A FRAMEWORK FOR THE GIG ECONOMY:

Why We Must Protect Workers & Hold Corporations Accountable

CLASP
The Center for Law and Social Policy

By Lorena Roque

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Executive Summary

In an attempt to maximize profits and cut labor costs, corporations are skirting labor laws to classify their workers as independent contractors rather than employees. Replacing direct employees with independent contractors reduces labor costs for companies because contractors do not receive the same benefits and protections as employees, including employer-sponsored health care, Social Security benefits, and unemployment insurance. This trend shows no sign of slowing down; In fact, the rise of app-based workers in the United States economy tripled between 2017 and 2021.[1] According to IRS data, five million taxpayers reported income from an app-based platform company.[2] Digital platform companies such as Uber, Lyft, and Instacart have relentlessly mounted federal, state, and local campaigns to erode worker rights and consumer protections further. They aim to legislate permanent carve-outs for their workers, allowing corporations to deny workers employee benefits and minimum wage and misclassify them as non-employees.

App-based workers such as ridehail (commonly referred to as "rideshare") and delivery drivers are disproportionately people of color. According to a survey by Pew Research Center, Hispanics are more likely than other racial or ethnic groups to have done platform work, with 30 percent of Hispanic adults having earned money through an online app-based platform.[3] These jobs are precarious by design, harmful to workers' health and financial security, and exacerbate racial inequities. In a survey by Center for Law and Social Policy (CLASP) and Data for Progress, 50 percent of app-based workers reported feeling overworked and say their jobs are physically exhausting, and 56 percent of app-based workers say that knowing their employer tracks them worsens their mental health. Compared to non-app-based workers, app-based workers are 13 percent more likely to say that the pace of work makes them exhausted.[4]

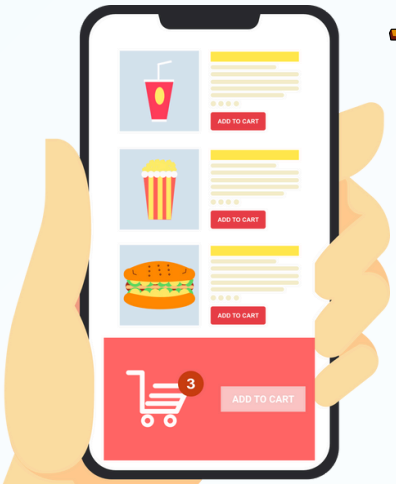
In this report, CLASP outlines a set of principles to provide a framework for policymakers and advocates that uses an economic and racial justice perspective to assess a range of proposals on the intertwined issues of low wages, less benefits, and fewer protections for workers in these jobs, including temp and franchise workers. There are no set definitions of "gig" work or the "gig" economy. Some experts define it as workers who "earn money from an online employment platform across industries, such as ridehailing, online tasks, and cleaning,"[5] while others have applied "gig" to all sorts of nontraditional labor, such as "contingent labor," "temp labor," or the "precariat," as in the precarious nature of the type of work.[6]

The scope of this CLASP report includes app-based workers, as they are a large group of workers misclassified as independent contractors rather than employees. This report also includes temp workers, who are largely considered contractors to the companies they are temping for since they are employed by temp or staffing agencies. Finally, this report also discusses franchise workers, whose ability to organize and bargain with the parent company that controls their employment is greatly undermined.

In offering the following principles, CLASP draws on our expertise about policy that reduces poverty, improves the lives of people with low incomes, tears down systemic barriers that hold back Black people and people of color, and advances racial and economic justice. Within that context, we propose the following principles to improve the work and lives of app-based workers, temp workers, and franchise workers:

1. **Policymakers should center the voices and experiences of workers in their decisions about how to regulate digital labor platforms, including but not limited to ridehail and delivery workers, temp workers, and other independent contractors. In order to do this, policymakers should prioritize meeting with worker centers and labor unions.**

2. **Employment and labor law must be strengthened to widen the benefits that app-based workers receive in order to reduce poverty and inequality.**
    a. Policymakers should support the U.S. Department of Labor's final Independent Contractor Rule, which will more effectively ensure that all workers, including misclassified app-based workers, have access to work protections such as federal minimum and overtime wages, employer-sponsored health insurance, worker's compensation, and anti-discrimination protections.
    b. Federal regulations should be in place on deactivation policies such as Just Cause termination or suspension in order to protect workers from being wrongfully deactivated from app-based platforms, which can lead workers to not having an income.
    c. At the federal level, NLRB regulations such as the Joint Employer Rule should be protected in order for all workers – including workers in temp agencies, franchise models, and subcontractors – to hold employers responsible for labor rights violations.



