CCPA
CANADIAN CENTRE
for POLICY ALTERNATIVES
BC Office

Raising the Bar for App-Based Work

CCPA-BC response to the BC Ministry of Labour discussion paper *Proposing Employment Standards and Other Protections for App-Based Ride-Hail and Food-Delivery Workers in British Columbia*

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Introduction

We are encouraged to see that the BC Ministry of Labour is moving forward with plans to extend key employment protections to app-based ride-hail and food-delivery workers, a particularly vulnerable group of largely racialized and immigrant workers. The BC government has a unique opportunity to set high standards for sustainable, responsible platform work and we are pleased to support your deliberations on this issue by providing this brief.

This brief addresses the specific discussion questions posed in the Ministry's Paper and highlights several other priority areas for reform that are essential for ensuring that app-based workers have access to the full range of rights and protections afforded to other workers in our province, including the right to collectively bargain.

For over 25 years the BC Office of the Canadian Centre for Policy Alternatives (CCPA–BC) has provided independent research, analysis and expertise on the key challenges facing our province. We work with a team of over 50 staff and volunteer researchers to develop and share workable solutions that advance social, economic and environmental justice in BC and support transformative policy development by governments.

The CCPA-BC has a long track record of research on the importance of strong workplace rights for a healthy society and economy and conversely, the negative consequences of weak employment and labour protections for workers, their families and their communities.[1] Together with SFU's Morgan Centre for Labour Research, THE is jointly leading a six-year research and public engagement initiative investigating precarious work and multi-dimensional precarity in British Columbia supported by the Social Science and Humanities Research Council of Canada (SSHRC).[2]

In June 2023, the CCPA-BC and the Centre for Future Work led an open letter signed by 61 BC leading experts in labour law, policy and economics calling on the provincial government to systematically extend workplace rights and protections to app-based ride-hailing and food-delivery workers and set high standards for sustainable, responsible platform work.[3] The open letter articulated key priority areas for regulating ride-share and food delivery platforms endorsed by the signatories.

This brief synthesizes the key learnings from the CCPA-BC's long track record of collaborative, cross-sectoral research on precarious work and economic insecurity.

App-based ride-hail and food-delivery workers are only the most visible examples of a growing workforce of app-based workers that provide what researchers describe as location-based gig (or platform) services. There is a small but growing number of other app-based workers providing location-specific services in BC who need the same workplace rights and protections. The recommendations in this brief are intended to apply to all location-based app-based service delivery workers in BC, including those providing services through platforms like Instacart, TaskRabbit and others.[4]

Summary of our recommendations

1. Establish a clear test to determine whether app-based workers are independent contractors with the presumption of employee status and make misclassification a priority enforcement issue.

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[1] Ivanova, I. and K. Strauss. 2023. *But is it a good job? Understanding employment precarity in BC*. CCPA-BC and SFU Morgan Centre for Labour Research. https://policyalternatives.ca/publications/reports/it-good-job.

[2] For more on the Understanding Precarity in BC Partnership see https://understandingprecarity.ca.

[3] For the full text of the open letter and the list of signatories see https://www.policynote.ca/gig-work/.

[4] Digital platforms are also being used to engage workers to complete one-off on-demand online assignments that can entirely be done remotely from anywhere in the world, such as data entry, image tagging, design and translation. This type of online gig work is distinct from location-specific app-based work like food delivery and courier services, and much more challenging to regulate. This type of app-based work is outside the scope of this brief but also requires policy makers' attention. See Datta, N., C. Rong, S. Singh, C. Stinshoff, N. Iacob, N. S. Nigatu, M. Nxumalo, L. Klimaviciute. 2023. *Working Without Borders: The Promise and Peril of Online Gig Work*. World Bank. http://hdl.handle.net/10986/40066.

2. Extend the full range of BC worker rights and protections available under the Employment Standards Act (ESA) to app-based ride-hail and food-delivery workers.
3. Ensure workers receive at least the minimum wage for all time worked before tips and after work-related expenses.
4. Require platform companies to compensate workers for all necessary work-related expenses and prohibit unauthorized deductions from workers' pay.
5. Apply existing ESA tip protection standards to app-based workers.
6. Mandate pay and destination transparency.
7. Protect workers from unfair account suspensions and deactivations/terminations, create a pathway to a timely complaints/appeal process, and mandate appropriate compensation when workers are found to have been unfairly suspended or terminated/deactivated.
8. Require notice of termination for app-based workers and implement unjust dismissal protections for app-based workers and all workers covered by the ESA.
9. Mandate that app-based workers have full coverage by the Workers Compensation Act and the Occupational Health and Safety Regulation.
10. Confirm app-based workers' full rights to collective bargaining and meaningful access to unionization.
11. Require platform companies to contribute to provincial and federal payroll-based programs.
12. Mandate transparency about the controls that platform companies apply over app-based workers through the platform.

Underlying these recommendations are two core principles: first, that regardless of the technology that mediates their work, app-based ride-hail and delivery workers deserve and are entitled to all the rights and protections that other BC workers receive as employees; second, the platform companies that engage app-based workers in their service must fulfil all the responsibilities of traditional employers, including accepting full legal liability for protecting the health and safety of workers and contributing to payroll-based programs.

Any half measures, such as extending only a subset of employment rights and entitlements to app-based workers without classifying them as employees, as was done in Ontario, risk entrenching a second-tier of largely racialized workers in the BC labour market and leave these workers vulnerable to further exploitation. The research is clear—creating a new regulatory category of worker that is neither an employee nor an

independent contractor (aka a "third category") limits the protections available to the app-based workforce and perpetuates racist economic hierarchies.[5]

As global platform corporations continue to expand their low-cost, low-worker-protection business model to various service industries beyond ride-hail and food delivery,[6] the BC government has a unique opportunity—and responsibility—to set high standards for sustainable, responsible platform-based work. Any proposed new legislation on the issue must consider the racialized consequences of re-defining (lower) minimum employment standards for what is likely to become a growing group of vulnerable workers in our province.

