passed, and that distinction got muddier. The companies, stumbling towards some kind of path to profitability, started separating what the customers charged from what we got paid (ahem, upfront pricing!)—instead, we were increasingly getting something that looked like an hourly

(or minutely) rate for the “booked time” we were either going to get the passenger or had the passenger in the car.

Bonuses based on what times we drove moved us towards working certain hours, and a passenger-oriented rating system combined with instant deactivations based on uninvestigated claims—often false or retaliatory—tightened company control over how drivers performed their jobs. Were we still independent contractors?

If it walks, quacks and drives like a duck, it's a duck. Whether *you* think you're an independent contractor or not isn't really important. Just because Uber and Lyft say—over and over—that you're an independent contractor has more influence, but it still isn't the deciding factor. Who gets to decide are the regulatory and judicial institutions tasked with regulating the labor market, and the verdict is overwhelmingly, unquestionably, that we're employees—*like it or not.*

ABC—Easy as 1-2-3?

As we covered in our previous article on AB5, the ABC test tried to codify a California Supreme Court design called the Dynamex Case. As we mentioned in our previous article;

From The Verge,

The California Supreme Court ruled on Monday in favor of workers for a document delivery company called Dynamex Operations West that were seeking employment status. The drivers for the delivery service first brought their case over a decade ago, arguing that they were required to wear the company's uniform and display its logo, while providing their own vehicles and shouldering all the costs associated with the deliveries.

As part of this decision, the CA Supreme Court also laid out an ‘ABC Test’ to help businesses determine whether workers are employees or independent contractors.

The ABC Test

To hire an independent contractor, businesses must prove the following (Harry's take is below in italics):

(A) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact.

(B) that the worker performs work that is outside the usual course of the hiring entity's business

(C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

In January 2020, AB5 was officially put into place. Gig companies fought the implementation of the law all year, and by November 2020, California voters faced a vote on the fate of Proposition 22, which was clearly a rebuke to AB5.

Read more about AB5 here.

Proposition 22

Proposition 22 is another side of the AB5 coin. As we said in our original Proposition 22 article:

AB5 and Prop 22 are mostly opposing forces; however, ***Prop 22 would likely not have come about if AB5 had not become a law.***

Prop 22 is proposing a new law that has language specifically addressing rideshare and gig economy companies and how they can classify their workers in relation to AB5 legislation.

The PRO Act is more along the lines of AB5 vs. Proposition 22 – and this likely has Uber (and other gig companies) worried.

As we all know, Prop 22 passed in California, which meant rideshare and delivery drivers would s would **be considered independent contractors in California – not employees.**

Read more about Proposition 22 here.

When the Going Gets Weird, the Weird Turn PRO (Act)

The Trump administration was clearly on board with Uber and Lyft's pro-independent-contractor agenda, but no more. New Labor Secretary (and former mayor of Boston) Marty Walsh has openly stated that "gig workers should be classified as employees," and earlier in May the Labor Department tossed out a Trump-era rule which will make it harder for companies to classify employers as independent contractors for federal labor-law purposes. Note that this won't change employment status for workers—it's more a matter of sorting out jurisdiction for various regulations.

Right now there are two important bills in the US Congress that could send gig workers on the path to employee status. The first is the **Protect the Right to Organize (PRO) Act**, HR2474. Passed by the House of Representatives in 2020, the bill proposes to amend the National Labor Relations Act (NLRA) to (among a lot of other things) broaden the class of employees covered by the 86-year-old act. The broadening mechanism? A concise 70-word ABC test that's almost word for word the same as AB5's.

According to NPR, here are five provisions in the PRO Act:

1. End state Right to Work laws
2. Employer interference and influence in union elections would be forbidden
3. Newly certified unions could seek arbitration and mediation to settle impasses in negotiations
4. The PRO Act would prevent an employer from using an employee's immigrations status against them when determining terms of employment
5. Establish monetary penalties for companies and executives that violate workers' rights

If the PRO Act is signed into law, it would be harder for gig companies to keep workers from forming unions and going on strike, "just one step along the way" to restoring full employment rights to gig workers, according to noted labor attorney Shannon Liss-Riordan (Liss-Riordan's law partner, Harold Lichten, was the first to argue for the implementation of the ABC test in New Jersey, which led to the California Supreme Court adopting it in 2018, in turn leading to the legislature codifying it with AB5).

Not only would it extend NLRA rights to drivers, it would also require all gig workers covered by a union to pay for collective bargaining, prohibit gig companies from forcing workers to agree to binding arbitration agreements, and allow strikes to support third-party unions. Clearly not a good thing for a gig company's peace of mind.

