



Committee on Labor and Public Employees
Connecticut General Assembly

February 18, 2021

RE: H.B. 6343, An Act Ensuring Fair Employee Protections for Gig Workers

Co-chairs Senator Kushner and Representative Porter, Ranking Members Senator Sampson and Representative Arora, and the distinguished members of the Committee on Labor and Public Employees,

Thank you for taking the time to consider this proposal today. I am the President of the UConn Law chapter of the People's Parity Project, an organization of law students dedicated to building a justice system that better serves workers and historically marginalized communities, and I would like to express our **support** for HB 6343.

Even before the pandemic, it was estimated that approximately 1-2% of workers rely on gig work as their primary source of income¹. Since the onset of the COVID-19 pandemic, our communities have come to rely more and more on gig workers to supply us with our day-to-day needs². 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.

However, despite the critical need for these workers and the COVID-19 exposure risks that they take each day on the job, such workers are often classified as independent contractors rather than employees, leaving them ineligible for even basic employee protections like minimum wage or unemployment insurance³.

In Connecticut and 32 other states, the question of whether a worker is an employee or independent contractor is often answered with what is known as an "ABC test," which looks at three different criteria to make the determination. By statute, Connecticut uses the ABC Test to determine unemployment eligibility⁴, and the Connecticut Supreme Court adopted its use in

¹ Edelman Intelligence. Freelancing in America: 2019. <https://www.upwork.com/i/freelancing-in-america/> (2019).

² Cathy Bussewicz & Alexandra Olson. *Gig Workers Face Shifting Roles, Competition in Pandemic*. Associated Press. <https://apnews.com/article/ebc223c6d783c49feca6ffb27af6264b> (July 4, 2020).

³ Sarah A. Donovan *et al.* Cong. Res. Service. What Does the Gig Economy Mean for Workers? <https://fas.org/sgp/crs/misc/R44365.pdf> (February 5, 2016).

⁴ Conn. Gen. Stat. § 31-222(B).

wage and hour claims¹. However, under the current test, gig drivers and other workers with flexible work arrangements are at risk of misclassification due antiquated expectations that someone who works outside the employer's place of business is more likely to be a contractor².

The General Assembly should amend the state's ABC Test to account for the realities of the modern economy. Since 2004, Massachusetts has used a "B" prong of its ABC test which assesses only whether a worker's service is outside of the usual course of the employer's business, with no reference to the place of business³. Removal of work outside the employer's place of business from the B prong of the test would ensure proper protections for more workers such as drivers and other working from home while still allowing for classic examples of contracting outside the usual scope of an employer's business.

Also like Massachusetts, and other states, Connecticut should extend the use of the test to all employment determinations, rather than only unemployment and wage and hour claims. Because they are classified as independent contractors under current law, 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. An employee is an employee, and the same test should apply for eligibility for all employee protections, pursuant to any other requirements such as full-time status.

The current system deprives workers of much-needed protections, and it also disadvantages our local businesses. For example, when local restaurants hire drivers, they are likely to be classified as employees, in part because they work some of the time in the restaurant's physical location. So even though their employees are performing essentially the same job as a driver for GrubHub, these restaurants pay for unemployment and workers' compensation insurance, comply with workplace safety and antidiscrimination laws, and everything else required for their employees. This puts them at a disadvantage to the large, out-of-state gig platform companies, who then charge large fees to those same restaurants to use their service⁴, all while leaving their workers underpaid and unprotected. These companies' lack of contributions to unemployment or workers' compensation also leaves our local economy to make up the difference.

It is past time to eliminate this carve-out for out-of-state gig platforms from a law that already applies to most of our local businesses and ensures many of Connecticut's workers are fairly compensated and have a safe work environment. Our workers deserve fair treatment under the law, our businesses deserve fair competition, and the state deserves a proper framework for employee protections in the modern economy. Thank you for your consideration of this important issue.

¹ *Tianti v. William Raveis Real Estate, Inc.*, 231 Conn. 690 (1995).

² See Conn. Gen. Stat. § 31-222(B)(ii)(II).

³ Mass. Gen. Laws § 148B.

⁴ Susie Cagle. "Fees are Murder": Delivery Apps Profit as Restaurants Forced to Close Doors. *The Guardian*. <https://www.theguardian.com/world/2020/apr/03/delivery-app-restaurants-coronavirus-california> (April 3, 2020).

Sincerely,

Steve Kennedy
President, People's Parity Project at UConn Law