Context: Global platform corporations rely on a business model that leaves workers with few protections and lobby intensely to keep it that way

The Ministry of Labour's Fall 2022 consultation documented that ride-hail and food-delivery workers currently lack the most basic workplace protections that the BC Employment Standards Act (ESA), the Workers Compensation Act and the Labour Relations Code are designed to provide, which leaves vulnerable workers unprotected in cases of injury, unjust treatment and exploitation.[7] This is something that worker advocates have known for years and it is not an accident but a core feature of the business model of platform companies.[8]

The business model of engaging workers to provide on-demand services through digital platforms first came to prominence in passenger transportation services (the so-called 'ride share' companies like Uber and Lyft) but is spreading quickly into other service industries including courier services, food and package delivery, home repair and maintenance tasks and caring services for seniors, people with disabilities and children.

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[5] For example, Dubal V. 2021. "The new racial wage code." *Harvard Law and Policy Review*, Vol. *15*, p.511. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3855094#.

[6] Sherer, J. and M. Poydock. 2023. *Flexible Work without Exploitation: Reversing Tech Companies' State-by-State Agenda to Unravel Workers' Rights and Misclassify Workers as "Contractors" in the Gig Economy and Beyond.* Economic Policy Institute. https://www.epi.org/publication/state-misclassification-of-workers/.

[7] BC Ministry of Labour. 2023. *App-based Ride-Hail and Food-Delivery Work in British Columbia: What We Heard.* https://engage.gov.bc.ca/app/uploads/sites/121/2023/04/What-We-Heard-Report-Gig-Workers-1.pdf.

[8] We wrote extensively about the lack of protections for gig economy workers in our 2018 submission to the Ministry of Labour's consultation on the Employment Stands Act, and it wasn't a novel concept then either. See Ivanova, I.. 2018. *Building a Stronger Foundation of Basic Workplace Rights for BC Workers: CCPA–BC Response to the BC Law Institute Consultation Paper on the Employment Standards Act.* CCPA–BC. https://www.policyalternatives.ca/publications/reports/building-strongerfoundation-Basic-workplace-rights-bc-workers.

While the technology to remotely manage a workforce via an app may be new, the actual work is not and typically consists of short, one-off tasks to be performed on demand such as driving a passenger or delivering prepared food or grocery items. Studies indicate that hundreds of thousands of Canadian workers now participate to varying degrees in this new form of employment.[9]

It has become increasingly clear that the owners of online platforms—often large global corporations—derive much of their profit and gain a competitive advantage over traditional service providers by exploiting gaps in the existing employment standards regulation and enforcement, not from genuine advantages in productivity or efficiency.

Platform companies classify the workers who sell their labour through the platform as "independent contractors" not as employees, thereby avoiding the responsibilities and costs that come with more traditional employment relationships.[10] This business model shifts most of the costs and risks of doing business, including those associated with fluctuations in business conditions, to app-based workers.

When global corporations like Uber, Lyft and Skip the Dishes are allowed to avoid paying employer health tax, WorkSafeBC, CPP and EI premiums, they are not contributing their fair share to support the services their workers will require when they get sick or injured and when they age and are no longer able to work.

This is obviously unfair and costly to BC taxpayers and to traditional businesses that are required to cover the costs of supporting their own injured workers through WorkSafe and other payroll premiums, and should not be allowed to continue. Without policies to limit these practices the platform business model will spread to more industries. This could threaten workers' livelihoods, unduly burden public health and safety net programs and undermine businesses that shoulder standard employment costs and responsibilities.

As has been pointed out by numerous worker advocates and labour experts, app-based service workers are rarely true entrepreneurs who set their own hours and rates. On the contrary, they typically have little control over their labour and pay rates set by the platform may not average above minimum wage after expenses. Workers may also be penalized for rejecting work assignments, which hardly fits the independent contractor label.

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[9] According to Statistics Canada, about 250,000 Canadians provided ride or delivery services through apps in 2022. See Statistics Canada. January 6, 2023. "Labour Force Survey, December 2022." *The Daily*. https://www150.statcan.gc.ca/n1/daily-quotidien/230106/dq230106a-eng.htm.

[10] See Clark, L.. June 23, 2017. "The gig economy threatens to take us back to pre-Industrial Revolution times." *Wired Magazine.* https://www.wired.co.uk/article/gig-economy-bank-of-england-worker-rights.

In Canada, the Ontario Labour Relations Board (OLRB) ruled that the control Foodora exerted over workers meant they could not be classified as independent contractors under the existing legislation. App-based workers around the world have won court cases proving they are misclassified as independent contractors and should be entitled to workplace protections afforded employees, including in Australia, Belgium, Switzerland, Germany, South Korea, Chile and Uruguay.[11] Courts, governing bodies and expert panels in the UK,[12] France,[13] Spain,[14] and Holland[15] have determined that much of the ride-hail and food-delivery platform workforce should be classified as employees.

So why do app-based workers continue to be systematically (mis)classified as independent contractors in BC (and in many other jurisdictions)? Because the definitions of "employee" and "employer" in the BC Employment Standards Act (and in employment laws almost everywhere) were written in the 20th century when there were no smartphones and were simply not designed to describe the employment relationships that modern technology has enabled. Additionally, the lack of a clear test to determine whether a worker is a genuine independent contractor or not, and the presumption of independent contractor status until a worker can prove otherwise via drawn-out and expensive court cases leaves workers vulnerable to misclassification.

Global platform corporations lean on their high-tech image and on the novelty of connecting buyers and sellers of services through a digital app to obfuscate the fact that they are de facto employers managing a large workforce to provide on-demand services. By arguing they are merely digital marketplaces rather than employers, platform companies can offload many of the normal risks and costs of doing business

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[11] International Lawyers Assisting Workers (ILAW) Network. March 2021. *Taken for a Ride: Litigating the Digital Platform Model*. https://www.ilawnetwork.com/wp-content/uploads/2021/03/Issue-Brief-TAKEN-FOR-A-RIDE-English.pdf.