The PRO Act has gotten the attention from the press, but Liss-Riordan alerted me to another bill, Washington Senator Patty Murray's **Worker Flexibility and Small Business Protection Act** (S4738). This bill would amend the Federal Fair Labor Standards Act (FLSA) to extend federal minimum wage

and overtime protections to gig workers, as well as leveling the playing field for small businesses by making CEOs and investors individually liable for worker misclassification.

The federal minimum wage is $7.25, but it's just a matter of time before it's raised to something closer to a living wage. Regardless of the amount, it's better protection than laws like Proposition 22, which only guarantee minimum pay for *"engaged"* time, not the time spent waiting for a ride or dead-heading to a busier place to work, about 33 percent for the average driver.

Political conservatives and gig company shareholders don't like either of these bills, obviously—they'll tell you they're nothing short of communism and will destroy Life as We Know it. Labor organizers and progressive politicians will say they're necessary to keep us from sliding into a dystopic future where gig work will be only a few steps above slavery.

I think the truth lies in the middle, but it's all academic—both bills are dead because the US Senate's filibuster system prevents them from coming to a vote. Short of getting 10 more Democratic senators (as if!) or tossing out the filibuster rule (ditto!), that's not happening.

Now What?

Uber and Lyft would probably *love* some kind of blanket federal law defining us as independent contractors now and for all time, or at least get a solid Supreme Court ruling, but there isn't a good chance of either of those things happening. A conservative, easy-to-reach definition of an independent contractor, perhaps similar to the rule Uber and Lyft use, which is "independent contractors are whatever *we* say they are," won't get through the Senate for the same reasons opposing bills die sad lonely deaths.

And strangely, even though the Supreme Court now has a 6-3 conservative majority, it tosses relevant cases back to the lower courts, most recently just earlier this year. It's hard to figure exactly why, since the Court seldom explains why it won't hear a case, but "originalist" justices believe less is more when it comes to adjudicating.

The path open to Uber, Lyft and company is to forge ahead state by state. They already secured their largest market, California, with Prop 22, and that model will likely be the template for any other troublesome state.

Massachusetts may be next. State Attorney General Maura Healey sued Uber and Lyft for employee misclassification last year and the state court upheld the suit—which the companies will likely lose.

But that's not the end of the world for them—they'll fight to the bitter end in the courtroom and likely appeal up to the Supreme Court—as Massachusetts has a ballot-initiative process similar to California. Expect to see something a lot like Proposition 22, except maybe with the word "wicked" in the title.

Update August 2021: *That ballot measure is coming to Massachusetts, albeit without 'wicked' in the title. The Massachusetts Coalition for Independent Work, an organization similar to the Uber and Lyft funded California organization, put forth a proposal similar to Prop 22 in August 2021.*

There's already a suspiciously well-funded "grass roots" organization called the Massachusetts Coalition for Independent Work, dedicated to "advocating for app-based platform workers" that sounds a lot like California's "Save App-Based Jobs and Services."

What Can You Do?

If you're happy with how your gig companies treat you, then fine! No worries. If you do have a grievance—like you've deactivated unfairly, had tips or pay withheld from you, been harassed, slandered or threatened by passengers or just feel these companies represent the paragon of unfeeling, rapacious greed, you can likely recover (lots of) damages. We can't give you legal advice, but there are *plenty* of lawyers who can, including Liss-Riordan and others we've covered on this site.

Gig Worker Regulations: State by State

Here's what we know about laws regarding employee misclassification around the country, with the type of employment classification test it uses in parentheses. If you find errors, please let us know in the comments or by email—we're not legal or political experts and may have gotten some things wrong or overlooked developments in your state.

We didn't list each state, just the largest ones, so again, please let us know if you think your state has significant developments. In states where there is no automatic determination of employment status and not a lot going on in litigation, my sense is Uber and Lyft have been quietly fighting or settling these suits—much cheaper than lobbying a hostile legislature or getting a ballot initiative passed.

California: (ABC) The Golden State is America five years from now in a lot of ways, and Prop 22 may be the model for the "third class" of worker classification. Still, Liss-Riordan wants to remind you that even though 22 has made you forever and always an independent contractor, you may still be able to recover wages and benefits due from before December 2020, when it went into effect.

Colorado: ('right-to-control' common law test) New legislation in effect January 1, 2022 will create a "rebuttable presumption" that a driver is an employee. Look for a ballot initiative designating drivers as contractors soon.

Massachusetts: (ABC) This looks a lot like California—state law is firmly on the employee side, so to avoid employment classification, the companies will likely sponsor some kind of 22-like ballot proposition for the 2022 election.

Update August 2021: The ballot measure for a Prop 22 clone is coming! The new ballot measure was put forward by the Massachusetts Coalition for Independent Work (similar to the one created in California) and offers a similar proposal to Prop 22.

