

The Gig Economy Is Coming for Millions of American Jobs

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Josh Eidelson, 17 février 2021



California's vote to classify Uber and Lyft drivers as contractors has emboldened other employers to eliminate salaried positions—and has become a cornerstone of bigger plans to “Uberize” the U.S. workforce.



Uber and Lyft drivers protest in a caravan outside Los Angeles City Hall on Oct. 22, 2020.
Photographer: Frederic J. Brown/Getty Images

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The tower of aging Manila envelopes, stacked in a corner of Rome Aloise's cluttered Bay Area home office, is a monument to five years of failure. Aloise, who heads the Northern California chapter of the Teamsters union, has spent a lot of time sitting across a table from officials at Uber and Lyft, trying to work out a deal to organize their drivers. The companies wanted to forge peace with labor while ensuring the workers would still be considered independent contractors without the legal rights employees are guaranteed, including the hourly minimum wage. The union wanted to increase its ranks and boost drivers' pay without setting a precedent that would endanger its other members' rights. The envelopes contain a small forest's worth of rejected proposals, handwritten notes, and other detritus from a great many meetings that couldn't bridge the gap. "Everybody would love to see some resolution," Aloise says. "It's just what that looks like is the problem."

Back and forth the companies and the Teamsters have gone over the years, as the firmament has shifted around them. During Aloise's first round of monthslong talks at Uber Technologies Inc.'s headquarters in San Francisco, in 2016, the company's clout was on the rise—its top officials included then-President Barack Obama's former campaign manager, and Obama himself joked about becoming an Uber driver after leaving the White House. A couple of years into the Trump era, the union appeared to have the upper hand, after California judges and legislators made it much tougher to call workers

contractors if they were central to a company's operations. Now, however, union leverage is at a nadir, and the scenario that labor officials—including some who don't represent drivers—spent years trying to head off is beginning to unfold.

Last year companies such as Uber, Lyft, DoorDash, and Instacart spent a record \$200 million campaigning for an Election Day ballot measure that would exempt them from the California law, arguing in ads and in-app messages that keeping drivers contractors would protect their ability to work. They won: Proposition 22, as the ballot measure is known, now limits their drivers in California to a set of sub-employee alternative perks such as an “earnings guarantee” that doesn't count the time or gas they burn waiting between trips. Prop 22 also insulates itself from future reform efforts by preempting local laws and requiring that any tweaks by the state legislature comport with its intent and pass with a seven-eighths supermajority. All this has left many drivers feeling stranded in the worst of both worlds—as beholden to bosses' whims as employees, without the corresponding protections.

Employees in related fields are already feeling the knock-on effects. In December, Albertsons Cos., the supermarket chain, started informing delivery drivers they'd be replaced by contractors. In California hundreds of Albertsons employees are being swapped for DoorDash Inc. workers, according to the United Food & Commercial Workers union. Albertsons declined to comment on the layoff figures but says that the move is happening in multiple states to “help us create a more efficient operation” and that affected workers are being offered other jobs there. (Some workers dispute that last part.) Startups such as Jyve Corp., which sends contractors to grocery stores to stock shelves in lieu of employees, are seeking similar exemptions.

Companies in a range of industries could use the Prop 22 model to undermine or eliminate employment protections. A week after the election, Shawn Carolan, a partner at early Uber investor Menlo Ventures, wrote an op-ed heralding the potential to spread Prop 22's vision of work “from agriculture to zookeeping,” including to “nursing, executive assistance, tutoring, programming, restaurant work and design.” The Coalition for Workforce Innovation, a lobbying group that seeks to enable wider use of contract labor, includes trade groups representing Amazon.com, Apple, AT&T, Comcast NBCUniversal, CVS Health, General Motors, Nike, Rite Aid, Starbucks, T-Mobile, Verizon Communications, and Walmart, as well as construction, finance, media, sales, and trucking interests.

Now gig companies are pressing their advantage. While pushing Prop 22 as a national model, they're also aiming to secure deals with unions in states like New York and California that could codify some form of union representation as well as benefits without making workers employees. “We hope other states will listen to the voices of drivers and delivery people who strongly support new laws that make gig work better,” says Uber spokesperson Matt Wing. (Gig companies have also been in talks with Unifor, Canada's largest private-sector union.) The companies have a lot more leverage now, Aloise says, because Prop 22 already declared drivers contractors: “Are we going to accept it, or are we going to still try to fight over it?”