[12] The Supreme Court of the United Kingdom. 19 February 2021. *Uber BV and others (Appellants) v Aslam and others (Respondents)*. Case No. UKSC 2019/0029. https://www.supremecourt.uk/cases/uksc-2019-0029.html.

[13] Haddad, B., D. Simonnet, et al.. 2023. *Rapport fait au nom de la commission d'enquête relative aux révélations des Uber files : l'ubérisation, son lobbying et ses conséquences*. Assemblée Nationale. https://www.assemblee-nationale.fr/dyn/docs/RAPPANR5L16B1521.raw#_Toc256000001.

[14] Ministerio de Trabajo y Economía Social. March 10, 2021. "El Gobierno y los interlocutores sociales alcanzan un acuerdo sobre los derechos laborales de las personas dedicadas al reparto a través de plataformas digitales." Government of Spain Press Release. https://www.ugt.es/sites/default/files/comunicado_mites_aass_logo_1.pdf.

[15] In 2021, the District Court of Amsterdam ruled that Uber drivers are employees per section 7:610 of the Dutch Civil Code and thus covered by the taxi transport collective agreement (see Gesley, J. 2021. "Netherlands: Amsterdam District Court Classifies Uber Drivers as Employees." Library of Congress, https://www.loc.gov/item/global-legal-monitor/2021-09-29/netherlands-amsterdam-district-court-classifies-uber-drivers-as-employees/); and the Amsterdam Court of Appeals ruled Deliveroo drivers are employees and thus covered by the transport of goods drivers collective agreement (see "Deliveroo workers are employees not freelancers: court." NL Times. January 16, 2019. https://nltimes.nl/2019/01/16/deliveroo-workers-employees-freelancers-court).

onto workers, consumers and public safety net programs. This serves global platform corporations well and they lobby intensely against any attempts to expand the definition of employee covered by employment law to include app-based workers.[16]

The direct result of the platform service business model is the emergence of a small but growing second class tier of (largely racialized) workers with few workplace rights and protections.

Denying these workers access to the full range of benefits and protections afforded other workers in our province is deeply unfair. It goes against the foundational principle of "decent work" put forward in the Arthurs Report on Canadian federal labour standards for the 21st century, which states that our legislation "should ensure that, no matter how limited his or her bargaining power, no worker … is offered, accepts or works under conditions that Canadians would not regard as 'decent'."[17] It also goes against the BC provincial government's anti-racism commitments.

While there is barely any data on the number and demographics of app-based workers in BC, a 2017 CCPA-Ontario study of gig-economy workers and consumers in the Greater Toronto Area suggests that app-based work exacerbates existing social and labour market inequalities.[18] The study documented that lower-income earners were more likely to provide services through online platforms, while higher-income earners were more likely to be consumers of these services. Similarly, the majority of service providers on the digital platforms were racialized workers, while the majority of consumers were non-racialized.

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[16] See for example the evidence revealed by the damning leak of thousands of confidential files on Uber to The Guardian and the International Consortium of Investigative Journalist (the Uber Files). Davies H., S. Goodley, F. Lawrence, P. Lewis, L. O'Carroll. July 11, 2022. "Uber broke laws, duped the police and secretly lobbied governments, leak reveals." *The Guardian*. https://www.theguardian.com/news/2022/jul/10/uber-files-leak-reveals-global-lobbying-campaign. Specifically on lobbying to weaken worker protection legislation in Europe, see: Corporate Europe Observatory. October 24, 2022. "Uber Files 2: How digital platforms are lobbying to undermine the rights of their workers." https://corporateeurope.org/en/2022/10/uber-files-2 and in the US, see: Marshal, A.. November 4, 2020. "With $200 million, Uber and Lyft write their own labour law." *Wired Magazine*. https://www.wired.com/story/200-million-uber-lyft-write-own-labor-law/.

[17] Arthurs, H. W.. 2006. *Fairness At Work: Federal Labour Standards for the 21st Century*. Government of Canada. http://publications.gc.ca/site/eng/324676/publication.html.

[18] Block, S. and T. Hennessy. 2017. *"Sharing economy" or on-demand service economy? A survey of workers and consumers in the Greater Toronto Area*. CCPA-ON. https://www.policyalternatives.ca/sharingeconomy.

Recommendations

1. Establish a clear test to determine whether app-based workers are independent contractors with the presumption of employee status, and make misclassification a priority enforcement issue

There is no objective justification for denying app-based workers access to the full range of employment rights and protections available to other BC workers. The most effective and fair way to provide these protections would be to clarify the definition of employee covered by the Employment Standards and Worker Compensation acts to explicitly include all workers engaged in digitally mediated employment relationships that do not meet the criteria describing genuine independent contractors.[19]

International examples of app-based workers successfully challenging misclassification in court suggest that ride-hail and food delivery workers may well already fall under the current definition of employee in BC. However, the BC Employment Standards Act does not offer a clear test for making the distinction between an employee (protected by the Act) and an independent contractor (not protected by the Act). Neither does the BC Labour Relations Code. This lack of clarity leaves workers vulnerable to misclassification. The resulting widespread misclassification of employees as independent contractors in BC is a well-documented problem that affects workers beyond those engaged in app-based ride hailing and food delivery work.[20]

Existing Canadian common law tests focus on two key factors to determine whether a worker is an employee: **control**, "assessing the presence or absence of control a manager or supervisor might or might not have over their worker"; and **integration**, "if the service being provided by the worker is performed as an integral part of the business, or done on behalf of the business but not integrated into that business."[21]

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[19] The BC government's website already specifies that agreeing to be an independent contractor, working more than one job, working independently without much direct supervision, driving one's own car, providing one's own tools, or being paid by piece rate or commission are not factors that on their own show that a worker is an independent contractor but there is currently no clear test to determine independent contractor status. See https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/forms-resources/employee-or-independent-contractor.