New Jersey: (ABC) Pending lawsuits against gig companies may yield huge judgments, and the governor signed a raft of laws toughening penalties and enforcement against misclassification violators. Citizens can't put initiatives on the ballot in New Jersey, and the labor-friendly legislature would be unlikely to put something Prop 22-ish directly in front of the voters. Fans of watching Uber and Lyft squirm should keep an eye on New Jersey.

New York (common law): There's pending legislation to enact an AB5-like law to codify an ABC test in New York, but there's plenty of opposition from both right and left. There is no provision for citizen-launched ballot initiatives in New York, and the legislature is pretty labor-friendly, so this could be a tough nut for the gig companies to crack.

New York City actually has the strictest minimum wage law, and while at the time Uber and Lyft disagreed with the ruling, a report in 2020 showed driver pay increased without any significant fare increases on riders.

Illinois (ABC test): Workers are presumed employees here, and the left-leaning legislature is unlikely to pass legislation making drivers contractors. That's probably why, last year, Lyft spent $1.2 million dollars to create a PAC called "Illinoisans for Independent Work." That money was spent mostly on mailers supporting Democratic state legislature candidates–sneaky, no? Ballot measures aren't really a thing in Illinois, so look for some kind of Uber/Lyft-sponsored law to crop up.

Florida ('right to control' common law test): There seems to be pending misclassification lawsuits in Florida, but not much action from Florida's GOP-dominated state government.

Texas (common law): In response to Austin and other jurisdictions imposing regulations that made Uber and Lyft leave that city in a huff, the legislature and governor passed HB100 in 2017, which declares TNC drivers independent contractors "for all purposes" if "the company and the driver agree…"

Pennsylvania (variety of common-law tests): Gig companies are likely very concerned about Pennsylvania. It's the state where UberBLACK drivers filed a misclassification lawsuit, the same lawsuit mentioned above that was denied a hearing by the US Supreme Court. It will now go back for trial, and if the court finds for the drivers, will likely be controlling law—unless the legislature does something to redefine gig workers. In PA, ballot measures can only go before voters with a majority vote from the legislature.

Ohio (right-to-control common-law test): Uber and Lyft were miles ahead of the labor lawyers when, in 2015, they basically wrote their desired legislation, which was passed and signed into law. It firmly declares that not only are TNC drivers not employees, they're not even *agents*, shielding the TNCs from all kinds of liability.

Washington (common law): Washington currently has two bills pending to make the ABC test state law. I didn't see any successful lawsuits against Uber or Lyft, but drivers are guaranteed a minimum wage in Seattle—the second city after New York to pass such a law. Washington citizens are allowed to place initiatives on the ballot, so look for a 22-like thing happening here.

Georgia (modified ABC): A bill to designate all TNC drivers as contractors died in the state legislature in 2018, but there isn't much in the way of misclassification lawsuits against Uber or Lyft.

North Carolina (common law): Here the state government is tough on employee classification, and also the home of one of the oldest federal employee misclassification lawsuits, *Hood v. Uber,* which was settled in 2019. However, the law that legalized Uber and Lyft in the state in 2015 creates a rebuttable presumption that drivers are contractors, a presumption that's likely difficult to overcome in arbitration.

Michigan (common law): Like many other states, Michigan passed a law in 2017 that makes app-based workers contractors drivers if the "company and the driver agree in writing."

Arizona (common law): Like a lot of states with pro-business legislatures, in 2016 Arizona passed a law creating a presumption of independent contractor status if the parties agree in writing.

Gig Worker Regulations: By Country

We looked at a few countries where the battle between the Uber Goliath and local-regulator Davids seemed interesting and indicated where things are headed when it comes to regulating rideshare companies.

What we found grabbed us because no matter where you go, the result is the same: **by almost any legal definition, regardless of country, when an employment test is applied to gig workers, we're generally found to be employees** (Australia and the USA are notable exceptions). And just as predictably, Uber aggressively lobbies local and national lawmakers in hopes of altering existing law to get its desired results. Here are some specifics.

Canada

Like the US, Canada's labor laws are a patchwork that varies from province to province, and employment classification is even murkier than south of the (Canadian) border. Despite the confusion, gig workers are still considered "dependent contractors" under Canadian law, most notably by the Canadian Supreme Court.

Canada's more labor-friendly environment and lack of a ballot-initiative process will make Uber and other gig-work companies' quest to keep labor costs minimal an uphill battle. That hasn't stopped Uber and others from heavily lobbying provincial legislatures and government officials to change labor laws in their favor.

