

Testimony to the Washington State Senate Transportation Committee on ESHB 2076

Concerning rights and obligations of transportation network company drivers and transportation network companies

Testimony • By [Jennifer Sherer](#) • February 26, 2022

Dear Members of the Senate Transportation Committee:

Thank you for the opportunity to submit testimony on ESHB 2076 on behalf of the Economic Policy Institute. EPI is a nonprofit, nonpartisan think tank created in 1986 to research the economic status of working America and propose public policies that protect and improve the economic conditions of low- and middle-wage workers.

We urge opposition to ESHB 2076 which, if enacted, could pose significant challenges to ongoing organizing and policy work to secure full employee status and labor rights for all workers. We strongly support transportation network company (TNC) drivers organizing to improve their pay and conditions in Washington and across the country, and we believe drivers deserve far better than the troubling compromises reflected in this bill.

ESHB 2076 denies TNC drivers basic employee rights

Determination of whether an individual performing services is an employee or an independent contractor carries significant consequences. Workers misclassified as independent contractors are not covered by wage and hour laws, non-discrimination laws, health and safety laws, or laws protecting union rights. They do not receive unemployment and are responsible for paying full payroll tax contributions to Social Security and Medicare. In contrast, for workers classified as employees, employers are responsible for contributing to payroll tax and social insurance programs, paying minimum wages, and adhering to other

employment laws.

ESHB 2076 declares TNC drivers “non-employees” for purposes of minimum wage and overtime, paid sick leave, paid family and medical leave, long-term care, and unemployment insurance—depriving them of essential protections and allowing platform companies to avoid payments to public tax and social insurance programs.

ESHB 2076 creates second-class status for TNC drivers, promising access to some new benefits but at greatly reduced, unpredictable levels

Minimum pay and paid sick time provisions would apply to TNC drivers only during “passenger platform time.” Data show that as much as 30%–50% of TNC drivers’ work time is spent logged onto the app while dispatching or traveling to pick up a passenger.¹ Under this bill none of that time counts toward promised protections. In other words, TNC drivers may need to work nearly twice as long as other workers to accrue the same amount of paid sick time.

There is likewise no reason to expect proposed per-minute and per-mile pay will compensate drivers at rates equivalent to minimum wage and overtime laws. Studies of similar proposals in other states show pay falling well below minimum wage, in effect creating a new subminimum wage.² Worse, this bill would eliminate progress drivers won via Seattle’s much stronger ordinance ensuring pay must meet minimum wage. Any statewide bill should incorporate and build on this important minimum pay standard, not preempt it.

ESHB 2076 excludes TNC drivers from unemployment, paid family medical leave, and long-term care programs, creating a “work group” to recommend potential state law changes on these matters. There is no guarantee that such changes will be achieved in the future or that they would afford TNC drivers the same benefits as workers with employee status under these important state laws.

ESHB 2076 creates no pathway to collective bargaining rights

EPI research shows that the erosion of collective bargaining rights, and persistent exclusion of entire occupational groups from federal labor law, accounts for a significant share of income inequality and wage suppression in our economy.³ Rather than recognizing that TNC drivers have rights to collectively bargain with employers over wages, hours, and working conditions, ESHB 2076 unilaterally sets driver wage rates and creates a “Driver Resource Center” with authority to “enter into an agreement” with companies on the single issue of an appeals process for driver account deactivation. We are particularly concerned that employers may use such a structure as a justification to skirt their legal duty to engage in collective bargaining with unions organized and democratically controlled by drivers themselves.

ESHB 2076 would set damaging precedents

Platform companies have waged an aggressive campaign to exempt themselves from labor and employment laws. They will undoubtedly pursue legislation like ESHB 2076 in other states, and will likely attempt to carve out other occupations from existing employee protections. Meanwhile, efforts to establish a strong, protective legal test for determining employee status are under way in many states and at the federal level, but could be harmed if inadequately protective new forms of “non-employee” status are prematurely codified in state laws.⁴

These are issues with real-life impact on working people that policymakers must address. Our opposition to ESHB 2076 reflects our grave concern that its provisions do more damage than good, and we urge Washington state legislators to take the time necessary to develop and pursue far stronger policy options.

References

1. See p. 9, Figure 3, “Breakdown of TNC VMT by Phase for each Metro Region,” in Melissa Balding et al., “[Estimating TNC Share of VMT in Six U.S. Metropolitan Regions](#) (Revision 1),” Fehr & Peers (August 6, 2019).
2. Ken Jacobs and Michael Reich, “[The Uber/Lyft Ballot Initiative Guarantees Only \\$5.64 an Hour](#),” University of Berkeley Labor Center (October 31, 2019); and Ken Jacobs and Michael Reich, “[Massachusetts Uber/Lyft Ballot Proposition Would Create Subminimum Wage: Drivers Could Earn as Little as \\$4.82 an Hour](#),” University of California Berkeley Labor Center (September 29, 2021).
3. Lawrence Mishel and Josh Bivens, “[Identifying the Policy Levers Generating Wage Suppression and Wage Inequality](#),” Economic Policy Institute (May 13, 2021).
4. Lynn Rhinehart et al., “[Misclassification, the ABC Test, and Employee Status](#),” Economic Policy Institute (June 16, 2021); Ross Eisenbrey and Lawrence Mishel, “[Uber Business Model Does Not Justify a New ‘Independent Worker’ Category](#),” Economic Policy Institute (March 17, 2016).