

HOW ANTITRUST CAN UPLIFT WORKERS IN THE GIG ECONOMY



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Gig economy companies, like Uber and DoorDash, are seeing record profits. However, workers in the gig economy have seen wage growth stalled or even decrease over the past five years. Gig workers, who generally say they want to be in professional organizations and collectively bargain, cannot do so because of the threat of antitrust law being wielded against organized independent contractors. Antitrust law should be updated and employment status for gig workers should be modified to allow for labor action without the threat of antitrust violations. Additionally, state and local government enforcers should prosecute antitrust violations on behalf of gig workers. Recent legal developments, particularly in merger law, support antitrust action to support workers. Enforcers can also see great political rewards from helping workers in a climate centered around the affordability crisis.

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The gig economy may benefit displaced workers in a cooling labor market. Gig work can provide income to laid-off workers while giving them time to apply to jobs in their preferred industries. However, increased employment in the gig economy comes with a cost. In a recession, demand for gig economy services is likely to fall as consumers become less willing to spend extra money on delivery fees or ride-shares.² Indeed, the utterance of the phrase “cooling labor market” leads to the uncomfortable question: are we currently in a recession?

Collective bargaining would solve the problem of depressed gig worker wages during a recession. All the major gig economy companies have reported profits within the last year — even among industries as diverse as food delivery (e.g. DoorDash), rideshares (e.g. Uber), and caregiving (e.g. Care.com). Gig workers would benefit from using their collective power, which increases with every new worker entering the gig economy labor force, to fight for more platform profits to enter their paychecks.

However, gig workers seeking to unionize face a major battle on the legal front. Collective action by gig economy workers may be seen as a violation of current antitrust law because the Clayton Act’s labor exemption only applies to employees.

Further, state and municipal governments should litigate antitrust actions on behalf of gig workers because the geographic scope of the market is highly localized. State and local governments can bring lawsuits on behalf of workers, bypassing arbitration agreements in the process. In fact, the Massachusetts Attorney General brought a lawsuit against Uber and Lyft on behalf of drivers and delivered major victories for them.

This article proceeds as follows: Part I discusses the economic rationale behind unionizing, Part II describes legal challenges to gig economy workers unionizing under antitrust law, and Part III discusses why gig workers should unionize, and Part IV discusses action that state and municipal government officials can take on behalf for drivers.

I. ECONOMIC RATIONALE BEHIND UNIONIZING

The gig economy initially promised that workers, not constrained by the shackles of a regular job, could work when they wanted and share in the spoils of a growing industry. Early studies into the labor economics of the gig economy broke this illusion. A 2018 study found that Uber drivers took home a wage of \$9.21 per hour, roughly in the 10th percentile of all workers’ wages.³ The lower-than-expected pay can largely be attributed to the fact that Uber drivers often work on gig platforms part-time to supplement other income.⁴ This itself is location dependent — a study surveying gig economy drivers in Los Angeles found that two out of every three gig economy drivers rely on driving as their main source of income.⁵ The study also found that many full-time gig economy drivers struggle to pay for work-related expenses, such as car maintenance, and that the majority of drivers surveyed would prefer to earn a set, predictable hourly wage.⁶ Little has changed in the years since, with gig economy wages stagnating or even decreasing since 2020.⁷

2 JESSICA RINDELS, GOLDMAN SACHS, THE GIG ECONOMY: ANOTHER PERSPECTIVE ON THE LABOR MARKET 8 (2025), <https://www.gspublishing.com/content/research/en/reports/2025/11/17/d13049a6-518a-490e-b8a8-bed5a4a34fe7.pdf>.

3 Lawrence Mishel, *Uber and the labor market*, ECONOMIC POLICY INSTITUTE (May 15, 2018), <https://www.epi.org/publication/uber-and-the-labor-market-uber-drivers-compensation-wages-and-the-scale-of-uber-and-the-gig-economy/>.

4 *Ibid.*

5 UCLA INSTITUTE FOR RESEARCH ON LABOR, MORE THAN A GIG 14 (2018), <https://labor.ucla.edu/wp-content/uploads/2018/06/Final-Report.-UCLA-More-than-a-Gig.pdf>.

