

# Labor and Public Employees Committee

## JOINT FAVORABLE REPORT

**Bill No.:** HB-6343

**Title:** AN ACT CONCERNING A STUDY OF GIG WORKERS.

**Vote Date:** 3/25/2021

**Vote Action:** Joint Favorable Substitute

**PH Date:** 2/18/2021

**File No.:**

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### SPONSORS OF BILL:

Labor and Public Employees Committee

### REASONS FOR BILL:

Since they are classified as independent contractors, "GIG" drivers do not receive benefits given traditional job employees.

### RESPONSE FROM ADMINISTRATION/AGENCY:

None submitted

### NATURE AND SOURCES OF SUPPORT:

#### **BEVERLY BRAKEMAN, REGIONAL DIRECTOR, UNITED AUTO WORKERS, REGION 9A**

This bill ensures fair protections for gig workers. Certain types of gig workers such as driving for internet-based food delivery or ridesharing services may be classified as independent contracting because the work occurs outside of employers' physical locations. These workers are not legally entitled to fair pay, family and medical leave, paid sick leave, unemployment benefits, or workplace protections because they are misclassified as independent contractors. By removing work outside of the office from the "B" portion of the ABC test for independent contractors, it eliminates classification based solely on work location.

#### **RICHARD E. HAYBER, ATTORNEY, HAYBER, McKENNA & DINSMORE, LLC**

The current law is bad because employers must pay employees minimum wages and overtime pay. They must also pay into unemployment funds and provide workers compensation insurance and abide by all employee rights laws including the NLRA and state and federal anti-discrimination laws. These laws cut into employer's profits and force them to treat employees with respect and fairly. For these reasons, they frequently misclassify their employees as independent contractors. Our courts use what is known as the ABC test to

determine if an individual is an employee or an independent contractor. The 'A' prong is the extent to which employers control the worker. The 'C' prong is the extent to which the workers are independently established in their trade or occupation. This typically means the individual must have their own business and provide similar services for other companies. The 'B' prong is the part being discussed which includes a loophole that harms remote workers. They propose to eliminate part of the 'B' prong. This change would bring us in line with other jurisdictions. In Massachusetts, the fact that you don't work a physical location owned and controlled by the corporation is simply not an issue in determining employee status. This is easy to follow. Employers and employees would know that you can be an employee and work from home or on the road. They could still use independent contractors, but only for work that is outside its usual course of business. It would make it easier for courts to enforce the wage laws. It would protect gig workers from minimum wage violations. Since taxpayers assume a greater obligation when employers don't pay their fair share, the taxpayers would also benefit. They suggest eliminating part ii of Prong B from the ABC test. This will bring CT in line with other states that care about their working class and create a more prosperous economy.

#### **STEVE KENNEDY, PRESIDENT, PEOPLE'S PARITY PROJECT UCONN LAW**

Even before the pandemic, it was estimated that approximately 1-2% of workers rely on gig work as their primary source of income. Since COVID19, our communities have come to rely more on gig workers to supply day to day needs. When restaurants were forced to close their doors and grocery stores saw severe restrictions, drivers for companies like GrubHub and Instacart became lifelines for consumers and local businesses alike. CT should extend the use of the ABC test to all employment determinations rather than only to unemployment and wage hour claims. Classified as independent contractors, gig drivers are cut off not only from unemployment and wage protections but also from workers' compensation, family and medical leave, antidiscrimination and workplace safety protections, and more. The same test should apply for all employees. Working some of the time in a physical location, they are classified as employees, even though they are doing the same job as a driver for GrubHub. These restaurants pay for unemployment and worker's compensation insurance which leaves them at a disadvantage to the large out-of-state gig platform companies. It is time to eliminate this carve-out for our out-of-state gig platforms from a law that already applies to most of our local businesses and ensures many workers are fairly compensated and have a safe work environment.