3. **Comprehensive policies to protect app-based workers' rights should include regulations on corporations and establishing corporate accountability.**
    a. Regulators such as the Federal Trade Commission (FTC) should aggressively crack down on corporate and monopoly power by enforcing laws on price fixing and worker misclassification.
    b. Congress should enact legislation to increase data transparency on app-based platform companies in order to seek a better understanding of the gig economy and its app-based workers.

Principles

1 **Policymakers should center the voices and experiences of workers in their decisions about how to regulate digital labor platforms, including but not limited to ridehail and delivery workers, temp workers, and other independent contractors. In order to do this, policymakers should prioritize meeting with worker centers and labor unions.**

In order to reduce poverty and inequality, the labor market must work for all workers. Because individuals who work on an app-based platform are labeled independent contractors, they do not have all of the rights or benefits W-2 employees have. For instance, app-based workers do not receive overtime compensation, paid time off, employer-sponsored health care, or employer contributions toward Social Security benefits. Additionally, app-based workers do not have a guaranteed right to federal or state minimum wage laws. The Bureau of Labor Statistics's 2017 national survey showed that 29 percent of app-based workers made less than the state minimum wage.[7]

Because of the precariousness of app-based work, it is important to prioritize the voices of app-based workers and their experiences in the gig economy. For instance, 76 percent of workers in app-based jobs strongly support receiving anti-discrimination protections, 73 percentsupport independent contractors receiving health care benefits, and 71 percent support receiving overtime pay. Sixty-five percent of app-based workers agree that independent contractors should be afforded retirement benefits, 64 percent are in favor of receiving unemployment insurance, and 63 percent support receiving paid medical leave. Fifty-three percent of app-based workers support receiving collective bargaining rights and 59 percent support a minimum wage.

It is essential to discuss the low bar of entry to app-based work and why some workers prefer it to traditional low-wage jobs. According to a survey of over 25,000 adults, nearly half of those who identified as immigrants reported being independent workers.[8] In fact, 25.7 percent of independent workers stated that they choose this kind of work out of necessity to support basic family needs and were some of the only jobs they could get, as opposed to choosing this type of job for so-called "flexibility."[9] Indeed, many immigrants simply need a vehicle and a driver's license to enter the app-based labor market, rather than the expensive training, degrees, and English proficiency necessary for more formal, and higher-paying, employment.[10]

However, the low bar to entry and supposed flexibility of these jobs aren't acceptable tradeoffs to not having employment rights or benefits. And while corporations tout these so-called benefits as part of their messaging to attract people to these jobs, 33 percent of full-time independent workers prefer traditional work.[11]

Historically, Black and brown workers have been excluded from labor law that benefited most workers. For instance, the Fair Labor Standards Act (FLSA), a part of the New Deal, intentionally left out farm, domestic, and agricultural workers from minimum wage protections, Social Security benefits, and overtime compensation. Since these jobs were some of the only ones open to Black Americans at the time, Black workers were for decades disproportionately denied access to some of the most transformational labor laws in our nation's history.

This two-tiered system of labor law continues today with the gig economy, as workers are excluded from all employment-based rights and protections, including the right to minimum wage and overtime and the right to collectively bargain and join a union. Due to the historic occupational segregation in the U.S, many app-based workers are Black, brown, or workers of color. Policymakers must include these workers and their unions to inform policy making in order to lift job quality and economic security.

Below is a list of ridehail and delivery worker groups that policymakers should meet with in order to understand the concerns of app-based workers across the country:

- **Gig Workers Rising**
- **California Gig Workers Union**
- **Chicago Gig Alliance**
- **Colorado Independent Drivers Union**
- **Rideshare Drivers United**
- **Connecticut Drivers United**
- **Drivers Demand Justice**
- **Los Deliveristas**

2 Employment and labor law must be strengthened to widen the benefits that app-based workers receive in order to reduce poverty and inequality.