6 *Ibid.*

7 Len Sherman, *Uber’s CEO Hides Driver Pay Cuts to Boost Profits*, FORBES (Dec. 15, 2023), <https://www.forbes.com/sites/lensherman/2023/12/15/ubers-ceo-hides-driver-pay-cuts-to-boost-profits/>. According to statistics from Gridwise, pay-per-trip earnings increased slightly from 2024 to 2025. *Uber and Lyft Earnings Per Trip Are Rising in 2025*, GRIDWISE (Sept. 3, 2025), <https://gridwise.io/blog/rideshare/uber-and-lyft-earnings-per-trip-are-rising-in-2025/>.

While gig worker wages have stagnated or declined, gig economy companies are earning record profits. After years of significant losses, Uber recorded its first annual profit in 2023.⁸ Uber has continued to achieve record profitability.⁹ Lyft recorded its first fiscal quarter of profitability in 2024,¹⁰ as did DoorDash.¹¹

The major gig economy companies' record profits should lead to higher wages for gig economy workers. However, this has not happened. This may be partially because the number of people who collected wages through gig work has increased rapidly since modern gig economy platforms became popular.¹² More likely, gig worker wages stabilizing or decreasing suggests that the platforms have become better at extracting value from their employees.

II. THE ANTITRUST PROBLEM

Congress passed the Sherman Act primarily due to public anger at “trusts and combinations” that were seen as creating economic oppression.¹³ Economists and Congressmen in 1890 believed that those business cartels and their restraints led to “high prices, limited production, low wages, and losses to small businesses.”¹⁴ Surprisingly, most early Sherman Act enforcement actions targeted organized labor instead of business cartels.¹⁵ In 12 of the first 13 cases interpreting the Sherman Act, courts found antitrust violations involving labor conspiracies.¹⁶ This anti-labor wielding of the Sherman Act culminated in *Loewe v. Lawlor*, where the Supreme Court held that the Sherman Act applied to unions and could be used to break strikes.¹⁷

Pressure from labor organizations prompted Congress to amend antitrust law with the Clayton Act to specify that “the labor of a human being is not a commodity or article of commerce” and exempted labor organizations and their members from antitrust law.¹⁸ However, due to the success of the labor movement in the New Deal era after the Clayton Act's passage, antitrust litigation in labor markets was virtually nonexistent.¹⁹

Antitrust enforcement in labor markets has increased in recent years. The 2023 Merger Guidelines by the Department of Justice and the Federal Trade Commission (“FTC”) included, for the first time, a guideline informing merger review staff to determine whether a merger may “substantially lessen competition for workers.”²⁰ The agencies determined that labor markets are narrow, and mergers can lead to frozen wages, slower wage growth, increased leverage for the newly merged firm in negotiations with workers, or a general degradation of benefits and working conditions.²¹ In the FTC challenge to the proposed Kroger-Albertsons merger, one of the first cases to test the legitimacy of the Merger Guidelines,

8 Jasper Jolly & Graeme Wearden, *Landmark moment as Uber unveils first annual profit as limited company*, THE GUARDIAN (Feb. 7, 2024), <https://www.theguardian.com/technology/2024/feb/07/landmark-moment-as-uber-unveils-first-annual-profit-as-limited-company>.

9 *Uber Announced Results for Third Quarter 2025*, UBER (Nov. 4, 2025), <https://investor.uber.com/news-events/news/press-release-details/2025/Uber-Announces-Results-for-Third-Quarter-2025/default.aspx>.

10 *Lyft Announces Q2 2024 Results, Including First-Ever Quarter of GAAP Profitability*, LYFT (Aug. 7, 2024), <https://investor.lyft.com/news-events/press-releases/detail/111/lyft-announces-q2-2024-results-including-first-ever-quarter-of-gaap-profitability>.

11 *DoorDash Releases Fourth Quarter and Full Year 2024 Financial Results*, DOORDASH (Feb. 11, 2025), <https://ir.doordash.com/news/news-details/2025/DoorDash-Releases-Fourth-Quarter-and-Full-Year-2024-Financial-Results/>.