[20] Misclassification was already widespread at the time the Thompson Commission reviewed the BC Employment Standards Act in 1993/94. For more recent discussions of misclassification see the BC Federation of Labour. 2022. *Worker Rights in the Gig Economy: Ensuring Equal Employment Standards Protections for All.* https://bcfed.ca/sites/default/files/attachments/BCFED%20precarious%20work%20Sept%202022%20final%20web%20Sept%208.pdf; and Prism Economics and Analysis. 2022. T*he Underground Economy in British Columbia's Construction Industry: Assessing the Impact*. BC Building Trades. https://bcbuildingtrades.org/wp-content/uploads/2022/04/2022-Underground-Economy-Report.pdf.

[21] Employment and Social Development Canada. 2023. *Determining the Employer/Employee Relationship*. Government of Canada. https://www.canada.ca/en/employment-social-development/programs/laws-regulations/labour/interpretations-policies/employer-employee.html.

These principles were useful at the time they were developed (mid-20th century) but they are not designed to deal with the more fluid relationships that technological advances have enabled in the 21st century and need to be updated and clarified.

Furthermore, the absence of clear definitions of employment categories leaves it up to courts to make this determination on a case-by-case basis, which relies on workers having the means to pursue long, drawn-out court cases, or Employment Standards Tribunal and Labour Relations Board misclassification complaints to enforce their basic rights. This is an unfair onus to place on an already precarious population.

To shield workers from misclassification, we recommend developing a new, clear test to determine whether workers are "part of the payer's business, or in business on their own account."[22] Additionally, it should be assumed that workers have employee status unless the employer proves otherwise.
This is in line with the recommendations of the Expert Panel on Modern Federal Labour Standards for the federal Labour Code, which include introducing[23]:

- a presumption of employee status.
- simplified employment definitions.
- an employment classification test.

The Biden Administration has similarly proposed new clearer rules to reclassify workers that are "economically dependent" on a company so they are considered employees instead of independent contractors, therefore entitling them to a range of worker rights and protections, with final regulations from the Department of Labour expected in October 2023.[24]

The gold standard classification test, supported by stakeholders and legal experts in Canada[25] and across the globe[26] is the ABC test, where a worker is presumed to be an employee unless the employer can establish all three of the following factors:

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[22] ESDC. 2023. *Determining the Employer/Employee Relationship.*

[23] "Chapter 3: Labour Standards Protections for Workers in Non-Standard Work." *Report of the Expert Panel on Modern Federal Labour Standards.* Employment and Social Development Canada. June 2019. https://www.canada.ca/en/employment-social-development/corporate/portfolio/labour/programs/labour-standards/reports/what-we-heard-expert-panel-modern-federal.html#h2.4.

[24] See Tam, D. June 15, 2023. "DOL Indicates Final Independent Contractor Rule Coming No Later than October." *Reuters.* https://tax.thomsonreuters.com/news/dol-indicates-final-independent-contractor-rule-coming-no-later-than-october/.

[25] Employment and Social Development Canada. 2023. *What We Heard: Developing Greater Labour Protections for Gig Workers*. Government of Canada. https://www.canada.ca/en/employment-social-development/corporate/portfolio/labour/programs/labour-standards/reports/gig-workers-what-we-heard.html; BCFED, 2022, *Worker Rights in the Gig Economy.*

[26] The ABC test is used in 21 US states (see BCFED, 2022, *Worker Rights* in the Gig Economy). It is also recommended by the Economic Policy Institute (see Sherer and Poydock, 2023, Flexible Work without Exploitation) and the International Lawyers Assisting Workers (ILAW) Network (ILAW, 2021, Taken for a

A. the worker is free from the control and direction of the employer in connection with the performance of the work, both under the contract for the performance of the work and in fact.
B. the worker performs work that is outside the usual course of the employer's business.
C. the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

By embedding the presumption of employee status, the ABC test places the onus of proof onto the employer to establish that a worker is in fact an independent contractor, reducing the likelihood of widespread worker misclassification. As the BC Federation of Labour has argued, "reversing the onus recognizes that employers hold more power over terms and conditions of employment."[27]

A strong and clear classification test with the presumption of employee status will not only protect app-based ride-hail and food-delivery workers but also protect workers in industries likely to turn to this service delivery model in the future, as well as many BC workers who are currently misclassified.

Importantly, this new test should be accompanied with making the misclassification of employees as independent contractors a priority enforcement issue for the Employment Standards Branch.

2. Extend the full range of BC worker rights and protections available under the Employment Standards Act to app-based ride-hail and food-delivery workers

As outlined in the previous section, app-based ride-hail and delivery workers in BC should be considered employees and granted access to the full range of rights and protections available under the Employment Standards Act, Workers Compensation Act and Occupational Health and Safety Regulation.

Ride). In an extensive review of gig work classification cases, the ILAW find, "From our survey of the cases, it appears that the most effective definitions and judicial approaches have two things in common: i) they prioritise substance over form; and/or ii) they presume an employment status favourable to the worker unless the putative employer can prove a conjunctive list of factors which, cumulatively, set a very high threshold. [...]. For example, the ABC test adopted by California in AB 5" (pp. 34-35). The Biden's Administration has also expressed support for this test (see "Five Employment Law Remarks in President Biden's State of the Union Address." March 30, 2022. *JDSUPRA.* https://www.jdsupra.com/legalnews/five-employment-law-remarks-in-2636137/).

[27] BCFED, 2022, *Worker Rights in the Gig Economy*.

These protections include the right to earn at least the minimum wage for all time worked, the right to shift breaks, paid sick leave, vacation pay, statutory holiday pay and WorkSafeBC coverage. Employee status would also provide app-based workers with full rights to collective bargaining and ensure they are eligible to participate in (and receive employer contributions for) Employment Insurance (EI) and the Canada Pension Plan (CPP). We urge the BC government not to deny app-based ride-hail and food-delivery workers these bare minimum rights and protections that are enjoyed by other workers in our province.