Holland

Uber was smacked with a big blow recently when the Court of Amsterdam ruled that not only are Uber drivers employees, they're even covered by an existing collective-bargaining arrangement that will mean the 4,000 or so drivers affected by the ruling are due not just benefits and increased pay, but back pay as well.

Uber, of course, has appealed the ruling—that means it will go eventually to the Dutch supreme court and then to the European Union's CJEU, the European Union's equivalent of the US Supreme Court.

And that's why it doesn't look good for Uber in any EU jurisdiction. In 2017, **the CJEU ruled that Uber was a transport company, not just a "technology platform"** linking passengers to transport providers. That final verdict means that the CJEU will allow individual EU countries to treat Uber as an employer in employment-misclassification cases and other relevant matters.

Germany

If you've been to Germany, you'll know folks there like to follow the law and don't look too kindly on companies that swagger in and insist on doing their own thing. A huge obstacle to a service like Uber in Germany (and Spain, Belgium, and Greece) is the "return to garage" rule, which requires a limo or taxi driver to return to a company garage or base before picking up their next passenger. That's one reason why since 2017 (when the EU ruled Uber has to obey local transport regulations), Uber is generally a marketplace sort of app, where the passenger uses the Uber app to book limos or taxi rides.

The rides are provided by taxi, limousine and airport-shuttle companies other than Uber, companies that employ their drivers and meet local regulations. Buying a 20-year-old hooptie and logging into the app the same day? Not going to happen in a German-speaking country, and though Uber is

predictably ramping up its lobbying efforts there, strong pro-union, pro-worker sentiment will likely keep upcoming legislation from changing the laws very much.

France

"They pretend to pay us and we pretend to work" is an old sentiment among French workers, indicating the cultural vibe towards employment in general. So it's no surprise the French Cour de Cassation, its highest court, classified Uber drivers as employees in 2020. More recently, a court found Uber guilty of unfair competition against Parisian cabbies.

Uber's appeals will likely not prevail, which will probably lead to a German-style Uber system for France (just don't call it German-style in front of a French person).

United Kingdom

Jolly Olde is no longer part of the European Union, but that hasn't lightened up the Crown's view of ridesharing apps like Uber. The UK Supreme Court ruled that Uber drivers are employees, not independent contractors, and amazingly, Uber agreed to abide by the ruling and pay minimum wage and provide benefits.

Except… Uber UK says it won't pay for wait time, which as any driver knows means Uber expects us to work 30 or 40 percent of app-on time for free, making minimum wage requirements functionally meaningless. It's clearly illegal to do this to workers—can you imagine how a firefighter union would respond to a city only paying when the firefighters are actually fighting fires?–but Uber's strategy is to do as it pleases and then drags things out in the courts as long as possible.

What Does it All Mean?

My hope in writing this is to give my fellow drivers an understanding of what federal, state and even international laws regarding employment status look like and how it affects them. If you feel entitled to compensation, this should give you a notion of if you can recover or not.

It's not an endorsement of the notion that we should all be employees—I'm under no illusion that the majority of us want that. **But what we *do* want is to be treated fairly and with respect by the companies we work for**, and being automatically and irrevocably declared independent contractors strips of almost all our collective bargaining power. We've all been treated like a meaningless nothing by the gig companies, but put 10,000 of us together, and they at least return our phone calls and invite us to meetings.

That's why, in California, we've noticed Uber taking back some of the things real independent contractors should have, like the right to set our own fares and know the destination and fare for trips before we accept them. That's why I'm against legislation declaring me a contractor, and for laws and regulations protecting my right to organize and protect my rights.

Drivers, what do you think about AB5, Prop 22, the PRO Act or any pending legislation in your state? Is there something we're overlooking or missed? Share your opinion below.

EXHIBIT B

RIDE SHARE GUY

Lyft Uber

All the Details on the Minimum Wage Uber and Lyft Want to Pay Drivers

By Gabe Ets-Hokin November 11, 2019
10 Comments

Recently, a new group calling itself 'Protect App-Based Drivers and Services' (PABDASA) launched a new website in an attempt to shift public perception against California Assembly Bill 5 (AB5). But what is PABDASA and will it benefit drivers? RSG contributor ***Gabe Ets-Hokin*** *breaks down what you need to know about PABDASA below.*

California Assembly Bill 5 (AB5), which goes into effect January 1, will reclassify most gig workers: workers for Uber, Lyft, Postmates, Grubhub, DoorDash and a myriad of others as employees, making these companies' paths to profitability much harder.

In response, Uber, Lyft and DoorDash committed $90 *million*, and Instacart and Postmates pitched in another $10 million, to sponsor a statewide ballot initiative to overturn it. I was curious: will pay increase or decrease? What kinds of benefits will they give us? Will it be a better deal than what we have now?