12 Samantha Delouya, *The rise of gig workers is changing the face of the US economy*, CNN (July 25, 2023), <https://www.cnn.com/2023/07/24/economy/gig-workers-economy-impact-explained>.

13 Barak Orbach, *How Antitrust Lost Its Goal*, 81 FORDHAM L. REV. 2253, 2262 (2013).

14 *Ibid.* at 2262-63.

15 Herbert Hovenkamp, *Labor Conspiracies in American Law, 1880–1930*, 66 TEX. L. REV. 919, 950 (1988) (analyzing the history of the Sherman Act being used to defeat organized labor activities).

16 *Ibid.*

17 208 U.S. 274, 292 (1908),

18 Clayton Act § 6, 15 U.S.C. § 17 (1996)

19 See Eric A. Posner, *Antitrust's Labor Market Problem*, PROMARKET (Nov. 8, 2021), <https://promarket.org/2021/11/08/antitrust-labor-market-concentration-problem/>.

20 U.S. DEP'T OF JUST. & FED. TRADE COMM'N, *MERGER GUIDELINES 26* (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf.

21 *Ibid.* at 27.

a federal district court found that the FTC presented a logical case for applying traditional antitrust analysis to labor markets.²² Notably, the court held that unionized grocery labor was a proper product market.²³ Additionally, the court held that the regions covered by collective bargaining agreements were proper geographic markets.²⁴

III. THE CASE FOR UNIONIZING.

79 percent of the Los Angeles Uber and Lyft drivers surveyed in 2018 wanted to join a worker or driver organization.²⁵ It's easy to see why: as independent contractors, gig workers risk being banned from working on platforms not only if they organize, but even if they complain about their contracts or working conditions.²⁶

With unionization, the increase in gig economy workers could be leveraged to the workers' benefit rather than their detriment. Without a union, an increase in gig economy workers could negatively affect every worker. More workers in a geographic market could lead the gig economy companies to lower wages to complete a rideshare request or food delivery. The significant supply of workers available could make demand irrelevant, allowing the platform to apply downward pressure on wages.

However, labor power benefits from a larger workforce. Workers can come together and ask for better wages across the board rather than fighting against each other. Organized workers should demand that the companies' record profits be reinvested into their workforce in the form of wages and benefits such as health care. Ultimately, increasing wages and improving benefits can help the gig economy workforce become attractive to new workers, which can in turn increase overall worker bargaining power.

IV. WHY STATE AND LOCAL GOVERNMENTS SHOULD FIGHT FOR GIG WORKERS

A class action antitrust case by gig economy drivers faces a significant challenge due to arbitration agreement in employment contracts. However, state and local governments do not have this constraint. Generally, antitrust law allows the Attorney General to bring actions in her forum of choice. And allowing the Attorney General to pick her selected forum could create a litigation environment friendly to the affected workers.

The effectiveness of such an action is not theoretical. In 2020, the Massachusetts Attorney General sued Uber and Lyft on behalf of drivers, seeking to classify drivers as employees under state law.²⁷ The case settled in 2024 with significant legal and monetary gains for drivers.²⁸ Under the settlement agreement, drivers receive a minimum of \$32.50 per hour for time spent traveling to pick up riders and transport them to their destinations, adjusted annually for inflation.²⁹ In addition, the agreement mandates that drivers get paid sick leave, a paid stipend to buy into the state's family and medical leave program, and pooled health insurance benefits for anyone who drives more than 15 hours per week.³⁰ The agreement also required Uber and Lyft to pay into a restitution fund, which the Attorney General distributed to current and former drivers who were underpaid by the companies.³¹ Finally, the agreement ended attempts by the companies to change state employment law through lobbying for a 2024 ballot measure that would have eroded labor protections

22 *Fed. Trade Comm'n v. Kroger Co.*, No.: 3:24-cv-00347-AN, 2024 WL 5053016, at *32 (D. Or. Dec. 10, 2024).