What this means for the questions you asked us:

3. Ensure workers receive at least the minimum wage for all time worked before tips and after work-related expenses

The general minimum hourly wage should apply to app-based workers for all time spent working, averaged on a daily basis,[28] including time on assignment, time spent online actively seeking assignments, time between assignments, time travelling to pick up location or returning to an area where there are likely to be assignments (e.g., downtown), time waiting for a passenger or meal pick up and time refuelling and cleaning one's vehicle during a shift. During these times, workers are not free to engage in activities of their choosing and these activities are essential to the timely provision of the service ride-hail and food-delivery platform companies offer.

Earnings should be calculated on a daily basis to ensure that workers are earning at least the general minimum wage for every hour worked daily.[29]

Applying the minimum wage only to "engaged" or "on-assignment" time as was done in Ontario (Bill 88) fails to recognize that app-based workers spend considerable amounts of time working outside of their direct on-assignment time and results in workers reporting earnings far below the minimum wage for their total work time.[30]

If the totality of time workers spend engaged in their work is not accounted for, app-based workers also risk not being able to prove they were working when they were injured and receive WorkSafeBC coverage should injuries happen outside of "engaged" or "on-assignment" time (e.g., if a food-delivery bike courier gets mugged while waiting for their next assignment outside). Complete WorkSafeBC coverage is important as this group of workers work on BC's roadways and public spaces (for those

[28] We support reforms to ensure that taxi drivers earn at least the minimum wage for time worked with work hours averaged on a daily basis, not on a monthly basis.

[29] We support reforms to ensure that taxi drivers earn at least the minimum wage every day they work.

[30] Gig Workers United. "Does Bill 88 Work For App-Based Delivery Workers?" Accessed September 20, 2023. https://gigworkersunited.ca/bill88.html.

who use bikes/scooters to do their delivery) where they are especially exposed to the risk of accidents causing injury.

We also recommend the ministry increase the general minimum wage to reduce the strikingly large gap between the current BC minimum wage of $16.75 per hour and the living wages in communities across the province.[31]

4. Require platform companies to compensate workers for all necessary work-related expenses and prohibit unauthorized deductions from workers' pay

App-based workers incur a range of out-of-pocket expenses in the course of their work that they should be fully compensated for, as is required under the BC Employment Standards Act that prohibits employers from requiring an employee to pay the employers' business costs. The costs of fuel, vehicle maintenance and cell-phone data are some of the most obvious costs app-based workers face but there are additional expenses for which they require compensation.

Our specific recommendations for how app-based workers should be compensated for work-related expenses include:

- For motor vehicle expenses, workers should receive a minimum rate per kilometre for wear and tear of vehicles in line with the established CRA reasonable allowance rate.[32] Equivalent reasonable allowance rates should be developed by the ministry for bicycles, e-bikes and scooters.
- Workers should receive reimbursement for commercial vehicle insurance costs (unless provided by the platform), including commercial vehicle insurance costs for food delivery workers who use a car for deliveries and bicycle/scooter/e-bike/etc. theft insurance costs.
- Workers should receive a reasonable allowance for mobile data plans.
- Workers should be reimbursed for all incidental expenses required in the course of providing the service they have been engaged to provide, including but not limited to:
    - airport and other municipal fees, including congestion charges and tolls.
    - parking costs.

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[31] Ivanova, I., S. Daub and A. French. 2022. *Working for a Living Wage Making paid work meet basic family needs in Metro Vancouver*. Vancouver: CCPA-BC. https://policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2022/11/CCPA-BC-Living-Wage-Update-2022-final.pdf.

[32] For the 2023 rates, see https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/payroll/benefits-allowances/automobile/automobile-motor-vehicle-allowances/reasonable-kilometre-allowance.html.

    - cleaning and repair costs.[33]
    - safety equipment such as cameras, visibility vests, gloves and helmets.
- Food-delivery workers should be provided with an insulated food-delivery bag for their deliveries.

Paying workers a fixed amount (or a wage premium) intended to compensate them for all business expenses incurred, risks determining an amount significantly lower than the actual out-of-pocket business costs borne by the workers, which could reduce real wages below the minimum wage.

Presently, platform companies make deductions from workers' earnings for various fees and taxes and these can significantly cut into workers' ability to earn a living wage. The Employment Standards Act prohibits employers from directly or indirectly withholding, deducting or requiring payments from employees other than for items specifically permitted under regulation and this requirement should apply to platform companies as well. Additionally, platform companies should not be permitted to charge workers for using their platform/app.

5. Apply existing ESA tip protection standards to app-based workers

While platform companies say that they do not deduct tips from workers' earnings, some workers report that tips do impact their base pay.[34] Existing ESA tip protections should apply and be enforced.

6. Mandate pay and destination transparency

As required in the ESA, app-based workers should receive regular pay statements that include information about the hours worked during that pay period, the wages received for the assignment (separate from any tips), including all the details that contribute to the pay, any allowances or other payment the worker is entitled to, any deductions from the worker's pay and the purpose of each deduction.

[33] Uber and Lyft have set cleaning fees for customers who dirty or damage vehicles, but no compensation for ongoing cleaning and repairs. Legislation should ensure that any set cleaning fees are reasonable amounts considering the expenses they are designed to defray.

[34] British Columbia Ministry of Labour. April 2023. *App-Based Ride-Hail Food-Delivery Work in British Columbia: What We Heard.* https://engage.gov.bc.ca/app/uploads/sites/121/2023/04/What-We-Heard-Report-Gig-Workers-1.pdf; Gig Workers United, "Does Bill 88 Work For App-Based Delivery Workers?".

Platform companies must also adhere to BC's Pay Transparency Act to establish accountability regarding the equitable compensation of all BC-based workers on the platform.