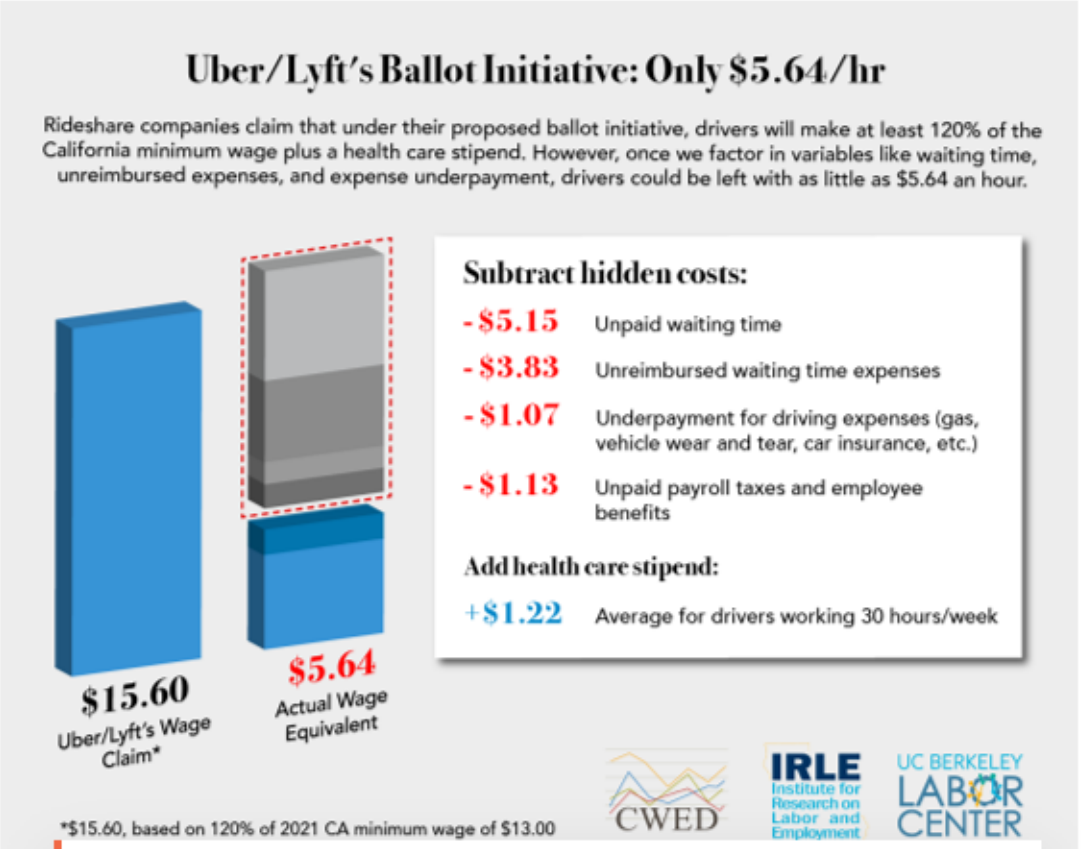
Luckily, on October 29, Protect App-Based Drivers and Services posted the text of PABDASA on its website. I'll go through the important sections with you and then let you know if I think we'll have a better deal under PABDASA or as employees.

Pay Under the Protect App-Based Drivers and Services Act (PABDASA)

Let's get right to the meatloaf: pay. After a flowery introductory section outlining the goals of the new law, and another section that reinforces the anti-*Dynamex* argument that the companies have made for years stating they don't have any *real* control over drivers, there's Article 3, Compensation. **It establishes that drivers shall always be paid a minimum that's greater than a "net earnings floor" and can always be paid more.**

Ken Jacobs and Michael Reich of the U.C. Berkeley Labor Center found driver earnings would be around $5.64 an hour, but they also deduct unpaid mileage reimbursment during wait times, unpaid employee benefits and underpaid mileage reimbursement. We here at Rideshare Guy think that ***before*** deducting for actual expenses, **you'll likely be guaranteed a minimum wage of $15-16 an hour** if you drive in a reasonably busy place during reasonably busy times. **Deducting the IRS mileage rate of 58 cents per mile can drop your pay to about $5 an hour if you drive 20 miles per working hour!** Drivers of high-maintenance gas-guzzlers, beware.

The main gripe we have with this U.C. Berkeley analysis is that they used the 58 cents per mile figure for a driver's costs, and that is a very conservative number. A used Prius might only cost a driver 20 cents per mile.

