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# ALEX A. DALLMAN

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STATE REPRESENTATIVE • 41<sup>ST</sup> ASSEMBLY DISTRICT

## Testimony in Favor of Assembly Bill 477

*Assembly Committee on State Affairs*

December 20<sup>th</sup>, 2023

Thank you, Chairman Swearingen and committee members, for allowing me to testify before you concerning Assembly Bill 477, legislation that would allow Transportation Network Companies (TNCs) and Delivery Network Companies (DNCs) to offer incentives such as personal portable benefit accounts and occupational accident insurance to their drivers. I would also like to thank Senator Bradley for his leadership on this legislation.

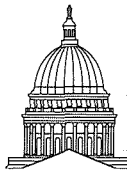
This bill would implement a first-of-its-kind portable benefits structure, allowing those who chose flexible work with TNCs and DNCs to access funding for health insurance, retirement savings, and the replacement of lost income in various conditions. The result being a structure for those who work for TNCs and DNCs to maintain the independence they value, while also providing an opportunity for earned benefits.

AB 477 also reinforces these drivers are independent contractors not employees of the TNC or DNC if the company refrains from doing the following:

- Setting work hours or minimum work mandates
- Terminating the contract if the driver does not accept specific requests
- Limiting a driver's ability to perform services for another TNC or DNC
- Limiting a driver's ability from working for any other lawful business

This bill would protect the independence of drivers while also providing access to benefits that best fits the needs of the worker.

Thank you again, Chairman Swearingen, for the opportunity to testify before this committee today and I would be happy to answer any questions you may have.



**JULIAN BRADLEY**  
WISCONSIN STATE SENATOR

**Assembly Bill 477**  
**Assembly Committee on State Affairs**  
**Wednesday, December 20, 2023**

Chairman Swearingen and Committee members,

As our economy continues to change, we as legislators must work to ensure Wisconsin's laws are not standing in the way of economic growth. The gig economy is a rapidly expanding part of our state's commerce. Whether it's someone from Uber getting you to the airport or Instacart dropping off your groceries, Wisconsinites are increasingly taking advantage of these services both as consumers and as contractors.

This bill helps facilitate this trend by allowing drivers for transportation network companies (TNCs) like Uber or Lyft and delivery network companies (DNCs) like Instacart or DoorDash to create portable benefit accounts. These accounts could be used for drivers to set aside some of their hard earned money to plan for future costs like health insurance or lost wages from a vacation or even retirement.

The bill would also create clear criteria for evaluating if these drivers are contractors or employees. These drivers would be considered contractors as long as the TNC or DNC refrains from doing any of the following:

- Setting explicit hours
- Abolishing the contract if the driver does not accept specific requests
- Limiting a drivers ability to perform services for another TNC or DNC
- Limiting a drivers ability to work for any other authorized business

These changes are crucial to the ongoing operation of these companies in Wisconsin and provide an added benefit for those who choose to participate in the gig economy.

Please join me in supporting Assembly Bill 477. Thank you.



Maplebear Inc. d/b/a Instacart  
50 Beale Street, Suite 600  
San Francisco, CA 94105

Dear Chairman Swearingen, Vice-Chair Green and distinguished members of the Committee on State Affairs:

On behalf of Instacart, I am writing to express our support for Assembly Bill 477, which would preserve access to the independence and flexibility shoppers and other app-based workers consistently say they want, while creating a portable benefits structure for those who need it.

Instacart is the leading grocery technology company in North America, and we partner with over 50 local retailers to facilitate orders from more than 1,100 stores across Wisconsin. Further, Instacart has helped add over 39,000 grocery jobs across Wisconsin and approximately \$112 million in revenue to the state grocery industry<sup>1</sup>. Our mission is to create a world where everyone has access to the food they love.

During this time of record inflation, Instacart is proud to provide low-barrier, flexible earning opportunities for shoppers on the platform who are looking to make additional income on their own terms. Shoppers – or the individuals who pick, pack, and deliver orders – are an integral part of their community. They are caretakers, parents, college students, and many others who either need or want alternatives to traditional employment. In fact, over 80% of shoppers say they choose to shop on Instacart because of the independence it provides, and the vast majority of shoppers shop less than 10 hours a week. They have the freedom to choose when, where, and for how long they work, without any set schedule, minimum commitment, or obligation.

Assembly Bill 477 meets the needs of this modern and independent workforce. It creates a unique framework for independent contractor protections while offering a company-funded portable benefits account that can be used if a driver has lost income due to an accident or disaster, to fund retirement accounts, or go towards purchasing health insurance. Further, the bill authorizes companies to purchase occupational accident insurance that would provide coverage for injuries that a worker may have sustained by providing services.

