

ELIZABETH WARREN
MASSACHUSETTS

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS
ARMED SERVICES
SPECIAL COMMITTEE ON AGING

United States Senate

UNITED STATES SENATE
WASHINGTON, DC 20510-2105
P: 202-224-4543

2400 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
P: 617-565-3170

1550 MAIN STREET
SUITE 406
SPRINGFIELD, MA 01103
P: 413-788-2690

www.warren.senate.gov

April 1, 2020

Matt Maloney
Chief Executive Officer
Grubhub, Inc.
111 W. Washington Street, Suite 2100
Chicago, IL 60602

Dear Mr. Maloney:

I am writing to request that, during the novel coronavirus 2019 (COVID-19) pandemic, you provide your front line delivery workers with the basic rights and protections they would be guaranteed if you classified them as employees rather than independent contractors, including paid sick leave, minimum wages, and essential health and safety protections. Because these workers perform essential delivery work and are critical to serving customers who cannot leave home during the pandemic, you have a responsibility to protect their health and the public's health. To do so, I urge you to reclassify your delivery workers as employees, rather than independent contractors, and ensure they are provided a full suite of employee protections and benefits.

On Monday, Instacart workers staged an emergency walk-off¹ to protest that the company had “not provided essential protections to Shoppers on the front lines that could prevent them from becoming carriers, falling ill themselves, or worse.”² Worker demands include free, company-provided safety precautions, an expanded paid leave policy, and additional hazard pay³—organizers declared that “workers should not be risking their lives for pocket change.”⁴ DoorDash and Uber have announced new paid sick leave policies, but workers report that requests to access this leave are being denied.⁵ Delivery workers are experiencing serious health and economic vulnerabilities as a result of their jobs, and your company is failing to provide appropriate and necessary protections.

¹ Washington Post, “Workers protest at Instacart, Amazon and Whole Foods for health protections and hazard pay,” Nitasha Tiku and Jay Greene, March 30, 2020, <https://www.washingtonpost.com/technology/2020/03/30/worker-strike-instacart-amazon-whole-foods/>.

² Medium, “Instacart Emergency Walk Off,” Gig Workers Collective, March 27, 2020, <https://medium.com/@GigWorkersCollective/instacart-emergency-walk-off-ebdf11b6995a>.

³ *Id.*

⁴ Medium, “Instacart’s ‘Response’ is a Sick Joke — The Strike is Still On,” Gig Workers Collective, March 29, 2020, <https://medium.com/@GigWorkersCollective/instacarts-response-is-a-sick-joke-the-strike-is-still-on-2aa4f5e4e726>.

⁵ Los Angeles Times, “Delivery workers are keeping California fed. They say no one’s keeping them safe,” Johana Bhuiyan, March 28, 2020, <https://www.latimes.com/business/technology/story/2020-03-28/coronavirus-delivery-workers-sick-leave-protection/>; Reuters, “Delivery drivers face pandemic without sick pay, insurance, sanitizer,” Chris Kirkham and Jeffrey Dastin, March 25, 2020, <https://www.reuters.com/article/us-health-coronavirus-delivery-drivers-i/delivery-drivers-face-pandemic-without-sick-pay-insurance-sanitizer-idUSKBN21C1CJ>.

In response to the highly contagious nature of the novel coronavirus, the serious risk it presents to older people and people with underlying health conditions, and the lack of testing available to identify those who have it, the Centers for Disease Control and Prevention (CDC) recommends that people stay home from work when they are sick, even if their symptoms are mild.⁶ Because they are not treated as regular employees, your delivery workers do not automatically have guaranteed access to standard benefits and labor standards like paid leave, health insurance, and a minimum wage.⁷ Without these benefits, workers may be forced to work while sick, be unable to care for family members who are sick, or be unable to access needed medical care. When this happens, they may endanger their own health, and the health of others in the community.

Your company's misclassification of your workers as independent contractors rather than employees creates inherent risk for workers,⁸ who are denied access to unemployment insurance and workers compensation, a minimum wage and overtime, health care benefits, the right to be represented by a union, and the legal protections of the *Occupational Safety and Health Act*.⁹ Lawsuits and state legislation, including California's Assembly Bill 5¹⁰ and the Massachusetts Independent Contractor Law,¹¹ have sought to protect workers from being exploited by employer misclassification. The impact your misclassification has on workers, and the precarious circumstances it puts them in, is amplified by this pandemic.

To address the risks workers are experiencing, I am calling on your company to guarantee at least 14 days of paid leave time to all workers who depend on your company for their income, and allow them to take this leave if they have symptoms of or have been exposed to someone with COVID-19. These workers should be allowed to take this leave even if they do not have a formal diagnosis of COVID-19 or a mandatory quarantine order. Policies introduced by delivery companies in response to the pandemic emergency currently require their workers to have a confirmed diagnosis of COVID-19 or a mandatory quarantine order from a doctor or public health agency.¹² However, as hospitals and clinics become overwhelmed with COVID-19 patients, and with testing capacity still limited, the CDC has provided guidance that "not everyone needs to be tested," and "[m]ost people [who] have mild illness [...] are able to recover

⁶ Centers for Disease Control and Prevention, "Steps to help prevent the spread of COVID-19 if you are sick," March 25, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/about/steps-when-sick.html>.

⁷ Department of Labor, "Misclassification of Employees as Independent Contractors," <https://www.dol.gov/agencies/whd/flsa/misclassification>.

