

**Testimony on H.B. No. 1848
An Act Establishing Rights and Obligations of Transportation Network Drivers and
Transportation Network Companies**

**Submitted to the Joint Committee on Labor and Workforce Development
Massachusetts Legislature
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OPPOSED

Submitted By:
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Dear Members of the Joint Committee on Labor and Workforce Development,

Thank you for holding this hearing and for the opportunity to submit this testimony on behalf of the Center for Law and Social Policy (CLASP). CLASP stands in strong opposition of H.B. 1848, An Act Establishing Rights and Obligations of Transportation Network Drivers and Transportation Network Companies, which carves out workers' rights for Transportation Network Drivers by classifying them as independent contractors.

CLASP is a national, nonpartisan, nonprofit, advancing anti-poverty policy solutions that disrupt structural, systemic racism, and remove barriers blocking people from economic justice and opportunity. With deep expertise in a wide range of programs and policy ideas, longstanding relationships with anti-poverty, child and family, higher education, workforce development, and economic justice stakeholders, and over 50 years of history, CLASP works to amplify the voices of directly-impacted workers and families and help public officials design and implement effective programs. CLASP also seeks to improve job quality for workers earning low incomes. That includes increasing wages and providing access to paid sick days, paid family and medical leave, and stable work schedules. Quality jobs enable individuals to balance their work, school, and family responsibilities – promoting economic stability as well as career advancement.

All working people have a right to a good, stable job that pays them a living wage and treats them with respect. Throughout the Commonwealth of Massachusetts, hundreds of thousands of hourly workers – disproportionately women and people of color – struggle to earn a stable income because of low wages and the inability to access employee benefits. H.1848 strips workers of being considered employees in the Commonwealth of Massachusetts, allows corporations to skirt accountability and avoid paying into

Massachusetts' social safety net, and forces the taxpayers of the Commonwealth to subsidize wages of workers to whom these corporations refuse to pay a living wage.

Carving out rights for TNC workers as Independent Contractors

H.1848 claims to establish rights for Transportation Network Company (TNC) drivers by establishing minimum payments and access to benefits such as healthcare, paid sick, and paid family and medical leave. However, these minimum wages and benefits are based on so-called "engaged time," defined in the legislation as "the period of time, as recorded in a network company's online enabled application or platform, from when a driver accepts a request for transportation services to when the driver fulfills that request."¹

Under this bill, engaged time does not include the wait time between finishing one driving assignment and beginning another, which is estimated to be almost 50 percent of a driver's working time.² In fact, network companies themselves have estimated that drivers spend only 54 percent to 62 percent of their time "engaged."³ By only covering "engaged time" under the minimum wage provision of this bill, workers are in fact earning far below the minimum wage for actual time worked. In addition, to accrue the intended benefits such as healthcare stipends and paid sick leave, TNC workers would have to spend approximately double the amount of time in their car, more than a traditional full-time employee. The same requirements around "engaged time" apply for the healthcare stipend and paid sick leave. For example, a TNC worker would receive 100 percent of the healthcare stipend if they have 25 "engaged" hours per week and 50 percent of the healthcare stipend if they have 15-25 "engaged" hours. Thus, most TNC workers would have to work double the hours to earn partial healthcare benefits. Indeed, this bill weakens Massachusetts labor law. For instance, Massachusetts requires that a worker's pay be based on all working time, which includes "all on-call time and "all time during which an employee is required to be on duty including rest periods of short duration."⁴

If employees weren't misclassified, they would be covered under Massachusetts' paid family and medical leave law as employees, but the provisions within H. 1848 creates a new classification of workers, a two-tiered system where workers can essentially accrue fewer benefits. As traditional employees they would have access to full benefits, however, under this new system, they would only receive a partial benefit.

Critically, this bill would perpetuate racial and economic disparities as the consequences of this bill would disproportionately affect TNC workers earning low wages who are predominately Black and other people of color. In fact, a 2021 Pew Research Center survey found that Hispanic and Black Americans are more likely to have earned money doing gig platform work.⁵ This bill would also deepen economic

¹ H. 1848 , 193rd Leg., Sess. (MA. 2023). <https://malegislature.gov/Bills/193/H1848/BillHistory>

² National Employment Law Project. *App-Based Workers Speak: Studies Reveal Anxiety, Frustration, and a Desire for Good Jobs*. NELP, 2021. <https://s27147.pcdn.co/wp-content/uploads/App-Based-Workers-Speak-Oct-2021-1.pdf>

³ Fehr and Peers. *Memorandum, Estimated TNC Share of VMT in Six US Metropolitan Regions*. Fehr and Peers, 2019. <https://www.fehrandpeers.com/what-are-tncs-share-of-vmt/>

⁴ 454 CMR 27.02; 454 CMR 27.04(2).