Existing laws make it difficult to offer such protections, but Assembly Bill 477 provides clear statutory authority enabling app-based companies to give this coverage without compromising independent contractor classification, which workers overwhelmingly tell us they want.

Assembly Bill 477 is an innovative piece of legislation. It embraces the unique nature of app-based work and creates a framework for companies like Instacart to contribute towards the well-being and financial security of app-based workers without jeopardizing the independence they want.

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<sup>1</sup> Industry data based on 2023 NERA Economic Consulting study:  
<https://www.nera.com/publications/archive/case-project-experience/nera-study-finds-direct-causal-relationship-between-instacart-ad.html>



Maplebear Inc. d/b/a Instacart  
50 Beale Street, Suite 600  
San Francisco, CA 94105

I respectfully urge each member of the Committee on State Affairs to prioritize the interests and well-being of independent contractors by supporting Assembly Bill 477. By doing so, we can ensure a fair and equitable environment for the growing app-based workforce across Wisconsin.

Sincerely,

Kelley R. Foxx  
Government Affairs Manager II



**Wisconsin State AFL-CIO**  
6333 W. Bluemound Road, Milwaukee, WI 53213  
Phone: 414-771-0700  
wisafclcio.org

To: Members of the Assembly Committee on State Affairs  
From: Stephanie Bloomingdale, President  
Date: December 20, 2023  
RE: In Opposition of AB 477

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Wisconsin's workers deserve policies that assure the protection of their rights on the job and family-supporting wages and benefits. The Wisconsin AFL-CIO values all work, and advocates for all workers by supporting employment policies that allow flexibility, living wages, and health, medical, and retirement benefits for every worker.

Assembly Bill 477 does not guarantee any more or less flexibility for workers, does not guarantee good wages, and does not guarantee benefits for workers in the gig economy. It does none of these things because the bill eliminates employee status for these workers, and all of the rights that come with the status, and does not require that these employers provide any benefits – portable or fixed – for gig drivers, whose labor have created vast sums of wealth for its investors and owners.

The lynchpin of this bill is found on page 4, lines 21-22 when it states, “An application-based driver is not an employee.” This bill, with that one line, will eliminate the “employee” status for every Wisconsin delivery worker who is employed by a delivery app company like Uber or DoorDash. This bill does not eliminate a mere technicality but eliminates essential rights of workers. It is the result of a concerted attempt by corporate tech giants that are going state-by-state to evade providing basic employment protections like worker's comp and the minimum wage for workers.

In sum, this bill would create a special exemption for these powerful corporations at the expense of Wisconsin's working men and women and our families, and every taxpayer.

## **I. WORKER'S COMPENSATION & UNEMPLOYMENT INSURANCE**

The very first section of this bill exempts app-based delivery drivers from our worker's compensation law, and later in the bill it also exempts these workers from participating in unemployment insurance system. This bill proposes to amend both the Worker's Compensation Act (Ch. 102) and Unemployment Insurance System (Ch. 108) without going through either the Wisconsin Worker's Compensation or Unemployment Insurance Advisory Councils.

In both the Worker's Compensation and Unemployment Insurance Advisory Councils, experts from management and labor comprise each Advisory Council. During every legislative session, Council members examine various proposals to amend each statute, through a process of

vetting and negotiation to advise the Legislature each session on policy matters concerning the development and administration of the applicable law. When labor and management experts who serve on each Advisory Council agree to recommended changes, legislators can be assured that the proposed bill represents sound policy.

This bill did not go through either Advisory Council. This bill was first introduced two years ago and at no point have either the Worker's Compensation or Unemployment Insurance Advisory Councils vetted this proposal. Instead, this bill bypassed the Advisory Council processes altogether.

The bill proposes substantial changes to the Worker's Compensation Act, like substituting the current nine-part test<sup>1</sup> to determine whether an injured worker is eligible for worker's comp. This nine-part test has been the law of the land for decades, and this bill proposes to undo that at the expense of every worker and every taxpayer. If this bill is passed, and a delivery worker employed by an app company is hurt on the job, then worker's comp would no longer apply. The injured worker would not be given the same prompt treatment, benefits for lost wages, and an incentive to return to work as they would if this bill is not passed. In addition, taxpayers would be on the hook when an app-based delivery worker gets hurt on the job and cannot return to work, being forced to rely upon state benefits.

Similarly, this bill proposes substantial changes to the Wisconsin's Unemployment Insurance law, like substituting the current test<sup>2</sup> to determine whether a worker is an employee, and eligible for unemployment insurance, or is an independent contractor. The test is also a long-standing statute and is a separate test than the worker's compensation test referred to above. In the current UI test, the worker first must meet a question of control by an employer and then must meet six of nine other factors in order to be considered an employee. This bill would substitute this intricate test for a four-point test.

