

Written Testimony of
Maria Crawford

for hearing on
“Misclassification of Employees: Examining the Costs to Workers, Businesses, and the Economy”
Committee on Education and Labor Subcommittee on Workforce Protection
U.S. House of Representatives
September 26, 2019

Hello my name is Maria Crawford, and I am a gig worker from Altadena, California. I am one of the roughly 57 million U.S. workers who are considered part of the gig economy¹.

I am a proud wife of 25 years, a mother of two adult daughters, and a grandmother to two beautiful grandchildren. I worked in the I.T. field for a utility company for over 15 years, but lost my job to outsourcing. At the age of 54, I have found it difficult to start a new career. This difficulty, as well as the promise of good wages and flexible scheduling brought me to the field of online platform work, often referred to as “gig work.”

While I spend most of my “gig work” time on the app Instacart, I also do work for Postmates, Door Dash, Caviar, and Uber Eats. All of these platforms classify me as an “independent contractor” but I believe I am a misclassified employee. That misclassification makes it hard for me to get the protections that would help make sure I have fair, steady pay.

I start every day unsure of how much work will be available for me that day. Some apps allow me to schedule shifts in advance, while others I can do on demand. Scheduling a shift reserves time in advance, where I am available to take orders in a specific part of town. My window to work is from about 11 am to 7:30 pm, since I am not comfortable making deliveries after dark, and since there is very little work on any platform available in the morning. Because base compensation for many of these platforms is so low, it is also important that I check to see what shift incentives are available on which platforms. Shift incentives include a bonus per delivery for working in a specific geographic area or working a specific day and time.

Once I’m done scheduling myself for the day, I usually log into Instacart and wait for a customer order, which we call a “batch.” My phone will alert me when a customer places an order giving me the opportunity to review it on my screen before I accept it. Sometimes I’m not told where to deliver the groceries to until after I accept the batch. I’m only told where to purchase groceries from and how far the delivery is from that store.

If I have a prescheduled shift, then I have three and a half minutes to review the order, and no one else can claim it. If I am working “on demand,” orders appear to anyone else working on demand and are often claimed in seconds. I’m told what I will get paid for the order, as well as the amount of tip the customer has added. Since I get dinged for passing on too many orders, I am often pressured into taking jobs that pay me very little money and in some extreme cases may even COST me money after factoring in things like fuel and wear and tear on my car.

¹ <https://www.forbes.com/sites/tjmccue/2018/08/31/57-million-u-s-workers-are-part-of-the-gig-economy/#341d65fa7118>

I then rush through my grocery store as fast as I can, since my time is monitored. If the customer orders an item that is out of stock, I have to message them about an adequate replacement item and hope that they respond in an adequate amount of time. If they take too long to respond, my delivery could be late, which could negatively impact my customer rating.

After I complete an order, I'm given a breakdown of my total compensation. Its broken down into several categories: "batch payment," incentive pay, which includes things like "peak boosts" and "quality bonuses," and the customer tip. My "batch payment" is the base delivery fee. This is determined through a non-transparent number of factors including how many items are in the order, how many people are working on the platform in the area, and how far from the store the delivery takes me. A "peak boost" is an incentive to take an order no other workers want to take, an order that needs to be expedited, or to prioritize orders during busy times. The availability of peak boosts are unpredictable and inconsistent. A "quality bonus" is an extra \$3 only available when I get a perfect customer rating for doing both the shopping and the delivery on an order. Finally, tips are inconsistent and can change up to three days after I make a delivery.

Initially, I found the pay on these platforms to be good, but over time, I found it more and more difficult to earn a living wage, despite it being my primary job and income that my family relies on. I think that they are misclassifying me as an independent contractor which means I am losing out on protections that could help make sure I have fair pay and hours.

Let me explain some of the ways in which I think I am losing out because I am being misclassified.

First and foremost, sometimes my pay is so low it often dips below the minimum wage in my state, which is \$12 an hour. My pay is not only low, but my structure seems to changing often, where now I must rely on tips and incentives to make ends meet.

Most apps do not reimburse me for expenses, so when you factor in car maintenance costs I might be making less than minimum wage. I do not get paid for waiting time, even if I am on a scheduled shift. There are times where I have to sit in a store or parking lot and wait for an order before I can deliver it. I do not get paid for that time. I sometimes have to wait a long time for customers to come get their orders that I am delivering. I do not get paid for that time. Imagine if members of Congress were only paid for times they voted!