Reforming labor law to include app-based workers would reduce poverty and inequality in the United States. Income inequality has risen over the past 50 years, with the top one percent of households averaging 104 times as much income as the lowest 20 percent of households in 2020.[12] According to the Bureau of Labor Statistics (BLS), the median Black worker earned 24.4 percent less than the median white worker in 2019.[13] Additionally, Black workers earn about 33 percent less than white workers over their lifetime, a difference of about $550,000 in total.[14]

Given the precariousness inherent in low-wage work, it is difficult for workers to accumulate wealth for financial emergencies. These gaps become even more pronounced when examining wealth inequality: In the first quarter of 2024, the wealth of the top one percent of American households hit a record $46.18 trillion, while the bottom 50 percent of households owned just 2.5 percent of total wealth.[15] The people hardest hit by wealth inequality are Black and brown Americans. From 2009 to the first quarter of 2024, the Black share of household wealth fell from 3.9 percent to 3.4 percent, while white wealth remained around 84 percent.[16] Without access to wealth and high-quality jobs, workers are susceptible to falling into poverty.

a. The Department of Labor must prioritize enforcement of its Independent Contractor Rule so that more workers, including app-based workers, have access to minimum wage and overtime protections.

Given how the app-based industry is growing, there are not many national government surveys on the characteristics of app-based workers. However, the BLS used the Contingent Worker Supplement (CWS) to the Current Population Survey in order to measure workers in different work environments other than a W-2 job.[17] It is important to note that this survey only captures app-based workers who work these jobs as their main job or main form of income. The CWS found that 29 percent of these workers earn less than the state minimum wage that they would earn if they were a W-2 service sector worker, and 19 percent of workers went hungry because they could not afford enough to eat.[18]

The BLS will release new survey data in 2024 through its new interagency Work Arrangements Committee, including data on individuals in "work that is not permanent, year-round, and full-time employment with predictable hours."[19] More data should give policymakers and researchers a better picture of all employment conditions.

Because app-based workers are classified by companies as independent contractors, they do not have the same rights as other W-2 workers and are not covered by federal labor law.

As a result, app-based workers do not have access to the following protections:

Minimum wage	Overtime pay	Unemployment insurance
Worker's compensation	Paid sick days	Paid family leave
Health and safety protections	Right to a union	Discrimination and sexual harassment protections

However, in January 2024 the Department of Labor (DOL) finalized its Independent Contractor (IC) rule, which establishes a six-factor test to determine whether a worker qualifies as an independent contractor. These factors are:

- The worker's opportunity for profit or loss
- Investments by the parties
- The work relationship's permanency
- The nature and degree of control over the work
- Whether the work is an integral part of the employer's business
- The worker's skill and initiative

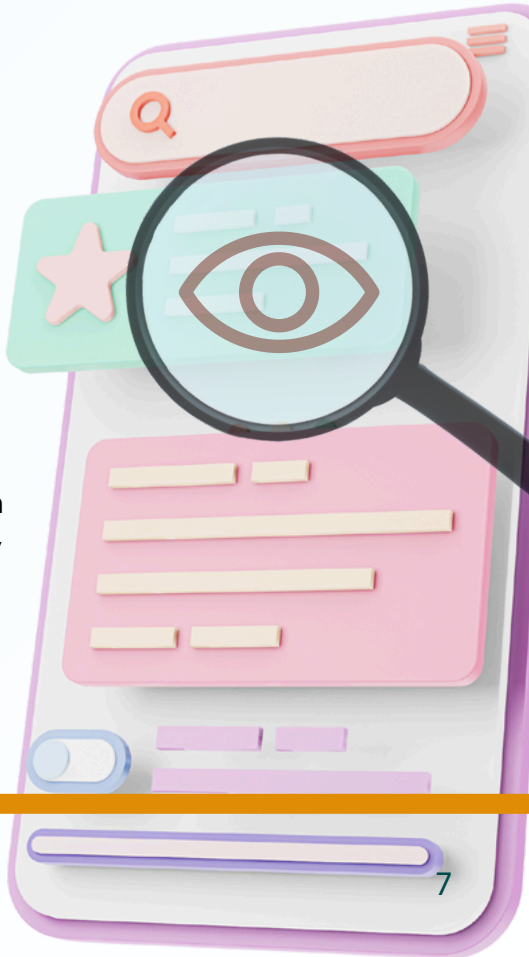
CLASP submitted comments on how the proposed rule is accurately designed for today's economy.[20] Because independent contracting occurs through a wide variety of working arrangements, it is essential that the rule cover all forms of independent contractors. For instance, some independent contractors are in business for themselves, such as an attorney or auto mechanic.