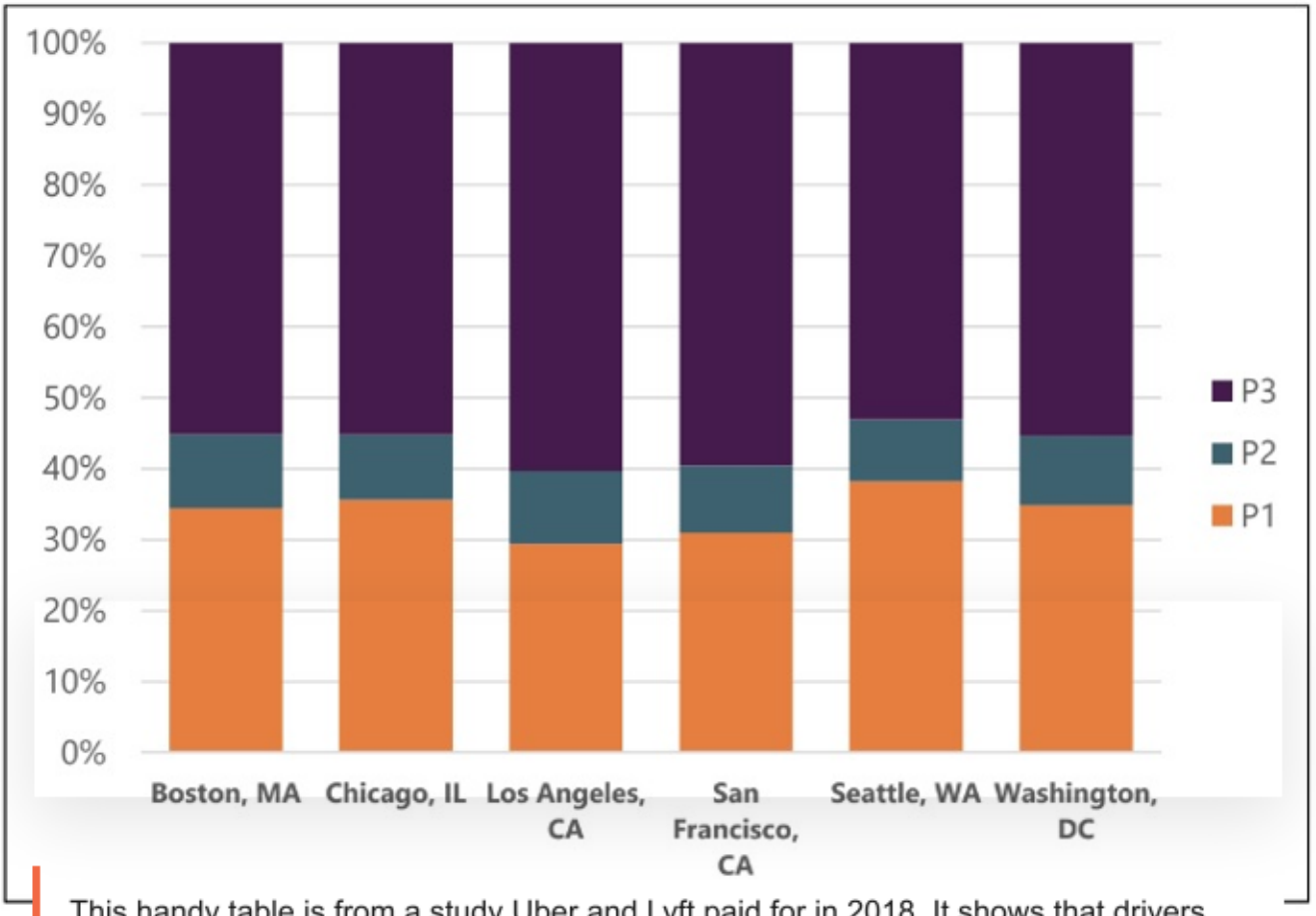


> Ken Jacobs and Michael Reich of the U.C. Berkeley Labor Center found drivers would only make $5.64 an hour under PABDASA. Your mileage may (literally) vary. Protect App-Based Services PR person Tracey Wells called the study "deceptive and flawed" without pointing out any specific errors. "You're a journalist," wrote Ms. Wells, "so you know the difference between opinion and unbiased reporting."

Uber and Lyft stridently maintain that PABDASA sets a floor, not a ceiling, so just as passengers *might* tip you, Uber and Lyft *might* pay you more. The floor is determined by multiplying the applicable minimum wage (for the city or county you pick up in) **by 120 percent** and ***adding*** **30 cents per mile**. Sounds good, right? It would be great…if they paid you from the second you made yourself available in driver mode to the moment you went offline. But they won't. Instead, **you'll be paid for your "engaged" time**, which starts when you accept a request and ends when you end the trip or delivery.

But how are we going to determine that number? If only Uber and Lyft had that data and made it freely available to scrappy RSG muckrakers. Oh wait! They did! In 2018.