⁵ Risa Gelles-Watnick and Monica Anderson. *Racial and Ethnic Differences Stand Out in the U.S. Gig Workforce*. Pew Research Center, 2021. <https://www.pewresearch.org/short-reads/2021/12/15/racial-and-ethnic-differences-stand-out-in-the-u-s-gig-workforce/>

inequality at a time where average median income has declined in the past year and inflation had reduced the purchasing power across the United States.

Precarious Work

This bill creates a disparate impact on TNC workers by permanently classifying them as independent contractors rather than employees. This bill would permanently exclude TNC workers from the minimum standards for employment and the social safety net that Massachusetts has worked to create. Classifying TNC workers as independent contractors would exclude these workers from unemployment insurance, workers' compensation, paid overtime, discrimination and sexual harassment protection, paid family and medical leave, and access to employer-sponsored health insurance coverage. TNC workers are disproportionately facing economic insecurity and struggling to make ends meet. For example, in a 2020 survey of gig workers, 19 percent went hungry because they could not afford enough to eat,⁶ while 30 percent of workers used the Supplemental Nutrition Assistance Program (SNAP) within a month of the survey, which is twice the rate of employees in the service sector.⁷

Corporate Accountability and a False Sense of Flexibility

Corporations falsely tout flexibility to TNC workers in an effort to cut labor costs and boost profits. This proposed bill is a perfect example of corporations not paying into the system that allows full access to state benefit for their workers. For instance, Massachusetts requires most employers to contribute significantly to the health insurance and paid family medical leave of their full-time employees.⁸ This bill offers the illusion of providing benefits yet, most TNC workers would only receive a partial benefit as a result of this legislation's creation of a two-tiered employment system. If digital platform companies want to support their TNC workers then they should abide by Massachusetts labor laws by classifying them as employees and appropriately paying into the social safety net that Massachusetts has fought to build.

Instead, these digital platform companies have relentlessly mounted federal, state, and local campaigns across the country to erode worker rights. This bill would open the door for other industries - such as technology and healthcare - to seek their own legislated pathways to permanently classify their workers as independent contractors, thereby shedding their responsibilities and financial obligations as employers. Following Proposition 22 in California, a similar ballot initiative was introduced (and then

⁶ Ben Zipperer, Celine McNicholas, Margaret Poydock, Daniel Schnieder, and Kristen Harknett, K. *National Survey of Gig Workers Paints a Picture of Poor Working Conditions, Low Pay*. Economic Policy Institute, 2022.

<https://www.epi.org/publication/gig-worker-survey/>

⁷ *Ibid.*

⁸ Fredric Blavin, Linda J. Blumberg, Matthew Buettgens, and Jeremy Roth. *Massachusetts Under the Affordable Care Act: Employer-Related Issues and Policy Options*. Urban Institute, 2019.

<https://www.urban.org/sites/default/files/publication/24911/1001626-massachusetts-under-the-affordable-care-act-employer-related-issues-and-policy-options.pdf>

withdrawn) that would have exempted health care workers from employment protections.⁹ Ten states have passed broad “marketplace contractor” legislation that exempts all current and future app-based workers from protections like minimum wage, unemployment, and overtime laws.¹⁰ At the federal level, leaders from the technology, service, and healthcare industries are advocating for legislation that would carve out huge swaths of workers from employment protections through the codification of “worker flexibility agreements.”¹¹

The Commonwealth of Massachusetts has been a national leader in building economic opportunity and security for working families. Massachusetts was the first state to pass a minimum wage law in 1912, the first state to pass a near-universal health care coverage, and one of just a handful of states to pass paid family and medical leave. H.1848 would be a significant retreat from Massachusetts remarkable history of advancing workers’ rights and economic security for its residents.

CLASP opposes H.1848 and urges the committee to oppose and reject this legislation. Thank you for your time and attention on this important issue.

Sincerely,
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⁹ Erin Mulvaney. *Health-care Worker Job Status Proposal Scuttled in California*. Bloomberg Law, 2022.

<https://news.bloomberglaw.com/daily-labor-report/health-care-worker-job-status-proposal-scuttled-in-california>

¹⁰ Jennifer Sherer, and Margaret Poydock. *Flexible Work Without Exploitation*. Economic Policy Institute, 2023.

<https://www.epi.org/publication/state-misclassification-of-workers/>

¹¹ Lorena Roque. *Worker Flexibility and Choice Act: The Corporate Attempt at Stripping Labor Protections*. Center for Law and

Social Policy, 2022. Available at: <https://www.clasp.org/publications/fact-sheet/worker-flexibility-choice-act/>