

## A Bad Deal for Workers: Uber & Lyft's Bill Is Not True Sectoral Bargaining and Would Roll Back Gig Workers' Rights

PEOPLE'S PARITY PROJECT

In New York, gig workers are fighting against their employers' exploitative practices—and they're winning. They won a first-in-the-nation minimum pay standard in New York City, and just won their rights to unemployment insurance as employees. **But now, gig employers like Uber & Lyft are cutting a backroom deal to roll back gig workers' rights by cementing their status as independent contractors, not employees.** Uber & Lyft are branding this bill as pro-worker legislation. But make no mistake: this proposal would be a bad deal for workers.

**COLLECTIVE BARGAINING IN NAME ONLY:** Uber's bill purports to expand workers' right to collectively bargain—but that framing is misleading. The bill empowers employers, not workers; fails core principles of sectoral bargaining; and would undercut basic labor standards.<sup>1</sup>

**Sectoral Bargaining 101:** Sectoral bargaining (also known as “multi-employer bargaining”) is a model of unionization common in Europe in which unions bargain with employer representatives to set workplace standards across whole industries or sectors of the economy. Sectoral bargaining can help workers raise labor standards by preventing nonunionized employers from dragging down wages and safety standards in industries with many different employers. **But in concentrated industries like ride-sharing and food delivery, in which the few dominant employers are already setting the standards, sectoral bargaining favors employers, not workers.**

**EVEN IF the sectoral bargaining model was a good fit for gig workers, Uber's bill falls far short of real sectoral bargaining for the following reasons:**

- **No floor for workers' rights:** Instead of making clear that gig workers are employees who have the same rights and benefits as other workers, this proposal creates new, inferior unemployment and workers' compensation systems for gig workers— and further excludes gig workers from other employment protections including paid leave. Because this bill would eliminate the floor provided by state law, powerful employers could force workers to accept terms *below* the minimum standards guaranteed by state law. This bill will only legitimize the unequal bargaining power between gig workers and their employers.
- **Excluding bargaining on core issues:** This bill significantly restricts the issues that workers can bargain over, including by limiting who can represent workers, lists the required topics of negotiation, and identifies the industries and respective bargaining units.

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<sup>1</sup>Principles for Sectoral Bargaining, Sectoral Bargaining: Principles for Reform at 4 (2021), <https://concerned-sectoral-bargaining.medium.com/sectoral-bargaining-principles-for-reform-7b7f2c9456>.

- **Banning Strikes, Pickets and Limiting Organizing:** Sectoral bargaining can only succeed where workers bring real power to bring to the bargaining table—but § 755 of the bill undercuts that worker power in negotiations by removing their right to picket, strike, and boycott. If workers do strike or picket, they could face legal consequences. By removing the threat of industry-wide collective action even before reaching an initial agreement, Uber’s proposal places a ceiling on worker power—giving employers the power to set terms.
- **No Ban on Conflicts of Interest:** To safeguard the independence of labor unions, federal labor law prohibits employers from funding or providing in-kind benefits to worker representatives. Uber’s bill wouldn’t prohibit those conflicts of interest—which risks creating a “company union,” a union dominated by the employer rather than democratically governed by workers.
- **Vulnerable to Being Overturned in Court:** Legislation attempting to create a sectoral bargaining framework for Seattle drivers was overturned in 2018 by a federal appeals court after employers argued that (much stronger) law was preempted by federal antitrust law.<sup>2</sup> This proposal would trade workers’ employment rights away in exchange for (weak) unionization rights that could soon be struck down—leaving workers with nothing.

**ROLLING BACK GIG WORKERS’ RIGHTS:** Gig workers are winning their rights in court. A growing consensus among New York courts holds that gig workers like Uber drivers are employees—who are being illegally misclassified as “independent contractors.” Last year, both state and federal courts held that app drivers are employees who have a legal right to unemployment insurance.<sup>3</sup> Last March, the New York Court of Appeals held that Postmates delivery drivers were employees, too.<sup>4</sup> Uber & Lyft’s proposal is designed to roll back those gains by locking gig workers into second-class status as independent contractors.

**UNDERCUTS THE NATIONAL LABOR MOVEMENT TO ACHIEVE FEDERAL ORGANIZING RIGHTS:** Gig workers may be classified as employees for NLRA purposes by either the PRO Act or the NLRB. This bill is an attempt to undermine active worker- and labor-led efforts to win their rights as employees.

**BROAD OPPOSITION:** The bill is widely opposed by workers and advocates, including Los Deliveristas Unidos, the National Employment Law Project, New York Taxi Workers Alliance, United Auto Workers Region 9A, Make the Road New York, Workers Center of Central NY, New York Civil Liberties Union, Food Chain Workers Alliance, A Better Balance, and New York Communities for Change.

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<sup>2</sup> *Chamber of Commerce v. City of Seattle*, 890 F.3d 769 (9th Cir. 2018).

<sup>3</sup> *Islam, et al v. Cuomo, et al*, No. 1:20-cv-02328, 2020 WL 4336393 (S.D.N.Y. July 28, 2020); *Matter of Lowry*, No. 530395, 2020 WL 7390888 (App. Div. 3d Dept. Dec. 17, 2020); *Matter of Thomas*, No. 530311, 2020 WL 7390959 (App. Div. 3d Dept. Dec. 17, 2020)

<sup>4</sup> *Matter of Vega*, 149 N.E.3d 401 (N.Y. 2020).