## **II. WISCONSIN EMPLOYMENT PROTECTIONS**

Under Wisconsin law, workers who are classified as "employees" are entitled to the minimum wage, overtime protections, protections against discrimination, and a right to Wisconsin Family and Medical Leave. The test to determine whether a worker qualifies as an employee for wage and hour benefits is set by the Wisconsin Court of Appeals<sup>3</sup> case law. This bill would wipe out each one of these essential employment rights that is guaranteed to employees.

## **III. MANDATORY LOSSES, VOLUNTARY BENEFITS FOR WORKERS**

Under this bill, non-employee status is mandatory for all who work as drivers for these delivery apps, but the provision of benefits is optional for the corporations.

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<sup>1</sup> Wis. Stat 102.07(8)

<sup>2</sup> Wis Stat 108.02(12)

<sup>3</sup> [Moore v. LIRC](#), 175 Wis. 2d 561 (Ct. App. 1993).

As stated at the outset, the lynchpin of this bill is on page four, lines 21-22 when it carves out one industry's workers from employee status. This bill does not require app-based corporations to contribute to a portable benefit account or carry insurance coverage.

The bill specifically states on page six, line 8 "a network company *may* contribute..." it then states in lines 11-14 that the contributions may come out of a of the driver's earnings. In addition, the bill goes on to underscore the voluntary nature of these benefits on page 8, on lines 12-13, it states "A network company *may* carry, provide, or otherwise make available group or blanket accident and sickness insurance..." Therefore, all of the so-called benefits talked about in this bill are optional and may never come to fruition for any gig driver.

#### **IV. BENEFICIARIES OF THIS BILL: CORPORATIONS, NOT WISCONSIN**

This bill was not written for Wisconsin's workers but for international corporations. The measure undermines not just Wisconsin's workers, but also Wisconsin's companies and small family-owned businesses. By creating a special carve out for the workers of this category, this bill puts smaller companies at a disadvantage and also puts taxpayers on the hook when these app-based delivery workers get hurt at work and then cannot work and must rely upon state benefits.

If this bill is passed, then this no-protection business model would be imposed on thousands of Wisconsin's workers by removing their employee status. This is a contradiction not just of Wisconsin values but our law, which has relied upon legislatively-created Advisory Council to study and vet changes to our worker's compensation and unemployment insurance law.

Please protect Wisconsin's workers employee status and oppose this bill.



**TECHNET**  
THE VOICE OF THE  
INNOVATION ECONOMY

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December 14, 2023

The Honorable Bob Swearingen,  
Wisconsin State Assembly  
Assembly Committee on State Affairs, Chair  
Room 123 West State Capitol  
PO Box 8953  
Madison, WI 53708

**Re: AB 477, An Act Establishing Portable Benefit Accounts for App-Based Delivery Drivers**

Dear Representative Swearingen:

I am writing to you today to express our support of AB 477 (Dallman), which would establish flexible, portable benefits for drivers who operate on delivery and transportation platforms.

*TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.5 million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance.*

Technology makes it easier for people to work independently, run their own business, and leverage their time and talents to generate supplemental income. The on demand and sharing economies have provided low-barrier entry earning potential for millions of Americans. Many in this modern, diverse, independent workforce find they get better financial returns on their skills than their peers in the traditional workforce, and the freedom to work how and when they want is a crucial benefit. TechNet supports legislation like AB 477, which recognizes the independence this workforce desires and provides an avenue for companies to deliver the real benefits they deserve.

TechNet believes that providing worker benefits should not be the sole provenance of an employer who has control over when, where, and how work gets done; nor should the growing, dynamic, independent workforce be denied protections and



benefits because they do not fit a narrow, often outdated definition of employment. When it comes to platform and app-based work, the problem is not that workers are incorrectly classified. The problem is that the statute presumes that there are only two classes of work. Attempting to shoehorn a dynamic, ever-changing, and growing industry and its workforce into binary and inflexible definitions of employer and employee via legislation will not address the underlying issue that the way many people choose to apply their skills and earn a living has changed dramatically since many of these statutes were put in place.

TechNet supports policies that maintain the independence that these workers desire with the protections that they deserve. Wisconsin can design a system of benefits that is portable, flexible, and makes sense in a 21<sup>st</sup> century economy; one that recognizes the diversity of the independent workforce and the different business models of the platforms that support them, and AB 477 is a key component of that. TechNet's members stand by to assist in this effort.

Thank you for your consideration of this important issue. Please do not hesitate to contact me if I can provide any additional information or assistance.

Sincerely,



Tyler Diers  
Executive Director, Midwest  
TechNet

Cc: Members of the Assembly Committee on State Affairs  
Representative Dallman