#### **SAL LUCIANO, PRESIDENT, CT AFL-CIO**

The past year has proven that improperly classified employees are taken advantage of by internet-based food delivery and ridesharing companies. Employee misclassification is a persistent problem in many growth industries and in the rapidly growing app-based "on-demand" economy. The gig economy has been criticized for using technology to evade worker protections such as rights to minimum wages and paid leave and healthcare. In traditional jobs, workers may enjoy the benefits of trade unions. Employees within the GIG industry are paid as independent contractors. While companies like Uber and Lyft make profits, these workers often make poverty level wages. Gaps in federal and state laws have left these workers without meaningful protections.

#### **TIMOTHY PHELAN, PRESIDENT, CT RETAIL MERCHANTS ASSOCIATION**

Many people require flexibility for many reasons, including children at home, elderly parents needing help, and they are pulled in multiple directions and often need to seek creative

alternatives to bring in income. This bill is a step in the wrong direction for people who require the independence and flexibility independent contracting offers. This is putting these jobs in jeopardy at the worst possible time, in the midst of a pandemic when lower earnings and less flexibility is the last thing these people need or deserve. The reality is that independent, flexible work is a critical and growing part of the economy and individuals in this field prefer the status quo. This should continue to be an alternative choice.

**NICOLE SANCLEMENTE, POLICY AND PROGRAM ASSOCIATE, CT WOMEN'S EDUCATION AND LEGAL FUND (CWEALF)**

Women, especially those of color, are overrepresented in low-wage jobs on the frontlines of the crisis. Many of these occupations lack access to critical policies like paid sick leave or paid family leave. Women are more likely to earn supplemental income and work part-time compared to their male counterparts and are more likely to engage in multi-level or direct marketing to sell goods online. These workers are the least likely to have access to benefits or continue to get paid during a downturn. Single-mother households are specifically affected during coronavirus-related closures. Non-traditional workers have proven essential during the COVID-19 pandemic and are bearing the burden of inconsistent and outdated labor laws. These workers are often classified as independent contractors and the gaps in federal and state laws have left them without the meaningful protections offered by trade unions, employer provided healthcare, minimum wages and other opportunities for growth and sustainable employment.

**SEIU HEALTHCARE**

This would provide basic labor standards to a growing gig workforce. Times change and large corporations figure out ways around the labor laws. This bill would make sure workers are keeping more of their paychecks as well as extending DOL and basic NLRB protections. The right to organize provides workers a voice and evens the playing field. They should not have to fight for these types of protections. All workers should have the right to form a union. This bill is a step toward recognizing the value and worth of all workers.

**STEPHANIE THOMAS, REPRESENTATIVE, STATE OF CONNECTICUT GENERAL ASSEMBLY**

This bill recognized that policy has not yet caught up to the trends of the modern workplace. Non-traditional full-time employment has grown almost 50% over the past decade. These gig workers lack the protections offered to traditional workers. Given the changing landscape of workplaces, several states are exploring ways to allow gig workers to pay into the UI program so they can participate when the need arises. This would go a long way towards protecting these key workers and lead the way in the nation on this subject.

**NATURE AND SOURCES OF OPPOSITION:**

**CHRISTOPHER GILREIN, EXECUTIVE DIRECTOR, TECHNET**

Technology makes it easier for people to work independently, run their own business, and leverage their time and talents to generate supplemental income. The gig ad sharing economies have provided low-barrier entry earning potential for millions of Americans. Many in this modern, diverse, independent workforce find they get better financial returns on their skills than their peers in the traditional workforce, and the freedom to work how and when

they want is a crucial benefit. Perhaps more than ever, policymakers should be wary of restricting or eliminating the ability of technology platforms to make independent flexible earning opportunities available to all CT residents. Providing worker benefits should not be the sole provenance of an employer who has control over when, where, and how work gets done, nor should the growing dynamic independent workforce be denied protections and benefits because they do not fit a narrow and often outdated definition of employment. The problem is not that workers are incorrectly classified, it is that the statute presumes that there are only two classes of work. Attempting to shoehorn a dynamic, ever-changing and growing industry and its workforce into binary and inflexible definitions of employer and employee via legislation will not address the underlying issue that the way many people choose to apply their skills and earn a living has changed dramatically since many of these statutes were put in place. CT can design a system of benefits that is portable, flexible, and makes sense and recognizes the diversity of the independent workforce and different business models.

