

## Prop 22 Harms People of Color First and Worst

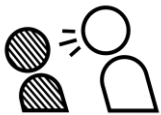
For many, work is a source of dignity, identity, and purpose—a way to provide for a family and support a community. All work should be safe, be free from discrimination, and provide a fair wage, benefits, and the ability for workers to join together and bargain with their employer for more stability and security. Yet, on Election Day in November, California voters will be presented with an **unprecedented and dangerous** ballot initiative—Proposition 22—that would put workers further from that goal.<sup>1</sup>

Advanced by Uber, Lyft, DoorDash, Instacart, and Postmates,<sup>2</sup> Prop 22 aims to strip workers of core protections such as overtime pay, unemployment insurance, and paid sick leave—benefits required by law but which these companies have flouted.<sup>3</sup> Workers of color in particular are routinely excluded from these workplace benefits, experience discrimination on the job, and earn far less than their white peers.

**This is why Prop 22 poses a singular risk to people of color**—who are the primary frontline workers for these corporations—since it would roll back anti-discrimination protections, strip away workplace safety and paid leave provisions that workers require in the face of COVID-19, and cement these changes by blocking workers from ever using their collective voice to change this substandard arrangement. It's also why workers of color have sent an open letter to proponents of Prop 22 calling them out for their platitudes about the Black Lives Matter movement, while they enshrine exploitation of Black and brown workers into law.<sup>4</sup>

### WHAT DOES PROP 22 MEAN FOR COMMUNITIES OF COLOR?

A recent UC Santa Cruz survey indicated that 78 percent of app-based ride-hail and delivery workers are Black, Latino, Hispanic, Asian or multi-racial.<sup>5</sup> Most are immigrants.<sup>6</sup> Yet, despite professing to “stand for racial justice,”<sup>7</sup> the companies are backing an initiative that would deny these workers the protections they need most.



**ANTI-DISCRIMINATION:** Prop 22 eliminates access to, or dramatically narrows, nearly all existing employment laws for app-based transportation and delivery workers, including laws prohibiting employment discrimination and ensuring equal pay.<sup>8</sup> Instead, the initiative offers narrow anti-discrimination protections that pale in comparison to what the law does now.<sup>9</sup> For example, **the initiative does not explicitly protect**

**immigrant workers** from discrimination, even though they make up a majority of workers on these platforms.<sup>10</sup> Prop 22 also cuts off protections for workers who experience discrimination that was recently banned in California. For instance, the state prohibits discrimination on the basis of traits

historically associated with race—such as hair styles<sup>11</sup>—but the initiative puts these protections out of reach.

Moreover, any rights offered by the initiative are meaningless without strong enforcement. Here as well, **Prop 22 makes it harder for workers to bring discrimination claims** against these companies by shortening the time a worker has to file.<sup>12</sup> And while 43 percent of ride-hail workers report being harassed on the job by a passenger,<sup>13</sup> the initiative contains **no enforcement mechanism** if a driver experiences

*Facing down discrimination and harassment is part of the job. I've been verbally assaulted and called a "ghetto" driver, only to have my app suspended by the same customer's complaint. Prop 22 all but ensures that this will continue since it frees the companies from any liability or responsibility for this type of behavior.*

—Cherri Murphy, Lyft Driver



discrimination,<sup>14</sup> such as high-profile instances of drivers of color being threatened and verbally accosted by white passengers.<sup>15</sup> Without clear enforcement provisions, workers are right to ask how discrimination will ever be effectively rooted out of the platform.<sup>16</sup>



**COVID-19 PROTECTIONS:** Black and brown communities have been the primary victims of COVID-19.<sup>17</sup> Through structural racism and occupational segregation, these workers are on the front lines engaging in “essential work” that results in disproportionately high rates of illness and death.<sup>18</sup> Instead of responding to this crisis, **Prop 22 weakens workplace safety** by cutting off access to Cal/OSHA for workers who report safety violations.<sup>19</sup> There is no requirement in the initiative that the

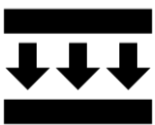
companies offer personal protective equipment, pay for cleanings, or put in place any procedures to protect workers.<sup>20</sup> Instead, some companies have resorted to selling masks and hand sanitizer to drivers, rather than provide it outright.<sup>21</sup>