From the beginning, Aloise has seemed especially keen to make a deal. “Unlike some other unions that have to continue putting up a fight just to look relevant to their members, we don’t necessarily have to,” he told *Bloomberg Businessweek* in 2016. In 2018 he emailed Teamsters leaders to point approvingly to the model of an Uber-funded guild representing drivers in New York and float the idea of a similar system for San Francisco. By then, however, he’d been suspended for two years from his union for allegedly approving “sham contracts” and asking companies he dealt with to hire his cousin and provide tickets to a *Playboy* Super Bowl party. Aloise, who denies wrongdoing, says his dealmaking efforts are driven by a duty to improve workers’ lives. The gig business model is bad, he says, and “from an idealistic point of view” the workers should be employees. “But the reality is, we’re not making much progress on that.”

Some of America’s most powerful union officials are signaling similar flexibility. Mary Kay Henry, the president of the Service Employees International Union (SEIU), America’s second-biggest, says she’ll listen to ride-hailing drivers and “back whatever they think about whatever company might be interested in reaching an agreement.” Mario Cilento, the head of the AFL-CIO in New York, which has been meeting with companies to discuss a compromise, says New York’s gig workers deserve to be recognized as full-fledged employees. But “I don’t believe in war in a lot of things,” he says, because “if you can talk things out, you can give yourselves an opportunity to get things done.” A spokesperson for California’s building trades council, which played a key role in scuttling talks with Uber and Lyft in 2019, says the council now “is deferring to the Teamsters on the best path” and suggested talking to Aloise.

Even as gig companies are urging that other jurisdictions adopt the Prop 22 model, they’re also saying they’d rather make a deal. John Zimmer, Lyft Inc.’s president, says he’s cautiously optimistic that he’ll soon be able to work with labor to “move the country forward.” Cease-fires with major unions could be one of the gig companies’ biggest coups to date: In exchange for some perks, such as bargaining and health benefits, they could cement their immunity from traditional employment law and stifle more aggressive organizing efforts.

Unions that are trying to head off more Prop 22 scenarios and also expand their ranks will have to weigh the uncertain potential for better treatment from President Biden against the risk of losing or being cut out of the conversation entirely. If they play things wrong, traditional employment could end for millions more Americans.



Vons delivery driver Derrick Neal has mostly been living in his car since the grocery chain announced in December that it was switching to a contract model.

Photographer: Horatio Baltz for Bloomberg Businessweek

For as long as there's been labor law in America, companies have been working to poke and stretch loopholes so fewer laborers would actually be covered by it. In the 1940s, President Franklin D. Roosevelt's new National Labor Relations Board ordered William Randolph Hearst's publishing company to negotiate with the newsies delivering his papers. Hearst refused on the grounds that they weren't really employees. After the U.S. Supreme Court sided with the workers, Congress changed the law to exclude independent contractors, a category that companies over the years have claimed covers everyone from teachers to mixed martial artists.

Uber has been feeling out a middle ground with unions since at least 2016, when it teamed up with the International Association of Machinists & Aerospace Workers to create the Independent Drivers Guild in New York City. By then, drivers' employment status had become a flashpoint in courtrooms, city council chambers, and unemployment offices across the U.S. The guild, affiliated with the union and funded by Uber, could appeal terminations and push policies such as a minimum pay rate, but it couldn't try to make drivers employees. Uber agreed to also establish company-funded driver advocacy groups in California and Massachusetts as part of a legal settlement, but that never happened because a judge rejected the deal as too stingy to workers.

In April 2018, California's Supreme Court ruled unanimously that a delivery company called Dynamex Operations West Inc. violated state law when it attempted to convert its drivers from employees to contractors. As part of its decision, the court established a sweeping new "ABC test," named for its three parts. The court said workers were to be

considered employees unless they did their work free of a company's direct control, the work fell outside the usual course of the company's business, and the workers had independently chosen to go into business for themselves. Uber, Lyft, and other companies began pleading unsuccessfully with lawmakers to shield them from the precedent and met again with labor leaders about a deal.

Unions saw a case for compromise. Even if California deemed these workers employees, that wouldn't give them unionization rights unless the federal government agreed, and even if that happened, organizing at Uber or Lyft promised to be a fight on the level of unionizing, say, Amazon.com Inc. That route would be "slow and difficult," SEIU's California chapter wrote in a memo in 2018, and the companies would resist fiercely, perhaps with a ballot measure. In 2019 the union mulled a potential compromise that would instead provide companies "flexible alternative standards" while ensuring workers minimum pay and a form of bargaining, according to a proposal that *Businessweek* viewed.

Hard-liners pushed back. In late 2018 activists from the fledgling group Rideshare Drivers United showed up at an SEIU office in Los Angeles to confront union leaders about what they could be bargaining away in private. The next year the Teamsters joined other California building trades unions in sending the governor a letter that opposed compromises on employment status. Lyft's president, Zimmer, was driving to Sacramento to try to settle on final terms with the unions when he got a phone call telling him to turn around and head home. Disagreement within labor had quashed a final deal.