Figure 3: Breakdown of TNC VMT by Phase for each Metro Region



> This handy table is from a study Uber and Lyft paid for in 2018. It shows that drivers are "disengaged" (AKA "Period 1," as you'd know from reading our articles about rideshare insurance) about a third of the time.

A report by high-end transportation consultants Fehr and Peers (paid for by Uber and Lyft) in 2018 revealed we're "disengaged"–logged into the app but with no requests–about a third of the time. So in San Francisco, for instance, where a 'grandfathered' driver is paid 73 cents a mile and 31 cents a minute, if we assume 66% engaged time, **you earn $21.96 per each hour you're online (on average)**. Of course, that doesn't include tips and bonuses.

PABDASA PAY SCALE COMPARISON				
Current Pay				
	San Francisco	Alameda County	Los Angeles	Bakersfield, CA
Per Mile	$ 0.73	$ 0.64	$ 0.85	$ 0.68
Time (Per minute)	$ 0.31	$ 0.22	$ 0.14	$ 0.13
Total hourly pay (engaged time)	$ 33.28	$ 25.75	$ 25.12	$ 21.40
Total hourly pay (66% engaged time)	**$ 21.96**	**$17.00**	**$ 16.58**	**$ 14.12**
Pay Under PABDASA				
Locality with *Projected* 2021 Minimum Wages	San Francisco ($16.36/hr)	Alameda County ($15/hr)	Los Angeles ($15/hr)	Bakersfield, CA ($14/hr)
Per Mile	$ 0.30	$ 0.30	$ 0.30	$ 0.30
Time (Per minute)	$ 0.33	$ 0.30	$ 0.30	$ 0.28
Total hourly pay (100% engaged time)	$ 25.63	$ 24.00	$ 24.00	$ 22.80
Total hourly pay (66% engaged time)	**$ 16.92**	**$15.84**	**$ 15.84**	**$ 15.05**
Percentage of current (66% engaged) hourly	77%	93%	96%	107%
Assumptions: Average driver completes 20 "engaged" miles per "engaged" hour and completes at least 25 "engaged" hours per week. Drivers are "engaged" roughly 2/3rds of the time, according to a study				

> Because there are some numbers I can't be 100% sure of, this may not be perfectly accurate, and I welcome you to double-check them and add your comments. If my assumptions are close, however, Uber and Lyft are the clear winners. The premise is that when you're waiting for a trip you're not "engaged," so you're only paid for "engaged" time.

Under PABDASA, if we assume 66% engaged time, you will earn less in some places, more in others, which is why I ginned up one of my world-famous spreadsheets to figure it all out. Is PABDASA better or worse? The answer is some of us will make more and some will make less.

In San Francisco, under PABDASA, drivers will earn at least $16.92 per hour assuming 66% engaged time. Note this is just the minimum pay, so if I'm averaging $21.96 per hour right now in SF without PABDASA, I'm not really sure how this would help me at all. And additionally, if my expenses are $3 per hour, I'm now actually making below minimum wage of $16.36 per hour in 2021.

To make this spreadsheet, I had to start with some assumptions. Primarily, I had to guesstimate how many miles an average driver completes while "engaged"–that is, while on the way to a pickup or while actually transporting the passenger. Under PABDASA, we won't get paid while the app is on unless we've accepted a trip.

I looked at five years of my own trip data, which shows I average 15 *paid* miles for every hour my apps are online. Since that number is from the actual trip mileage I get from Uber and Lyft reports, it doesn't include the time spent driving to the pickup, which PABDASA *would* pay us for.

I seldom drive more than five minutes to pick up a passenger, and my lifetime completed trip average is 3.3 an hour, so I decided to give PABDASA the benefit of the doubt and figure the average driver will complete about 20 miles per engaged hour. Of course, it's possible that in less-populated areas, a driver may do 25 or 30 miles per hour on average (especially if you're following a destination-filter strategy), but that seems extreme.

Benefits Under PABDASA

Under the Affordable Care Act, large employers must offer health-care coverage to 95 percent of their employees. That's no good for Uber/Lyft! PABDASA requires companies to pay full-time drivers about 83% of the premiums for a Covered California Bronze plan, which according to Protect App-Based Drivers and Services' press representative Stacey Wells' best guess is $367.36 a month. But it's not automatic: gig companies will provide a 50% stipend to its drivers if they work 15 or more engaged hours a week, 100% for more than 25.

Interestingly, you can double-dip if you work enough hours with two or more companies. That can be a double-edged sword, as it may restrict how much time you can spread between the two apps. So if you want to be assured of getting your *full* stipend, you'll likely have to choose one company over another. PABDASA requires companies to figure your hours over each quarter, so that could help; if you don't complete enough hours one week, you can make it up the next.