What’s more, the proposition offers **zero paid sick days; cuts off unemployment or state disability protections**, including protections for family leave; and **provides illusory health benefits** if workers fall ill.<sup>22</sup> In fact, **Prop 22 effectively cancels local COVID-19 emergency sick leave laws**—passed in cities such as San Francisco, Oakland, San Jose, and Los Angeles—that applies to app-based workers today.<sup>23</sup>



**COLLECTIVE BARGAINING:** True security, independence, and dignity at work only comes when workers are able to come together to speak in a collective voice. Yet, **Prop 22 is directly at odds with the Movement for Black Lives’ Economic Justice platform**, which calls for “[t]he right for workers to organize in public and private sectors especially in ‘On Demand Economy’ jobs.”<sup>24</sup> This is a bedrock demand, since

**workers on these apps face arbitrary “deactivation”** from their app (something experienced by nearly a third of all workers) and **have no way to change the terms and condition of their work.**<sup>25</sup> Yet, if passed, Prop 22 would require a 7/8<sup>th</sup>s majority vote by the legislature in order for the state to authorize collective bargaining for app-based workers, putting a meaningful voice in the conditions at work further out of reach.<sup>26</sup>



**SUBSTANDARD WORK:** California has been enacting new laws to eliminate racist exclusions of Black and Latino workers from core protections. In recent years, overtime laws were revised to include farmworkers and domestic workers.<sup>27</sup> This initiative would go in the opposite direction and **lock this largely people-of-color workforce into substandard conditions in perpetuity.**<sup>28</sup> It’s no surprise that Prop 22 does not

reduce the legal rights of the highly paid and largely white executives at tech companies<sup>29</sup> and instead only targets its low-wage, largely Black, Latino, Hispanic, and Asian driver and delivery workforce.

## WHY ARE THE COMPANIES PUSHING THIS INITIATIVE NOW?

In 2019, workers won a watershed victory with the passage of AB 5, a law that ensured that workers who are core to the business model of these companies can access vital workplace protections.<sup>30</sup> Uber and Lyft spent more than one million dollars to lobby for an exemption to the law.<sup>31</sup> They failed. Now, several app-based companies are subject to dozens of lawsuits, including by the cities of San Diego (Instacart)<sup>32</sup> and San Francisco (DoorDash)<sup>33</sup> and by the State Attorney General (Uber & Lyft).<sup>34</sup> Prop 22 would give these companies the exemption they failed to obtain and undermine enforcement efforts.

Far from protecting flexibility or offering “historic” benefits to workers—as its proponents suggest—Prop 22 means precisely the opposite, reversing AB 5 and taking away essential worker protections. Through forced misclassification, Prop 22 would **strip hundreds of dollars in wages from workers** each week;<sup>35</sup> **deny them paid family leave**;<sup>36</sup> and **upend workers’ compensation protections** for injuries on the job.<sup>37</sup> Indeed, while Prop 22 was spurred on by recent changes to the law, by any fair measure, these workers were employees long before AB 5 was enacted.<sup>38</sup>

## WHAT ELSE WILL PROP 22 DO?

But the initiative doesn’t stop there. With their \$181 million investment, the companies are seeking, once and for all, to **deregulate the industries in which they operate**.<sup>39</sup> Prop 22 would gut labor protections; deprive courts, state agencies, and local jurisdictions of the ability to enforce or raise standards; and ensure that the Legislature can never authorize these workers to bargain for better quality jobs.<sup>40</sup> **If passed, it will signal to corporate America that, with enough cash, they can buy permanent deregulation and establish a perpetual underclass of workers.**

Simply put, as app-based companies raise nine-figure sums from private investors<sup>41</sup> and mint new billionaires in the midst of this crisis,<sup>42</sup> their diverse frontline workforce would be left out in the cold—**permanently**—if the companies are able to pass Prop 22.

Essential workers of color deserve better.