Instead, the unions got what looked like a better one. They helped pass AB5, a California law that codified the state Supreme Court's ABC test. But it remained a fragile victory born from a somewhat awkward coalition.

In September 2019, Governor Gavin Newsom enacted AB5, California's highest-profile law in years, at a private, unannounced gathering in his office. Newsom had declared in a Labor Day op-ed that he would sign the bill while continuing to push for a deal to maintain "flexibility" in ride-hailing and create union rights for drivers, priorities he reiterated in a letter to the legislature and an interview with the *Wall Street Journal*. His chief of staff also held a private conference call with executives to reassure them that, despite signing the bill, Newsom was still trying to negotiate an agreement that would ultimately shield them from it. In a photo published online by AB5 author Lorena Gonzalez, Newsom is seated at a big reflective desk, handing her the signed bill, with union activists standing around them looking in different directions—at him, or her, or the camera. Her smile is big. His isn't. It's less "We did it" and more "Are you happy now?"

Newsom declined to comment for this story. Gonzalez says it's not surprising that, as a former cheerleader and union leader herself, she'd be the most exuberant one there. As for the governor, "I can only take him at his word—why he signed it, what he believes in," she says.

Rather than a victory party, union leaders headed from the subdued signing across the street to the California AFL-CIO's office. There, at Newsom's urging, they held another meeting about compromising to amend AB5 and avert a ballot measure. Throughout last year's campaign, Newsom stayed publicly neutral on Prop 22.

"The goal of the matter is for everyone to walk away equally unhappy"

Two days after Prop 22 passed in November, several dozen Rideshare Drivers United activists gathered on Zoom to talk about their fears—of losing their right to claim unemployment benefits and of wage theft—and the tactics still available to them, such as suing, striking, and pushing the incoming Biden administration for a federal response. Heads nodded and fists pumped in poorly lit rooms, the meeting interrupted a couple of times by technical difficulties. "We got smashed," RDU organizer Nicole Moore, the event's emcee, told the virtual crowd, sitting in her garage in front of a red bedspread she'd draped on the wall. "All of the sudden our voice went from here to, like, whoosh," she said, raising her hands and then lowering them out of sight.

Moore, a Lyft driver, a Los Angeles County employee, and a former union organizer, warned the attendees not to place their faith in a middle-ground deal. "Our work is like everybody else's work," she said. "If we compromise employment rights, we're going to have a whole lot of people, including ourselves, who are second-class."

While the RDU activists were forswearing surrender, company executives were planning to take Prop 22 on the road. Two weeks after Election Day, the companies behind the ballot measure unveiled a national group lobbying for similar policies they've pitched to President Biden and politicians in Colorado, Illinois, Massachusetts, and New Jersey. In December they announced a coalition of allies in New York that included the state's chapter of the NAACP.

The companies will still struggle to pass laws that resemble Prop 22 in New York and other blue states without union support. "You can't just copy-and-paste what happened in California," says Neal Kwatra, a political consultant in New York who's worked for unions, Uber, and Governor Andrew Cuomo. Their California win gives the companies momentum, but the lack of a ballot-referendum option in states such as New York makes it tougher to turn mountains of cash into a law quite so directly. In December, New York's Supreme Court upheld rulings by the state's unemployment insurance appeals board that declared a group of Uber drivers to be employees entitled to full jobless benefits. To get what they want through the legislature, Kwatra says, the companies will need to build a coalition that Democrats feel comfortable embracing.

In recent months labor groups including the New York State AFL-CIO, the Machinists' Uber-funded Independent Drivers Guild, and the Retail, Wholesale & Department Store Union have met with gig companies to discuss compromises that would create some form of collective bargaining for gig workers. The drivers guild, which as with Uber now also represents local drivers for Lyft when they appeal their termination from the app, says Prop 22's success shows that bargaining rights are a better priority for workers than

employment status. “Collective bargaining on its own is incredibly powerful,” says the guild’s executive director, Brendan Sexton, “a lot more powerful and uplifting of the industry than just passing some random laws.”

Some advocates call such arguments perverse. Workers need employment protections to set a floor they can bargain up from, says Bhairavi Desai, who directs the New York Taxi Workers Alliance, which includes ride-hail drivers. But even some prominent progressives, such as Jessica Ramos, who chairs the New York Senate’s labor committee, say they’re leery of copying California’s ABC test and would prefer a compromise to years of litigation. “The goal of the matter is for everyone to walk away equally unhappy,” Ramos says.