23 *Ibid.* at *33-34 (applying indicia from *Brown Shoe Co. v. United States*, 370 U.S. 294 (1962) to determine if the union grocery labor submarket is distinguished from the overall labor market).

24 *Ibid.* at *34.

25 UCLA INSTITUTE FOR RESEARCH ON LABOR, *supra* note 5, at 41-42.

26 *Ibid.* at 44.

27 *AG Healey: Uber and Lyft Drivers are Employees under Massachusetts Wage and Hour Laws*, MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL (July 14, 2020), <https://www.mass.gov/news/ag-healey-uber-and-lyft-drivers-are-employees-under-massachusetts-wage-and-hour-laws>.

28 *Uber and Lyft Settlement Information and Frequently Asked Questions*, MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL (last updated Oct. 15, 2025), <https://www.mass.gov/info-details/uber-and-lyft-settlement-information-and-frequently-asked-questions>.

29 *Ibid.*

30 *Ibid.*

31 *Ibid.*

for gig workers.³² Litigation like this shows that state governments can successfully take action against gig economy companies to protect their workers.

While this was not an antitrust action, prosecuting labor violations combined with antitrust action can produce even more powerful results if statute or case law supported such a prosecution. Recent jurisprudence has created a legal environment more friendly to antitrust claims in labor markets than ever before. In particular, merger litigation relying on the Merger Guidelines shows that labor markets should be accounted for in a merger review. Given the potential for acquisitions by large gig economy companies like Uber, which has a history of acquiring horizontal competitors like Postmates,³³ merger litigation presents a great opportunity for state and local government enforcers to protect gig workers from the harms of extreme consolidation.

A major benefit to action by state and local officials is that gig economy markets are often highly localized. Companies employing workers in, say, a city with significant labor protections for gig economy workers will inevitably have to pay more for the worker than they would for a worker operating out of areas without the same labor protections or demand for services offered by gig labor. Additionally, consumers in urban areas have more disposable income than consumers in rural areas, so gig economies can charge more for services in cities. Most importantly, services are often highly local. Rideshare trips or goods delivery often occur in close areas, and the platforms attempt to match available workers as close to the consumer as possible. For a settlement like the Massachusetts AG one, the best way to reach an appropriate minimum wage number would be to consider state and local laws and the cost of living within less-populous jurisdictions. Thus, an ideal outcome for workers happens when state or local officials take action to protect labor rights in their jurisdiction.

Finally, state and local officials have much to gain politically by fighting for workers against gig economy companies. Politics currently center around “affordability,” with significant numbers of voters choosing candidates based on how the candidate plans on responding to cost-of-living issues. Much of this conversation so far has revolved around lowering costs of goods. However, state and local officials can achieve similar results by working to increase the pay and benefits for workers in their jurisdictions. Gig economy workers, particularly those who do gig work full-time, would significantly benefit by having disposable income and health insurance. Beyond affording rent and groceries, they would then pay more into the state and local tax base. Now is the perfect time for political officials to target the likes of Uber and DoorDash amid their newfound profitability, especially given the multitude of benefits that would result from better pay for workers.

V. CONCLUSION

Like many United States workers, gig workers are struggling because their wages have not increased. Worse yet, major gig companies across every sector are seeing profits increase. The threat of antitrust action against collective action by gig workers chills the ability for gig workers to fight together for better wages and benefits. Removing the antitrust threat against gig workers organizing is important to allow them to fight for their labor rights.

Additionally, state and municipal officials should prosecute antitrust violations against gig economy companies in their jurisdictions. Not only has the Massachusetts Attorney General provided a template to fight for labor rights for gig workers, but federal court decisions affirming the Merger Guidelines provide jurisprudential support for antitrust action on behalf of gig workers. In the current fight against the affordability crisis, state and local officials fighting to increase wages and benefits in a growing labor sector would drastically improve the material conditions of workers.

³² *Ibid.*

³³ Joe Guskowski, *Uber Eats Completes Postmates Acquisition*, RESTAURANT BUSINESS (Nov. 30, 2020), <https://www.restaurantbusinessonline.com/technology/uber-eats-completes-postmates-acquisition>.



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