<sup>1</sup> See Protect App-Based Drivers and Services Act (hereafter “PADSA”) (Dec. 9, 2019) available at:

<https://www.oag.ca.gov/system/files/initiatives/pdfs/19-0026A1%20%28App-Based%20Drivers%29.pdf>.

<sup>2</sup> Ryan Byrne, “With funding from Uber, Lyft, and Doordash, campaign behind California Proposition 22 tops \$180 million” Ballotpedia, (Sep 9, 2020), <https://news.ballotpedia.org/2020/09/09/with-funding-from-uber-lyft-and-doordash-campaign-behind-california-proposition-22-tops-180-million/>.

<sup>3</sup> See, generally Rey Fuentes, Rebecca Smith, and Brian Chen, “How Uber, Lyft, and DoorDash’s Ballot Initiative Would Put Corporations Above the Law and Steal Wages, Benefits, and Protections from California Workers,” Partnership for Working Families and National Employment Law Project (July 2020) (hereafter “Rigging the Gig”) available at <https://www.forworkingfamilies.org/resources/publications/rigging-gig>.

<sup>4</sup> Sign On: Open Letter to Gig Companies regarding Black Lives Matter, Gig Workers Rising, June 18, 2020, <https://medium.com/@catalina.brennan.gatica/sign-on-open-letter-to-gig-companies-regarding-black-lives-matter-4b48420e238d>.

<sup>5</sup> See Chris Benner, “On-demand and On-the-Edge: Ride hailing and Delivery workers in San Francisco,” Institute for Social Transformation, UC Santa Cruz, p. 8 (May 5, 2020) (hereafter “Benner”) available at <https://transform.ucsc.edu/on-demand-and-on-the-edge/>.

<sup>6</sup> *Id.*

<sup>7</sup> Uber Technologies (June 2, 2020, 10:18 AM) available at <https://twitter.com/uber/status/1267868227394326530>.

<sup>8</sup> See “Rigging the Gig,” Section IV(A).

<sup>9</sup> See PADSA, proposed Bus. & Prof. Code § 7456.

<sup>10</sup> *Id.* Compare to Cal. Lab. Code § 1171.5(a) (making explicit that “[a]ll protections, rights, and remedies available under state law ... are available to all individuals regardless of immigration status”).

<sup>11</sup> The initiative creates a new anti-discrimination regime in the Business and Professions Code which would effectively untether the employee discrimination protections in the Government Code which contains broader protections against discrimination. For example, unlawful discrimination based on race includes discrimination based on “traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.” Cal. Gov. Code §§ 12926(w)-(x). But this protection would not be available under Prop 22.

<sup>12</sup> Section 52 of the Unruh Civil Rights Act allows an aggrieved party to bring a claim before the Department of Fair Employment and Housing if the alleged unlawful practice was a violation of Section 51. Cal. Civ. Code § 52(f). Yet, because app-based workers would be alleging violations of the Business and Professional Code as amended by PADSA, it is unclear that they would be able to access the administrative enforcement mechanism otherwise available under Civil Code § 52(f) and Government Code § 12948, and requires the claim to be filed within two years for the administrative hearing process, compared to three years under FEHA.

<sup>13</sup> See Benner at p. 35.

<sup>14</sup> See “Rigging the Gig,” Section IV(B)(6).

<sup>15</sup> See, e.g., Todd Perry, “Edgar the Lyft Driver Showed How to Perfectly Respond to an Unhinged, Racist Customer,” Upworthy (June 26, 2020) available at <https://www.upworthy.com/lyft-driver-responds-to-passenger-racist-homophobic-rant>.

<sup>16</sup> *Id.*

<sup>17</sup> Tiffany Ford, Sarah Reber, and Richard Reeves, “Race Gaps in COVID-19 Deaths are Even Bigger Than They Appear,” Brookings Institution (June 16, 2020) available at <https://www.brookings.edu/blog/up-front/2020/06/16/race-gaps-in-covid-19-deaths-are-even-bigger-than-they-appear/>.

<sup>18</sup> Alexander Bryan, et al. "Moving From The Five Whys To Five Hows: Addressing Racial Inequities In COVID-19 Infection And Death," Health Affairs (July 2, 2020) available at <https://www.healthaffairs.org/doi/10.1377/hblog20200625.389260/full/>.