In California, Uber, Lyft, and labor leaders such as SEIU President Henry have voiced support for what’s known as sectoral bargaining, a system of negotiations between groups of companies and workers in particular industries to set common standards. Henry, who chairs Governor Newsom’s Future of Work Commission, says sectoral bargaining could create “stable, decent jobs” in the wake of Prop 22. The sectoral models widespread in Europe and other parts of the world have drawn approval from progressives as stalwart as Bernie Sanders. In places where such systems have flourished, however, they’re buttressed by much stronger unions than exist in the U.S.

Ron Herrera, a Teamsters vice president and Los Angeles AFL-CIO head, says he’s urging the companies to “see where we can meet in the middle.” Fellow Teamster Aloise says he’s open to a compromise if it would help drivers and leave intact Teamsters’ rights in sectors such as trucking. “The goal of any union is to grow,” he says. The extent of his participation in any negotiations may hinge, though, on a pending decision from the union’s ethics watchdog on alleged violations of his prior suspension. Aloise says the investigator who brought the claims against him, former Trump attorney Joseph DiGenova, has been part of a plot to stop him from running to take over the national Teamsters leadership from outgoing President James Hoffa (Jimmy’s son). DiGenova declined to comment.

Democratic control of the White House and Congress has opened new doors for labor advocates in Washington. The Democrats’ razor-thin Senate majority and swing senators’ reluctance to abolish the filibuster make sweeping reforms unlikely, but the party’s unified federal control makes it possible for provisions cracking down on contractor classifications to pop up in all sorts of must-pass legislation. And Biden’s appointees could deem gig workers employees under existing law and prosecute the companies accordingly. The president got the ball rolling on his first day in office by firing the general counsel of the National Labor Relations Board, a former corporate attorney who helped Ronald Reagan vanquish the air traffic controllers union in the 1980s and had deemed Uber drivers to be contractors devoid of labor rights.

Yet Uber and Lyft have reason to expect they’ll at least get a respectful hearing from the Biden administration. Tony West, Uber’s top lawyer, is Vice President Kamala Harris’s brother-in-law. Several of Biden’s cabinet picks have consulted for Uber, and his national security adviser previously helped the company try to cut a deal with unions. One of

Biden’s key campaign advisers on labor, former Deputy Labor Secretary Seth Harris, co-wrote a 2015 paper with a fellow Obama alum advocating the creation of a middle-ground employment status that didn’t include a minimum wage but granted protections against discrimination. “President Biden looks forward to working with Congress to establish a federal standard modeled on the ABC test for all labor, employment and tax laws,” a White House spokesperson said in a statement.

Zimmer says he’s hopeful Biden will come around to see the virtues of pairing new benefits with the flexibility of contract work. One thing that could change the national debate is reaching a deal at the state level. “Ideally,” he says, “there’s a model that can be replicated.”



Neal says his next move will probably be out of California.
Photographer: Horatio Baltz for Bloomberg Businessweek

In the long history of American companies seeking to cleave workers from workplace laws, Uber is an outlier. Despite almost a decade of lousy press and scandal after scandal, the service remains broadly popular. Its simple interface and large network—facilitated by billions of dollars in venture funding and shielded from legal reckoning by forced arbitration—have made it a cherished convenience, a cultural touchstone, and the most ubiquitous new verb since “Googled.” By the time most regulators began to seriously worry about the effects of the Uber model, the company had the public support and the money to defy them.

Like Harold with his purple crayon, Uber sketched a reality it wanted to inhabit, and Americans are living in it. When local laws have stood in the company's way, states have stepped in to override them. Uber and Lyft say they're just tech platforms, not transportation companies that employ drivers, even as they tell city officials that their drivers' names should be treated as confidential trade secrets because disclosure would make them easier for other companies to poach.

Now Uber, after successfully reshaping culture and politics to accommodate its business model, is bending unions, too. Labor groups have to take seriously the prospect that if they don't come to the table, the companies will write the laws themselves, as they did with Prop 22. Favorable results for the companies in Washington, D.C., California, or New York—where the state budget due to pass by April 1 is one vehicle for compromise—could lead all sorts of other businesses to edge their way out of traditional employment.

Derrick Neal was at home on his couch when managers on a conference call informed him and other delivery employees that Vons, the Albertsons subsidiary, was eliminating their jobs. "They basically said, 'We know this sucks,'" recalls Neal, who'd just learned that he was losing his apartment because his landlord was selling it. At the moment, he's mostly sleeping in his car. He says he feels that Albertsons has betrayed him and hasn't promised anything about finding him another position, but he's not psyched about applying for the DoorDash version of his old job, either. "There's nobody backing you," he says.

Neal says his next move will probably be out of state, to stay with friends and try to start over. "I have options," he says. "It's just a lot of life-altering options."

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