We also recommend that platform companies be required to provide workers with the following information when offering an assignment:

- the minimum payment (separate from any tips) that the worker is assured to receive for completing the assignment and a description of how this amount is calculated.
- the pick-up and drop-off locations associated with the assignment.
- any factors used in determining to offer the work assignment to the worker.
- whether there will be consequences (incl. for the worker's performance rating) for the work assignment or the worker's failure to perform the work assignment and, if applicable, a description of those consequences.[35]

We further recommend mandating pay transparency upon completion of a work assignment as provided in Ontario's Bill 88. Specifically, within 24 hours of assignment completion, workers should receive information about:

- the actual payment they will receive for work, a description of how the amount was calculated and when the amount will be paid.
- The amount of tips/gratuities collected by the platform company for the work assignment, the amount of tips/gratuities that will be paid to the worker (which should be the same, as per our Recommendation 5) and when the amount will be paid.

Additionally, the ministry should consider regulations similar to those in place in New York City that allow food delivery workers to limit the distance between a restaurant and a customer they will travel for an assignment and provide the ability for workers to decline travel on or through specific tunnels or bridges (which can be particularly unsafe for cyclists). And, workers should be allowed to change these parameters at any time without penalizing workers for setting the parameters. In order to enable that, New York City requires the following information to be provided in advance of an assignment/trip: the pick-up address, the estimated time and distance of the trip, any

[35] The last two bullets mirror provisions in Ontario's Bill 88 and address key calls for algorithmic transparency. For an accessible overview of the problems with the current black-box algorithm practices of setting wages and distributing assignments, see Subramaniam, V. July 8, 2023. "Apps like Uber and DoorDash use AI to determine pay. Workers say this makes it impossible to predict wages." *The Globe and Mail.* https://www.theglobeandmail.com/business/article-pay-ai-algorithm-gig-workers-uber/.

tips and payment excluding tips.[36] New York City also requires that food delivery workers be given access to bathrooms at restaurants while picking up a delivery order.[37]

7. Protect workers from unfair account suspensions and deactivations/terminations, create a pathway to a timely complaints/appeal process and mandate appropriate compensation when workers are found to have been unfairly suspended or terminated/deactivated

App-based workers should not be suspended or deactivated from a platform without prior warning and a reasonable opportunity to respond to complaints made against them or concerns raised about their performance.[38] Platforms should be required to provide a written explanation of why a worker is being suspended or temporarily deactivated from the platform at the time of suspension/deactivation, unless the worker has engaged in gross misconduct.

Workers should have the right to appeal their suspension or deactivation through a fair and timely deactivation review process external to the platform, and they should have the right to be represented by a labour or worker advocacy organization or another representative of their choice in that review process.

The most effective and efficient way to accomplish this is by confirming the right of app-based workers to file a complaint to the Employment Standards Branch (ESB) as employees. Presently, the ESB is notorious for the lengthy delays in investigating and adjudicating complaints, which effectively denies justice to workers by making it impractical for many workers to undertake the process required to enforce their basic employment rights. To remedy this serious problem, the ESB should be appropriately resourced and mandated to speed up its processing of complaints in general and to establish an expedited process for reviewing and adjudicating complaints about unfair suspension/deactivation or termination from app-based workers and all other workers covered by the Employment Standards Act.

Suspensions/deactivations from a platform that exceed a certain length (e.g., five days) should be considered a termination and the ESA provisions about notice will apply as per Recommendation 8 below.

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[36] City of New York Local Law 2021/114. https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4927215&GUID=68592300-6B1D-40DC-9995-33D16088F98C&Options=ID%7CText%7C&Search=delivery

[37] City of New York Local Law 2021/117. https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4927206&GUID=4F2D9BC6-74D4-4A24-A889-85104C11881B&Options=ID%7CText%7C&Search=2298

[38] The same rights should be extended to all employees under the ESA.

In cases when technical issues on the platform result in a suspension or temporary deactivation, or if the ESB review process finds that the worker was unfairly suspended/terminated, platforms should be required to make the worker whole by compensating them for lost income during the suspension/deactivation.

8. Require notice of termination for app-based workers and implement unjust dismissal protections for app-based workers and all workers covered by the ESA

App-based workers should be entitled to notice of termination or pay in lieu of notice based on their length of service as outlined in the ESA. Additionally, as recommended in our 2019 submission to the ministry's consultation on modernizing the ESA, we call for the elimination of the three-month eligibility requirement for notice of termination or pay in lieu of notice for all workers and the implementation of unjust dismissal protections similar to those in Nova Scotia, Quebec and under federal labour standards.[39]

9. Mandate that app-based workers have full coverage by the Workers Compensation Act and the Occupational Health and Safety Regulation

Ride-hail and food delivery work is dangerous, sometimes deadly work.[40] Workers should be fully covered by workers' compensation paid by the platform companies and by BC's Occupational Health and Safety Regulation. Any business entity engaging workers in BC, including global platform corporations, must accept the full legal responsibility for protecting worker health and safety and must reduce their workers' exposure to risk by complying with relevant provincial regulations.

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[39] Ivanova, I. 2019. *CCPA–BC Response to the BC Ministry of Labour Consultation Paper on Modernizing the Employment Standards Act.* CCPA-BC. https://policyalternatives.ca/publications/reports/ccpa%E2%80%93bc-submission-modernizing-employment-standards-act.

[40] See Blakkarly, J. November 24, 2020. "After Five Deaths in Two Months, Australia's Food Delivery Workers Speak out about Unsafe Conditions." *SBS News*. https://www.sbs.com.au/news/article/after-five-deaths-in-two-months-australias-food-delivery-workers-speak-out-about-unsafe-conditions/xvh3wlu2e; Corry, K. November 10, 2022. "Road Collisions More Likely for Takeaway Delivery Riders Working in the Gig Economy." *University College London (UCL) News*. https://www.ucl.ac.uk/news/2022/nov/road-collisions-more-likely-takeaway-delivery-riders-working-gig-economy; and MilNeil, C. September 20, 2022. "State Data Show Uber and Lyft Drivers Were Involved in Over 1,000 Crashes in the City of Boston Last Year." *Streetsblog Massachusetts*. https://mass.streetsblog.org/2022/09/20/state-data-show-uber-and-lyft-drivers-were-involved-in-over-1000-crashes-in-the-city-of-boston-last-year.