Some workers classified as independent contractors are assigned and paid for tasks via an intermediary organization or business such as a staffing agency, third-party manager, or subcontractor. Others obtain work through digital labor platforms, such as ridehail or food and package delivery; in these situations, the platforms determine which assignments are offered to workers and at what pay rate. Still others are more traditional freelancers, undertaking specialized or professional work for specific customers on a project-by-project basis.

One essential part of the IC rule is factor 4, "the nature and degree of control over the worker." Low wage and hourly work in the service, retail, logistics, warehousing, and health care industries is more susceptible to surveillance because these jobs are easily measured. In ridehail, for example, companies like Uber and Lyft use algorithmic management and automated systems that effectively control the terms and conditions of their work. As previously mentioned, these workers are more likely to be immigrants and people of color, who have a history of facing higher scrutiny in the workplace and higher levels of surveillance and monitoring.[21]

More companies are implementing new surveillance practices, often enabled by technology, and using them to monitor, control, and integrate the work of independent contractors while disclaiming employment relationships. It is crucial that the Wage and Hour division of the DOL enforces the FLSA evenly and fairly, and that the determination of independent contractor versus employee status is made based on the economic realities of the working arrangement.

Ridehail companies like Via and Uber tightly control their non-employee workers through ride and job assignment and speed-monitoring apps, customer reviews, and cameras.[22] A report by Data & Society detailed how, in addition to dictating routes and shifts through their driver phone applications, delivery companies use the growing network of digital doorbell cameras to enlist consumers in the surveillance of the independent contractors who complete deliveries.[23]



Employer control outlined in the IC rule can exist in many forms, but the DOL correctly makes it clear that control enabled through technology rather than in-person supervision does not necessarily weigh in favor of independent contractor status. Indeed, surveillance practices at work have resulted in physical injuries due to an increased pace of work, adverse mental health effects, and workers' ability to organize.[24]

Despite the progress made by the DOL in the IC rule, there have been numerous court challenges against the updated six-factor test. For example, the U.S. Chamber of Commerce claims the rule is "clearly biased towards declaring independent contractors as employees," and that it will "decrease flexibility and result in lost earning opportunities for millions of Americans".[25] These false claims on flexibility and lost wages have been a common tactic by corporations and business-friendly organizations,[26] and the second principle of this report outlines how to combat these claims to secure worker's rights in the gig economy.

Given the legal challenges of this rule, Congress and advocates should champion the Protecting the Right to Organize (PRO) Act, which would[27] amend the National Labor Relations Act (NLRA) by applying a straightforward ABC test to identify which workers are actually employees and ensure these workers are protected by the NLRA.[28]

b. Federal regulations should be in place on deactivation policies such as Just Cause termination or suspension in order to protect workers from being wrongfully deactivated from app-based platforms, which can lead workers to not having an income.

For app-based workers, the act of being deactivated, or suspended or terminated, from the app they base their income on is harmful and can lead to these workers falling into poverty. Ridehail app-based workers across states have protested against "unfair deactivations"[29] and also made it clear that they are often not given a reason for their termination.

When ride hail companies receive a safety report regarding a driver, they terminate the driver's account while they investigate the complaint. Safety reports are not the only reason drivers can be terminated; others include vehicle issues or failed background checks. And the companies do not inform workers on deactivations or provide guidance on what can cause them, just that a customer complained.[30]

In a nationwide survey of app-based drivers, 40 percent report being deactivated in the past year. In the same survey, 59 percent of drivers said they had accepted a ride when they felt unsafe, fearing negative reviews could lead to termination.[31] Fears of safety must be taken seriously; a joint report by Gig Workers Rising and the Action Center on Race and the Economy reports that 31 app-based drivers and delivery workers were murdered on the job in 2022 alone.[32]

Ridehail workers have coordinated efforts against wrongful deactivation, and multiple worker groups across the country have led Activate Respect, a national campaign protesting deactivations that is organized by several groups led by app-based workers including Chicago Gig Alliance and Gig Work Rising.

Activate Respect highlights app-based drivers' demands to change deactivation policies. Drivers recommend transparency around why workers are being deactivated; fairness in guidelines about what could cause a deactivation; and changes to the appeals process, including that an independent third party manage the appeal process and that workers be allowed to submit evidence to defend themselves against claims of deactivation. Workers also want to be paid for the work they lost during their deactivation.[33]

Policymakers should enact these policies and introduce legislation that bans the automatic firings of app-based workers, similar to legislation introduced in the European Union.[34]

C. At the federal level, NLRB regulations such as the Joint Employer Rule should be protected in order for all workers – including workers in temp agencies, franchise models, and subcontractors – to hold employers responsible for labor rights violations.