To complicate things further and exacerbate the problem of low pay, Instacart and DoorDash have been accused in the past of using customer tips to cover part of my base pay for each order, instead of adding tips on top of that pay.² I'm sure most customers are unaware of this practice, and would feel deceived if they learned of it. While they say that they are no longer doing this, there is no way for me to confirm whether this is still happening or. I do not want to ask my customers, because it would be awkward and may harm my customer rating.

I am told that the advantage to my type of work is the flexibility and freedom to set my own schedule. I, in theory, can work any time and any day. The truth is my "flexibility" is totally dependent on a very narrow window of time when most orders come in, usually around lunchtime and after 5. This means I have to compete with my coworkers for lucrative shifts. Often this means I get waitlisted.

I also do not have the flexibility to pick and schedule these lucrative shifts, or even stay on the app, unless I meet unreasonable standards. Instacart has a demerit-based system which they call "reliability

² <https://www.theverge.com/2019/2/6/18214335/instacart-reverse-controversial-pay-policy-tip-stealing>

incidents.” If I pass on too many orders, even if I think I will make too little money, I will receive a reliability incident. If I sign up for a shift but decide I want to finish early, they penalize me with a “reliability incident.” If I sign up for a shift but decide I can’t make it anymore and don’t give them 6 hours notice, they penalize me with a “reliability incident.” If I receive a certain number of reliability incidents, I can only work certain hours of the day, which may not be lucrative. If I receive a certain number of reliability incidents, I lose my ability to set my schedule a week ahead of time. So when I want to be flexible with my work, Instacart punishes me by stopping me from being able to set a flexible schedule.

Maintaining a high customer rating is VITAL to work on these platforms. On Instacart, if your rating drops to a 4.2 out of 5 stars, you get “fired” and are completely unable to access the app. Just to be clear, 4.2 stars is an 84% rating. Imagine if members of Congress had to maintain an 84% approval rating to keep their job!

The app on my phone dictates my ability to take orders. It constantly tracks me. It sets my pay. It times my work. It has the ability to discipline me. While there is a way to appeal discipline, I fear retaliation as the process is vague and inconsistent. I feel as though I have less control over my work now, than in my previous job when my employer rightly classified me as an employee!

With no pay standards or transparency in how I’m paid and how my work is evaluated, it is impossible to plan ahead and budget for my family. Especially, when, unlike my previous job, I am expected to pay for workers compensation insurance, disability insurance, health insurance, unemployment insurance, liability insurance, automobile insurance, social security, as well as, federal, state, and local income taxes.

These platforms encourage their employees to save 20% of their income to pay for these expenses, but when the base compensation is so low, I know most gig workers simply do not have the ability to do this. While I am fortunate to have financial support from my husband, I still rely on my retirement savings to help make ends meet. I don’t see how this type of work is sustainable for younger individuals, let alone families.

We are told that many people who do this type of “gig work” are merely supplementing their income from their primary low paying jobs — but in my experience — my “primary low-paying job” is another gig job!

I know that there are fellow gig workers forced to live in their cars and rely on social services just to get by. I also know that there are workers who do similar grocery delivery work for companies like Peapod, who are paid as hourly employees and do not face these struggles.

With all of these difficulties, one might wonder, “Why do I do this type of work?” Again, as I stated before, as a woman in her 50s, I have found it difficult to find a new job – despite over a decade of experience in the I.T. field. I am not anti-technology and I was excited to get experience working in a new and growing sector. I see new technology as a source of opportunity – not a means to bypass worker’s rights. As someone who has spent her entire career in the tech industry, I know that the success of new technology is NOT contingent upon workers being treated this way.

I raise all of these issues up, not to single out my employers – because I know I am not alone with these problems, nor are they unique in how they treat their workers. Gig work is a work trend that is growing. I fear that if we let companies like Instacart, Postmates, Door Dash, Grub Hub, Caviar, Uber Eats and other platforms continue to exploit their workers, it will only incentivize this bad corporate behavior.

I am proud of the fact that I was part of a broad coalition, full of hard-working people like me in my home state of California who fought for the passage of AB 5 so fewer workers are misclassified. I am honored to be here today to share my story, as you look to what the federal government can do to fight misclassification.

What we are asking for is nothing radical. We do not want to stop technological progress – we in the tech industry embrace it. All we are asking for, are fair labor standards and the free and fair right to organize that have fueled innovation and technological progress in this great nation for years.

On behalf of workers like me across the country who struggle to get by, I ask you all to support the Payroll Fraud Prevention Act, and help prevent workers like me from being misclassified so we can have family sustaining wages and benefits.