**ERIC GJEDE, VICE PRESIDENT OF GOVERNMENT AFFAIRS, CBIA**

"Gig" economy jobs, like app-based delivery and transportation network companies, are creating economic opportunities for thousands of individuals in the state. Citizens are choosing these economic opportunities over traditional jobs because they can be their own bosses, capable of setting their working hours to meet the flexibility needs of other jobs, classes, or familial commitments. Gig economy jobs allow individuals to earn hundreds of millions of dollars every year and fill an important niche in the economy. They allow individuals subject to social distancing and quarantine requirements the option to have food and medicine delivered and provide alternatives to mass transit transportation, which also helps support small local restaurants and businesses. They encourage the creation of beneficial alternative business models used by these companies rather than unnecessarily regulate them.

**JOHN OLSEN, DIRECTOR, STATE GOVERNMENT AFFAIRS, NORTHEAST REGION**

They oppose this bill because it would fundamentally change how internet companies provide needed economic opportunities to residents and businesses struggling to survive in a pandemic world. It would cause significant economic hardship for numerous businesses already struggling to maintain a workforce and continue operating during the COVID emergency. This bill attempts to reclassify a workforce that overwhelmingly prefers to remain independent contractors. Flexibility and the ability to work across multiple platforms has enabled many residents to supplement their incomes. Because of the pandemic, traditional employment remains a challenge and more people are forced to work from home. Reclassifying these jobs would dramatically curtail the services offered by internet platforms and make food ordering, delivery, and ridesharing more expensive and less frequent. This reduces demands and limits restaurant revenues and earning opportunities for thousands of current and potential delivery workers.

**DAVID LONDON, HEAD OF GOVERNMENT RELATIONS, US EAST, DOORDASH**

As cities and states have issued guidance restricting the operations of restaurants and other businesses during the pandemic, delivery and pickup services have been critical to reducing person to person contact and ensuring that residents have access to food and other essentials. Their testimony cited many things they did through organizations to help during the pandemic. This bill would significantly alter the flexibility their Dashers need. As independent contractors, they enjoy the flexibility to earn supplemental income by working whenever and wherever they want to accommodate their existing work, family, school and

other obligations. This is not the time to make sweeping changes. Upending this system that is bridging the gaps would not be a wise move in these uncertain times. Restricting the way third party companies operate within the state will only hurt residents that choose opportunities that provide flexible, on-demand work they can engage in on their own schedule.

**HAYLEY PRIM, PUBLIC POLICY MANAGER, UBER TECHNOLOGIES, INC.**

The testimony cited the important part these drivers and delivery workers play during the pandemic and the contributions they made. Anyone who passes the background check and meets the regulatory requirements to work as a driver or delivery person can use the Uber App. There is no minimum commitment or obligation. Drivers provide their own vehicles and are responsible for the costs of running their business. In CT, 43% of these drivers/delivery people work fewer than 10 hours a week. Drivers value the independence and freedom associated with being their own boss. If this bill was passed, it would force thousands of single parents, college students, retirees and those whose traditional employment has been eliminated due to COVID to seek different jobs. Accessibility and flexibility provide immediate and sustainable earning opportunities. Research has shown that people with these jobs want to remain independent contractors. The gig economy is not perfect, but the current employment system is outdated and unfair. This bill could cause large swaths of the population to lose access to reliable, affordable transportation and access to critical services like food and medical deliveries.

**Reported by:** Marie Knudsen, Assistant Clerk

**Date:** April 5, 2021