Similar to the IC rule, the NLRB proposed the joint employer rule.[35] This rule is crucial to protecting workers' rights, ensuring fair labor practices, and increasing corporate accountability. The joint employer rule would treat companies as joint employers that share control over working conditions of employees who have more than one employer, such as contracting agencies, staffing agencies, and franchises. In practice, this rule would protect workers when they exercise their rights to form a union and collective bargaining by ensuring workers can effectively negotiate with their corporate employers.[36]

This rule is especially important to workers earning low wages; those performing dangerous jobs, such as workers in the oil, gas, or mining industries; and construction workers who need the protections of the NLRA the most. Workers who are placed in jobs via temp or staffing agencies and those who work in heavily contracted industries, including janitorial, construction, delivery, manufacturing, home care, and warehousing, will also benefit from the NLRA.

Corporations operating in lower-wage industries use subcontracting arrangements that can result in degraded working conditions and diminished worker access to collective action and bargaining.[37] Companies that retain and share control over working conditions at a job should share the responsibility for complying with basic worker protections and for bargaining over job conditions. When operating correctly, joint employment results in better overall protections for workers and promotes workers' voices on the job.

If workers don't know who their employer is and enforcement agencies fail to name the companies that are truly calling the shots, workers' voices suffer and job conditions like pay are more likely to deteriorate. In today's economy, we should be looking for ways to increase workers' bargaining power and economic security, not laying the groundwork for more sweatshops.

The joint employer rule is especially important when considering workers that get jobs through temporary staffing agencies as well as franchise workers. Temporary staffing agency jobs are growing faster than other private sector jobs, with 3.2 million temporary staffing agency jobs in 2023.[38] Workers getting jobs through these agencies earn less than direct hires for the same jobs: staffing agency workers earn 21 percent less in manufacturing jobs, 33 percent less in security jobs, and more than 47 percent less in teaching jobs than direct hires.[39]

The franchise model, which is particularly prominent in the fast food industry, is equally pernicious to workers. Workers suffer wage theft, discrimination, unsafe work environments, and unstable schedules.[40] Franchisees are squeezed by their franchisor, creating incentives to cut labor costs as much as possible and even violate labor law.

At its core, the structure of the franchise model can incentivize this abuse. In most franchise models, the franchisee pays a royalty to the franchisor linked to revenue, not profit, and must follow strict rules around operation, quality of services, and sourcing of input products, known in the industry as vertical restraints. All of those confines leave very little room for profit. One of the few things a franchisee can control is labor costs, and that's where they squeeze.[41] This system can create incentives for franchise operators to violate the law to eke out a profit on the backs of their workers.

The NLRB's joint employer rule is critical to protect workers employed by franchises and other subcontractors and enforce labor laws. The rule would ensure workers can effectively negotiate with their corporate employers, who ultimately make massive profits from these workers and tightly control many aspects of their working conditions.

Similar to the court challenges to the IC rule, the NLRB's joint employer rule has been struck down by a federal judge in Texas and in agreement with the U.S. Chamber of Commerce, stating that the rule "would treat some companies as the employers of contract or franchise workers even when they lacked any meaningful control over their working conditions."[42] As demonstrated here, businesses are concerned with profits and increasing their workers' productivity through direct and indirect control via surveillance. That makes the passage of the PRO Act more urgent, as it would codify a strong joint employer standard by establishing that any and all companies that share control over a worker's employment are employers and therefore required to bargain with their workers.[43]

Comprehensive policies to protect app-based workers' rights should include regulations on corporations and establishing corporate accountability.

Policy ideas such as a federal ban on price gouging for groceries have become popular amongst lawmakers.[44] This is likely due to growing evidence showing that corporations are price gouging to increase their profit margins, using supply chain issues and input costs to justify raising prices.[45] In fact, Groundwork Collaborative research shows that during numerous quarterly earnings calls, corporate CEOs admitted to driving up prices as a profit strategy. These executives have called rising prices "successful pricing strategies" and boasted "our strategy is working" because supply chain issues have eased while price hikes have gone into effect.[46]

These corporations are using inflation as a cover to place higher prices on consumers, which in turn harms families' abilities to pay for basic necessities. This corporate profiteering is a result of intentional market consolidation which allows companies to monopolize industries and thus have more power to further increase prices.