<sup>19</sup> See "Rigging the Gig," Section IV(B)(8).

<sup>20</sup> *Id.*

<sup>21</sup> Sarah Emerson, "Lyft Is Selling — But Not Providing — Masks and Sanitizer to Drivers," OneZero (July 16, 2020) available at <https://onezero.medium.com/lyft-is-selling-but-not-providing-ppe-to-drivers-71bd95c43104>.

<sup>22</sup> *Id.* at Section IV(B)(4) (sick leave); (B)(5) (unemployment); (B)(2) (health benefits).

<sup>23</sup> *Id.* at Section V(B)(2).

<sup>24</sup> "Economic Justice," The Movement for Black Lives (accessed on June 12, 2020) available at <https://m4bl.org/policy-platforms/economic-justice/>.

<sup>25</sup> See Benner at p. 40.

<sup>26</sup> See "Rigging the Gig," Section V(B)(1).

<sup>27</sup> See Assembly Bill 241 (Ammiano), Ch. 374, Reg. Sess. 2013-2014 (Sept. 26, 2013) (extending overtime protections to domestic workers). Assembly Bill 1066 (Gonzalez), Ch. 313, Reg. Sess. 2015-2016 (Sept. 12, 2016) (same for agricultural workers).

<sup>28</sup> See generally "Rigging the Gig."

<sup>29</sup> For example, nearly 60 of Uber's leadership is white, a pattern reflected in nearly every sector of the company's employee workforce See "Diversity and Inclusion Report," Uber Technologies, p. 17 (2019) available at <https://d1nyezh1ys8wfo.cloudfront.net/static/PDFs/Uber+D%26I+Report+2019.pdf>.

<sup>30</sup> Assembly Bill 5 (Gonzalez), Ch. 296, Reg. Sess. 2019-2020 (Sept. 18, 2019).

<sup>31</sup> As recent data on lobbyist spending indicates, Uber and Lyft spent more than \$1 million lobbying the state legislature for an exemption from AB 5. See Cheryl Miller, "Uber and Lyft Spent More Than \$1M on State Lobbying in 2019," The Recorder (Feb. 3, 2020) available at <https://www.law.com/therecorder/2020/02/03/uber-and-lyft-spent-more-than-1m-on-state-lobbying-in-2019/?sreturn=20200117162528>.

<sup>32</sup> See The People of the State of California v. Maplebear, Inc., Case No. 37-2019-00048731-CU-MC-CTL (Feb. 18, 2020).

<sup>33</sup> See The People of the State of California v. DoorDash, Inc., Case No. CGC-20-584789 (June 16, 2020).

<sup>34</sup> The People of the State of California v. Uber Technologies, Inc., Case No. CGC-20-584402 (S.F. Superior Court, May 5, 2020).

<sup>35</sup> See "Rigging the Gig," Section IV(B)(1).

<sup>36</sup> See "Rigging the Gig," Section II.

<sup>37</sup> See "Rigging the Gig," Section IV(B)(3).

<sup>38</sup> See, e.g., O'Connor v. Uber Technologies, Inc., 82 F.Supp.3d 1133 (N.D. Cal. 2015) (finding that the question of employee status, while a contested issue of fact, likely weighed in favor of workers as employees); *Cotter v. Lyft, Inc.*, 60 F.Supp.3d 1067 (N.D. Cal 2015) (same).

<sup>39</sup> See "Rigging the Gig."

<sup>40</sup> *Id.*

<sup>41</sup> Kenrick Cai, "DoorDash Raises Another \$400 Million Ahead of its Public Listing," Forbes (June 18, 2020) available at <https://www.forbes.com/sites/kenrickcai/2020/06/18/door-dash-raises-400-million-ahead-of-ipo/#69fa4bc26e7f>.

<sup>42</sup> Jennifer Wang, "Instacart Founder Apoorva Mehta Becomes a Billionaire After New Funding Round," Forbes (June 17, 2020) available at <https://www.forbes.com/sites/jenniferwang/2020/06/17/instacart-founder-apoorva-mehta-becomes-a-billionaire/#620c00597e02>.