10. Confirm app-based workers' full rights to collective bargaining and meaningful access to unionization

The government should confirm that app-based workers have full rights to organize unions (utilizing BC's single-step certification procedure), negotiate collectively with their platforms and take collective action (including strike action) in support of their demands. While the Employment Standards Act offers a minimum level of basic workplace rights and protections, app-based workers should have the right to organize on their own behalf and collectively bargain for better working conditions and family-supporting compensation and benefits above and beyond this minimum.

Sectoral bargaining should be implemented as a way to provide a meaningful path to unionization for app-based workers who would face significant difficulties in unionizing under the current legal framework due to the isolated nature of their work and the tremendous bargaining power and access to resources commanded by their employers (in particular global platform corporations).

11. Require platform companies to contribute to provincial and federal payroll-based programs

If app-based workers are found to be employees under the new test envisioned in Recommendation 1 above, then platform companies are employers. Consequently, all provincial and federal payroll-based programs, including WorkSafeBC, the Employer Health Tax, EI and CPP must apply equally and fairly to platform companies and their workers.

It is imperative to mandate platform companies to fulfil the same labour and fiscal responsibilities as traditional employers to ensure fairness for workers and traditional businesses.

When platforms are not required to contribute to WorkSafeBC—as is currently the case—they are off the hook for the costs of injured app-based workers' medical care, shifting the expenses to the public purse and thereby to other BC businesses and households. If injured app-based workers cannot work temporarily or permanently as a result of their injury, the costs again are borne by public safety-net programs.

Similarly, when app-based workers with no EI protection suffer a loss of income because they are terminated without cause (and notice) or find themselves unable to work due to illness or a disability, we can expect the need for provincial welfare and income support programs to increase.

The foregone tax revenues for the provincial and federal governments are significant. It has been estimated that Uber and Lyft "legally avoid paying around $135 million per

year in Canadian taxes, including around $81 million in avoided EI and CPP payroll taxes, and up to $54 million in avoided corporate taxes, based on 2019 figures."[41] This does not include estimates of foregone tax revenue provincially and even the federal estimates are likely much larger now because Uber and Lyft were not licensed to operate in BC until December 2019. Food-delivery services have also expanded significantly in the province since 2019.

Platform companies should no longer be permitted to offload the costs of keeping their BC-based workers safe and healthy onto the province and onto workers themselves.

12. Mandate transparency about the controls that platform companies apply over app-based workers through the platform

Global platform corporations' claims of being mere digital marketplaces rather than employers managing a large workforce depend on black-boxing the controls they apply to the work performed through their apps. Platform companies rely on trade secret exemptions to hide the underlying logic of the algorithms that automate controls over both the distribution and compensation of assignments.[42] Workers are thus unable to fully understand or predict the fluctuations in jobs and pay they are offered while on shift. Consequently, ensuring that workers are protected from discrimination and unjust treatment requires algorithmic transparency.

The European Union's General Data Protection Regulation (GDPR) offers a model for applying information protection acts to app-based work.[43] In line with the data transparency required of platform companies by the EU's GDPR,[44] the BC government needs to confirm that the provincial Personal Information Protection Act applies equally to workers' data as it does to consumer data. At a minimum, app-based workers should be entitled to:

- The right to be informed about what data is being collected about them and their work by the platform.
- The right of access to the data that is collected about them and their work.
- The right to correct any inaccurate information.

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[41] Cochrane, D.T.. 2021. *Report: Uber-low Taxes Lyft Ride-sharing Revenue.* Canadians for Tax Fairness. https://www.taxfairness.ca/en/resources/reports/report-uber-low-taxes-lyft-ride-sharing-revenue.

[42] Subramaniam, V. 2023. "Apps like Uber and DoorDash use AI to determine pay."

[43] The European Data Protection Board. 2018. *General Data Protection Regulation.* The European Union. https://gdpr.eu/what-is-gdpr/.

[44] For example, the GDPR regulations were applied in a case against Ola and Uber, requiring transparency around the platforms' algorithmic management of their workforce (see Lomas, N.. April 5, 2023. "Drivers in Europe net big data rights win against Uber and Ola." *Tech Crunch.* https://techcrunch.com/2023/04/05/uber-ola-gdpr-worker-data-access-rights-appeal/).

- The right to transparency around automated decision-making that has significant impacts on the worker.[45]
- The right to meaningful human review of automated decisions that have significant impacts on the worker.

Myth Busting: Employee Protections and Decent Work are not Incompatible with Flexibility

Flexible models of work are incredibly important. They contribute to a more diversified and adaptable economy by opening up labour market participation to people with various social responsibilities or health needs and others who face significant barriers to traditional employment. As a province, BC should move away from tying workers' protection from poverty and precarious lives exclusively to the standard employment relationship as the people excluded from such models of protection are more likely to be women and/or racialized persons.

Changes need to be made to the ESA to provide better rights to flexibility for employees as the CCPA-BC has previously recommended.[46] Nonetheless, it is important to recognize that existing ESA protections are compatible with many flexible models of work, including app-based ride-hail and food delivery work. We can shield workers from exploitation while improving flexibility and allowing room for the important and unpaid labour of social reproduction that society relies on.