The tactics used by corporations to profiteer and the exploitation of workers in the gig economy are two sides of the same coin. Both models use unethical business practices to increase their profit margins and cut costs. Indeed, this calls for take-rate transparency - how rider prices are split between the platform and drivers - for ridehail and delivery workers as app-based platforms are gouging customers and workers are not seeing their wages increase.[47]

This is evident given aggressive corporate lobbying campaigns to further deregulate the gig economy by weakening labor law and attempting to increase the number of industries in which app-based companies operate, potentially stripping more workers from their labor rights. For instance, the Coalition for Workforce Innovation (CWI) is a corporate lobbying consortium which aims to pass laws that would allow the expansion of gig work in their industries, which include Google, Target, and Accenture.[48] These campaigns falsely tout flexibility for workers as a way to convince policymakers that the policies are beneficial for workers and the economy, when in fact they are only beneficial to corporations. CWI persuaded Congressional members to introduce the Worker Flexibility and Choice Act to the House of Representatives in 2022, which would have required workers to enter a "worker flexibility agreement" and sign away their rights as employees, thereby weakening the FLSA.[49]

a. Regulators such as the FTC should aggressively crack down on corporate and monopoly power by enforcing laws on price fixing and worker misclassification.

App-based companies are concentrated in the ridehail market and thus more likely to exert their market power in anticompetitive ways that harm workers' wages and job quality. In fact, FTC Commissioner Alvaro M. Bedoya argued in 2024 that the FTC should challenge worker misclassification as a violation of Section 5 of the FTC Act's ban on "unfair methods of competition."[50]

The authority of the FTC allows the agency to stop unfair practices before they harm workers and consumers, meaning that the agency would act as complementary to the DOL and NLRB, not duplicative.[51] Additionally, the FTC provided scope on what is considered an "unfair method of competition," which broadly targets corporate conduct that is "coercive, exploitative, collusive, abusive, deceptive, predatory, or involves the use of economic power of a similar nature," and that "tends to negatively affect competition."[52]

The agency has also released a policy statement on enforcement related to app-based work, detailing how the misclassification of app-based workers has expanded to various industries including construction, trucking, agriculture, in-home health care, in-home cleaning, and janitorial services.[53] The FTC must exercise its authority and start investigating and regulating the harmful corporate practices that result from the misclassification of workers.

b. Congress should enact legislation to increase data transparency on app-based platform companies in order to gain a better understanding of the gig economy and its workers.

Despite the attempts of federal agencies to combat the misclassification of workers in app-based companies, researchers and worker advocates do not have complete information on what these companies collect in terms of data collection and data surveillance, or how consumer and driver data is used in decision-making by app-based companies. While federal bills on data transparency have been introduced and the Biden Administration issued a historic executive order on AI to protect workers, there isn't a policy that targets data transparency and usage for app-based platform companies.[54] Congress should introduce legislation to increase data transparency in order to better understand the realities that app-based workers face.

To do so, Congress should look to state legislation that has already addressed this issue. For example, Colorado has recently enacted legislation boosting transparency for app-based workers. Under this legislation, app-based companies must:

- Disclose terms and guidance for the deactivation of drivers and provide guidelines on how workers can be reactivated on the app platform.
- Disclose all information to all drivers before they accept a ride, such as fare and distance, so they can make informed choices about whether to accept rides. This can prevent last-minute ride cancellations initiated by drivers, which may lead to deactivation.
- Share information about the ride to consumers, such as the amount the customer pays and the amount the driver actually receives.
- Share data on rides and app activity to the state of Colorado, such as total mileage driven by drivers and number of deactivations.[55]

State and federal legislatures should build on Colorado's success and enact similar legislation for data transparency.[56] In fact, more data can lead to fair legislation for workers and consumers alike. The U.S. needs laws that require app-based companies to disclose what data they collect from customers and workers and why, and ban individualized wage and price setting based on collected data.[57]

Conclusion

All workers deserve the worker protections, minimum wage, and benefits that labor law has given workers in other industries. Because of the precariousness of app-based work, it is important to prioritize the voices of app-based workers and their experiences in the gig economy. Congress and policymakers must prioritize their policy recommendations while also reining in the corporate power that these companies have inflicted on American workers.

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