Statement from New York Unemployment Insurance Coalition on Network Workers Bill

May 27, 2021

We, the undersigned organizations that comprise the New York Unemployment Insurance Coalition ("the Coalition"), write to comment on a proposed bill which will eliminate Unemployment Insurance (UI) benefits for some of the most vulnerable workers across the State of New York. The proposed bill titled "A Bill Requiring Regulation of Network Regulations of Network Workers, and Providing for Their Protection and Benefits" ("Network Workers Bill") purports to help app-based drivers and delivery workers ("network workers") but in fact will harm these workers and reverse established rights to UI benefits which have been a lifeline for thousands of these workers during the pandemic. The bill will prevent network workers from receiving UI and carves out a separate, second-class system of unemployment benefits which few, if any, workers will actually receive.

Although misclassified as independent contractors by their employers, network workers are unequivocally employees for the purposes of the New York UI Law. Matter of Vega (Postmates), 35 N.Y.3d 131 (2020); Matter of Lowry (Uber), 189 A.D.3d 1863 (3rd Dept. 2020); Unemployment Insurance Appeal Board Nos. 596722-596727 (Jul. 12, 2018). Classification as an "employee" is a necessary condition for a worker to receive New York State UI benefits, as independent contractors are not eligible for UI.

During the pandemic, Congress created a separate emergency program primarily for independent contractors called Pandemic Unemployment Assistance (PUA), which will expire after September 5, 2021. PUA benefits are generally calculated based on net income with the current minimum weekly benefit rate being $173 as opposed to NY State UI benefits, which are calculated using a worker's gross income. Employees may also be eligible for PUA, at the NY State UI rate utilizing gross income, if they lost their work due to Covid-19 but are not otherwise eligible for NY State UI.

During the pandemic, at least 68,000 app-based drivers in New York received a base benefit rate based on their gross income as opposed to their net income because of their status as employees. In most cases, app-based drivers received the maximum benefit of $504.00 per week, amounting to at least $1,363 more per month more than they would have received had

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1 A group of non-profit organizations working to reform the State’s unemployment insurance program. The Coalition was formed in 2005 and is comprised of the undersigned New York State-based organizations that fight for justice on all unemployment insurance related issues on behalf of low-income New York workers.

2 The minimum weekly benefit rate for PUA changes each quarter. The weekly benefit rate is the base rate before the addition of federal benefits which provides an additional $600.00 per week from March 30 to July 26, 2020 and $300 per week from July 27, 2020 to September 6, and December 28, 2020 through September 5, 2021.
they been classified as independent contractors eligible only for PUA. This allowed drivers to feed their families, pay rent and mortgages, and maintain their vehicles, allowing them to return to work.

The proposed Network Workers Bill would bar network workers’ from receiving NY State UI benefits and create a new separate but unequal unemployment program only for network workers, with severe limitations on eligibility not present under NY State UI. The Network Workers Bill would prevent workers who still have "access" to the app from receiving unemployment benefits even when there is little or no work available, which effectively means that such workers would not be eligible for benefits. In comparison, under NY State UI, a network worker who lacks work, as was the case during the Covid-19 shutdowns, is eligible for UI benefits.

Moreover, if a worker is deactivated from the app, they will be ineligible from receiving benefits under the Network Workers Bill if the company decides that the worker has failed to meet "minimum requirements" set by the network company regardless of fault. App-based drivers sometimes lose access to the app for performance issues (failing to meet the minimum star rating or a customer who complains against a female driver when she resists sexual harassment, for example). These workers would be eligible for benefits under NY UI but not under the Network Workers Bill.

Finally, under NY State UI, workers are able to utilize work from all covered employment during their base period. This often allows workers to establish monetary eligibility for NY State UI or increase their benefit rates. Under the Network Worker Bill, a network worker cannot count income from non-network employment to establish a claim or to increase their benefit rate.

The majority of network workers are people of color and immigrants. The Network Workers Bill will severely harm an already vulnerable group of workers and prevent them from accessing subsistence benefits.

For more information, please contact Nicole Salk at (718) 237-5544, Nsalk@lsnyc.org.

Sincerely,

The NY UI Coalition:
Brooklyn Defender Services
Empire Justice Center
Legal Services NYC
Make the Road NY
Mobilization for Justice, Inc.
National Center for Law and Economic Justice
New York Legal Assistance Group
The Legal Aid Society
Volunteers of Legal Service
Chaumtoli Huq & Stephen Loffredo, Co-Directors Workers Rights Clinic, CUNY Law School