A common lobbying tactic of global platform corporations has been to threaten to leave a jurisdiction should local policy-makers put forward stronger protections for their workers. However, platform companies can continue to operate within the parameters of providing decent work without affecting workers' ability to choose their working hours as research has shown, "employment, as a legal classification, has proven to be adaptable, dynamic and capable of accommodating a range of working time behaviors."[47] A US-based package delivery platform that pre-emptively classified their California workers as employees provides a recent example of this compatibility: "The firm retained a diverse workforce with variable schedules and maintained the same scheduling system following the shift to employment. Thus, the firm remained flexible in its labor deployment strategy. We also found that following the shift to

[45] Under EU's GDPR, workers are entitled to clarity around the underlying logic of automated assignment distribution, assignment pricing, suspensions, terminations, and other algorithmic rules that affect workers and their work. See for e.g. Lomas, N., 2023. "Drivers in Europe net big data rights win."

[46] Ivanova, I. 2019. *CCPA–BC Response to the BC Ministry of Labour Consultation Paper on Modernizing the Employment Standards Act.*

[47] Johnston H. et al., 2023. "'Employment Status and the On-Demand Economy: A Natural Experiment on Reclassification." *Socio-Economic Review*, 1–26. https://doi.org/10.1093/ser/mwad047.

employment, the firm became more efficient in its use of labor resources by better matching its scheduled workforce with its labor needs."[48]

Although global platforms sell the idea of boundless workers' flexibility to their potential workers, in reality, app-based workers' flexibility is significantly limited by algorithmic controls that force workers to chase decent pay by making themselves available in places and at times that are not of their own choosing.[49] And where workers have lost employment status under the guise of improved flexibility, as was the case for Deliveroo workers in Belgium, for example, they found that, "instead, it reduced their degree of autonomy and control in relation to the platform."[50]

If workers were guaranteed the same minimum employment protections across all platform work, they may not need to pick up work on various different apps to make ends meet and instead could be empowered to choose the platform that works best for them (e.g., provides the highest compensation).

Extending only a narrow subset of employment rights and protections to app-based workers leaves these workers vulnerable to continued exploitation and entrenches racist labour market hierarchies

In every jurisdiction where app-based workers' independent contractor status has been challenged, global platform corporations have aggressively lobbied for a so-called "third way" to classify app-based workers to avoid taking full responsibility for their workforce.[51] The evidence is clear: where a third employment category or limited protections have been applied, such as in Ontario and California, app-based workers continue to face exploitation.[52]

A third category limits the protections these workers have access to without giving them any added flexibility. This approach would place BC's predominantly racialized app-based workforce in a second, lower-tier category of employment, a move that upholds white supremacy. Creating new exclusions to the Employment Standards Act

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[48] Johnston H. et al., 2023, "Employment Status and the On-Demand Economy."

[49] BC Ministry of Labour, 2023, *App-Based Ride-Hail Food-Delivery Work in British Columbia: What We Heard*; Gig Workers United, "Does Bill 88 Work For App-Based Delivery Workers?".

[50] Drahokoupil, J. and A Piasna. 2019. "Work in the Platform Economy: Deliveroo Riders in Belgium and the SMart Arrangement." *Etui.* https://ssrn.com/abstract=3316133.

[51] Sherer and Poydock, 2023, *Flexible Work without Exploitation*.

[52] See for example Sainato, M.. February 18, 2021. "'I can't keep doing this': gig workers say pay has fallen after California's Prop 22." *The Guardian.* https://www.theguardian.com/us-news/2021/feb/18/uber-lyft-doordash-prop-22-drivers-california.

(ESA) is also be contrary to the Fair Wage Commission recommendations and goes against the BC government's broader efforts to address systemic racism.

Furthermore, as global platform corporations have demonstrated an interest in expanding this model of on-demand work to other industries,[53] allowing for exceptions to the ESA or opening up third categories of employment for app-based work creates a dangerous precedent for BC workers.

Conclusion

All BC workers deserve access to basic workplace rights and protections. The basic rights enshrined under the Employment Standards Act and the Workers Compensation Act are particularly important for vulnerable workers such as new immigrants, low-wage workers and racialized workers—who are disproportionately represented among app-based workers—all of whom are less able to secure workplace conditions better than the minimum requirements set out by law.

Taken together, the recommendations put forward in this brief will extend appropriate rights and protections to app-based workers and ensure fair competition between digital platforms and other businesses that retain traditional employment relationships (and fulfil the associated employment responsibilities).

Although this brief focuses specifically on issues of regulating app-based work, we emphasize that app-based workers are not the only ones who need the ministry's attention. The extensive research CCPA–BC has published on workplace rights in BC reveals significant gaps in the current Employment Standards Act and serious problems with the existing enforcement practices that leave many workers unprotected. Major reforms to BC's employment standards and their enforcement are urgently needed to establish a strong foundation of basic workplace rights and protections that meaningfully apply to all workers.

We urge the ministry to act immediately on its election promise to develop a precarious work strategy that reflects the diverse needs and unique situations of today's workers and workplaces beyond just the most visible app-based workers. The recommendations outlined in our previous submissions to the ministry on modernizing the Employment Standards Act and to the Labour Relations Code Review Panel that have not already been implemented should be revisited as they will help establish a decent work standard of minimum rights and protections for all workers in BC and ensure that these

[53] Sherer and Poydock, 2023, *Flexible Work without Exploitation*; and *California Independent Healthcare Contractor Definition Initiative (2022).* Ballotpedia. Accessed 20 September 2023. https://ballotpedia.org/California_Independent_Healthcare_Contractor_Definition_Initiative_(2022).

rights are meaningfully enforced.[54] We have enclosed these earlier submissions for your reference.

Thank you for this opportunity to share our recommendations for strengthening the workplace rights of app-based ride-hail and food delivery workers in BC. We hope our contributions are useful for your deliberations.

[54] See Ivanova, I. 2019. CCPA–BC Response to the BC Ministry of Labour Consultation Paper on Modernizing the Employment Standards Act. and Ivanova, I. 2018. Response to the 'Recommendations for Amendments to the Labour Relations Code' Report. CCPA-BC. https://policyalternatives.ca/sites/default/files/uploads/publications/BC%20Office/2018/05/CCPA-BC%20Written%20Response%20to%20LRC%20Review%20Panel%20Report_Nov%202018.pdf

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