

TECH

Op-ed: Elizabeth Warren and lawyer who sued Uber say gig economy companies deny workers their rights

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Elizabeth Warren and Shannon Liss-Riordan

KEY POINTS

- Gig economy companies like Uber, Lyft and Grubhub misclassify their workers as independent contractors, when they deserve full benefits companies typically provide to their full-time employees, Sen. Elizabeth Warren, D-Mass. and labor lawyer Shannon Liss-Riordan write.



Democratic presidential candidate Sen. Elizabeth Warren (D-Mass.) as she campaigns at the Seattle Center on February 22, 2020.

The coronavirus pandemic has delivered a one-two punch to American workers – a public health emergency paired with a brutal economic crisis. Our country has lost millions of jobs and has already experienced some of the [highest unemployment numbers](#) since the Great Depression. Essential workers are risking their safety on the

job, often without adequate protections. Senate Republicans have made shielding employers from liability, while [dismantling federal labor protections](#), their top priority for the next relief package. We need to respond to this crisis by putting power in the hands of workers – and a key part of that is ending worker misclassification.

Gig economy companies like [Uber](#), [Lyft](#), [GrubHub](#), and [Amazon](#) misclassify workers as “independent contractors” rather than employees, [enabling them to deny workers](#) collective bargaining rights, health care, a minimum wage, overtime protections and access to unemployment insurance and paid sick leave guaranteed to employees under state and federal law.

This model harms workers who rely on these jobs to support themselves and their families. Competitors who are trying to follow the rules also can't compete with the artificially low costs enjoyed by companies that shirk worker protections by misclassifying workers. State and local governments [also suffer](#), because these companies don't pay into state unemployment or workers compensation funds or pay employer payroll taxes for misclassified workers.

Misclassifying workers as independent contractors can be a popular tool for employers looking to strip workers of basic rights and protections to pad their own pockets. And if we don't act, this anti-worker practice will be embedded deep into our economy.

Right now, Uber is [leading the charge](#) to seek a new legal classification for gig economy workers that would write into law a way for companies to evade their responsibilities to workers. Along with other gig economy companies, it is trying to convince the public and policymakers that everyone will benefit if it is allowed to flout the rules that apply to all other employers. And a former lawyer from the firm defending it, its former counsel, who now leads the Department of Labor, is [rushing to issue a rule](#) to make it easier for companies to misclassify workers.

Instead of helping giant companies evade the law, we should follow the lead of states that have taken steps to protect workers. In [Massachusetts](#) and [California](#), there are comprehensive laws in place and a stringent test to stop companies from misclassifying their workers. Known as an “ABC test” for the three conditions that must be met for a worker to be classified as an independent contractor, it's a clear, straightforward way to ensure that workers aren't denied rights and protections so companies can maximize their profits. Attorneys General Xavier Becerra and Maura Healy recently [sued](#) Uber and Lyft under this test for continuing to misclassify workers in violation of California and Massachusetts law, and a California judge has [agreed](#) that the drivers must be classified as employees under the test. We need to apply that test to federal laws like the National Labor Relations Act and Fair Labor Standards Act so it protects every worker.

Ending worker misclassification is just one part of what Congress should do to protect workers. The weak labor market is giving employers the power to hold wages flat or cut them as a condition of rehiring, or to replace full-time, union-represented jobs with part-time or contractor positions that don't offer benefits, stability, or protections. Early data suggest that people who are out of work during the economic fallout of the pandemic

are returning to jobs offering [fewer hours and less pay](#). Communities of color and low-income workers have been hit hardest by the [economic impact](#) of Covid-19, and are most at risk of further harm if we fail to act.

After more than a decade with no increases, it is long past time for Congress to raise the federal minimum wage – and make further increases automatically tied to inflation. Millions of workers earned wages so low before the virus hit that after losing their jobs, they've seen an income boost from unemployment benefits. That doesn't mean benefits are too generous: it means wages are too low. Workers also need strong health and safety guarantees. Congress must include an [Essential Workers Bill of Rights](#) in the next coronavirus relief package to guarantee benefits and protections for essential workers, who have been left unprotected and underpaid by big employers.

Unemployment coverage provided in the CARES Act has been a lifeline for families and for [our economy](#). The full \$600 supplement to weekly benefits should be extended immediately, and those benefits, as well the additional unemployment benefit expansions like Pandemic Unemployment Assistance, should be tied to real-time economic data, not an arbitrary cut-off date. While this administration has [worked to dismantle](#) workers' rights to unionize and collective bargaining at every turn, it is also time for Congress to weigh in by protecting and strengthening workers' rights.

Our country faces an unprecedented health and economic crisis, and our failure to protect workers has added fuel to the fire. If workers had more power at the onset of this crisis, companies might have implemented protections that would have slowed the spread of the virus. If workers had fair wages, families might have had more cushion to weather a recession. We can't change how this crisis started, but we can still change how we emerge from it.

Elizabeth Warren is the senior senator from Massachusetts and a member of the Senate Health, Education and Labor Committee. Shannon Liss-Riordan is a Massachusetts-based labor lawyer and former candidate for the U.S. Senate who once sued Uber in a class-action lawsuit for drivers.