So to get this benefit–which works out to $367.36 a month, an estimate provided by Ms. Wells–you'll need to work at least 33 hours a week (25 hours plus 33 percent). Note that the companies *may* ask for proof you're enrolled in an ACA health-care plan. If you're on MediCal, MediCare, VA coverage or a spouse or family member's plan, you may not qualify for this stipend. Uber and Lyft *always* maintain that only a small percentage of its drivers work more than 10 hours a week, so we didn't calculate the extra $3 an hour a 120-hour-per-month driver might make from that.

Other benefits include disability and death/dismemberment insurance, but it's unclear if Uber/Lyft would pay the premiums. I think they would: not a bad little perk, but a fraction of what *actual* employees are due in California.

Flexibility Under PABDASA

Ironically, there's no section or article titled "Flexibility," the main thing the anti-AB5 argument has going for it. However, it does have an article declaring that "an app-based driver is an independent contractor and not an employee or agent with respect to his or her relationship with a network company if… the network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the app-based driver must be logged into the network".

It also gives us the right to refuse (nothing about cancelling) trips and work for other companies.

What Kind of Rights Will Workers Receive Under PABDASA?

As far as rights go, PABDASA is pretty light. App-based workers can't collectively bargain, aren't subject to the very-lengthy California Labor Code, and good luck lobbying the union-and-worker friendly California legislature: PABDASA is a jealous lover and requires a 7/8th (88%) majority for amendments. So if we decide we don't like the new law after a year or two, guess what? Tough luck. Raise your *own* $100 million war chest and go back to the voters, because you probably couldn't pass a bill in the California legislature proclaiming "ice cream is delicious" with a 7/8th majority.

It does make it a bit harder to deactivate gig workers, though. **It outlaws at-will termination and requires an appeal process**, protects against sexual harassment and mandates investigation of claims of wrong-doing. It also requires drivers to undergo (unpaid) safety training. It also codifies Uber and Lyft's policy of automatically deactivating any worker reported for possibly being under the influence of alcohol or drugs, as long as the reporter "reasonably suspects" that's the case.

What PABDASA Means for Drivers

Will PABDASA be good or bad for you? Here's the bottom line. California minimum wage will be $14 an hour when the proposed law takes effect in January 2021. That means a California Uber or Lyft driver, working for a typical rate now, will likely make a bit more than that…*before* you deduct your expenses, which could suck another $3-10 an hour out of your pocket.

Also, this is California legislation, so if you're in any other state it won't *directly* affect you, unless Uber and Lyft use it as a blueprint to change the law in your state.

The life and disability insurance is nice, but this kind of minimal coverage is cheap purchased a la carte. As for the appeals process and at-will deactivation protections, well, we've all had experiences with Uber and Lyft that tell us these things will likely give the companies the benefit of the doubt, like binding arbitration. I imagine Uber's appeals board will be staffed by some kind of AI, or worse, their current staff that answer the customer-service phone numbers. PABDASA has *no* language regulating or overseeing the appeal process, so I'd expect it to *not* favor drivers.

For the next 12 months, uninformed media as well as paid mouthpieces for Uber, Lyft and the delivery services will repeat the misleading and incorrect claim that PABDASA pays 120% of minimum wage. In fact, after vehicle expenses, **it will likely pay *less* than minimum wage** unless you have very low costs and a passenger in your car more than 66 percent of the time. And what about drivers who use Fair, Lyft Express Drive or other rental services?

To be fair, Ms. Wells pointed out a few things. First, PABDASA's language doesn't say Uber and Lyft have to pay us the minimum: they can pay us any amount over the payment floor. I agree, and if this passes, I don't expect our pay to immediately plummet to the new, lower amount. But I also think Uber and Lyft will eventually be forced to lower it as much as they can to avoid bankruptcy, even if the folks at those companies are as kind and benevolent as they want us to believe.That's because investors, board members and shareholders will demand squeezing us as much as possible so they can become profitable.

Ms. Wells also pointed out that Uber and Lyft just can't be expected to pay us while we're "not working." After all, she told me on the phone, we're "free to do anything we want" (I'm paraphrasing) in between pings. We could be writing a novel, or standing next to our Prius practicing our golf swing, or trying out one of the best gig jobs out there.
That's reasonable: in fact, maybe we should deduct Uber's software engineers a pro-rata amount of their annual salary while they're using the bathroom, enjoying a lavish company-provided catered meal or chatting with a co-worker and see how that goes over with *them.*
As written, PABDASA has lots of nice-sounding language but clearly benefits companies more than drivers.

Find the text of the proposed law here.

Drivers, what do you think about PABDASA and what it offers drivers?