⁸ Sacramento Bee, "The gig economy fails to share the wealth with workers. Here's how we fix it," Art Pulaski, May 9, 2019, <https://www.sacbee.com/opinion/op-ed/article230178194.html>.

⁹ Harvard Business Review, "Lots of Employees Get Misclassified as Contractors. Here's Why It Matters," David Weil, July 5, 2017, <https://hbr.org/2017/07/lots-of-employees-get-misclassified-as-contractors-heres-why-it-matters>.

¹⁰ California Assembly Bill Number 5, "Worker status: employees and independent contractors," https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB5.

¹¹ Massachusetts.gov, "Independent contractors," <https://www.mass.gov/service-details/independent-contractors>.

¹² Instacart, "Expanding Our Community of Household Heroes: A Thank You From Apoorva Mehta, Instacart Founder & CEO," March 23, 2020, <https://news.instacart.com/expanding-our-community-of-household-heroes-a-thank-you-from-apoorva-mehta-instacart-ceo-3e596b5d05a9>; Uber, "Supporting you during the Coronavirus," <https://www.uber.com/blog/supporting-you-during-coronavirus/>; DoorDash, "COVID-19 Financial Assistance Program," https://help.doordash.com/dashers/s/article/COVID-19-Financial-Assistance-Program?language=en_US.

at home.”¹³ It may therefore be difficult for workers to access testing or medical documentation, particularly if they lack health insurance and a regular source of care. In addition, workers have reported being denied sick leave even with documentation from a doctor with directions to quarantine from home.¹⁴ You should address these discrepancies and provide paid sick leave quickly and uniformly, so you do not risk the safety of workers, customers, and the public.

In addition, workers should not be penalized financially if they need to care for children whose school may be closed or family members who are quarantined or isolated. Your policies should allow workers to take care of themselves and their families during this national public health emergency.

I also urge you to take all necessary health and safety precautions to protect your workers who are at work during this public health emergency. At a minimum, this includes providing protective equipment such as masks, gloves, and cleaning supplies such as hand sanitizer, at no cost to all delivery workers. Workers who are asked to continue working in an area with widespread transmission of coronavirus need to be assured of sufficient protection to avoid putting themselves and their families at risk. Practices companies have implemented for customer safety, like requesting “no-contact delivery,” should be equally available for workers to request and utilize. These protections will not only help to keep workers safe; they will also prevent widespread absences that could affect your ability to operate essential services and help to slow the spread of the virus in the community.

Although some delivery companies have begun to provide some cleaning supplies to their drivers, in many cases the supplies have been inadequate,¹⁵ and in some cases, drivers have to pay weekly shipping fees if they want to access those supplies.¹⁶ Unsafe conditions and fears for their exposure to the virus have led delivery workers to speak out and organize for safer working conditions and a modicum of economic security.¹⁷

I also urge you to pay your delivery workers a fair wage to compensate them for the increased risk they are taking on by continuing to work during this pandemic. Some companies providing essential services have increased worker pay to compensate for the increased intensity of the work and the increased risk to workers’ safety.¹⁸ Your workers, who may depend on your platform for their income, are no less at risk and no less deserving of increased compensation. Instacart delivery workers, for example, are demanding an additional \$5 per delivery and

¹³ Centers for Disease Control and Prevention, “Should You Get Tested,” March 21, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html>.

¹⁴ Pay Up, “I sent Instacart the doctor’s note saying I need to quarantine after I got a COVID test. Instacart said it wasn’t enough,” March 29, 2020, <https://payup.wtf/blog/2020/3/29/instacart-fake-sick-pay>.

¹⁵ NPR, “Amazon, Instacart Grocery Delivery Workers Demand Coronavirus Protection and Pay,” Alina Selyukh and Shannon Bond, March 30, 2020, <https://www.npr.org/2020/03/30/823767492/amazon-instacart-grocery-delivery-workers-strike-for-coronavirus-protection-and->

¹⁶ DoorDash, “Dasher Supplies for Covid-19,” https://help.doordash.com/dashers/s/article/Dasher-Supplies-for-Covid-19?language=en_US.

¹⁷ Medium, “Instacart Emergency Walk Off,” Gig Workers Collective, March 27, 2020, <https://medium.com/@GigWorkersCollective/instacart-emergency-walk-off-ebdf11b6995a>.

¹⁸ Texas Monthly, “Inside the Story of How H-E-B Planned for the Pandemic,” Dan Solomon and Paula Forbes, March 26, 2020, <https://www.texasmonthly.com/food/heb-prepared-coronavirus-pandemic/>.

increased default tip rates in the Instacart app.¹⁹ While premium pay is not an alternative to health and safety protections, providing this type of additional “hazard pay” compensation in addition to taking necessary health and safety precautions is a concrete way to support your workers during this time of heightened risk. You should also provide workers guaranteed minimum pay from your company, after accounting for the costs of mileage and other basic expenses, and not including tips.

Finally, I urge you to immediately share driver wage data with relevant state agencies, without preconditions. By classifying your workers as independent contractors, rather than employees, you are not mandated to report this data to the state, but failing to do so creates a “monthslong bureaucratic process” for workers “to prove their employment status and secure unemployment benefits.”²⁰ Workers seeking unemployment compensation likely need immediate relief to stay afloat, especially during an economic downturn. Your company should facilitate unemployed former workers getting relief by promptly providing states with driver wage data.

I appreciate that your company has continued to make it easier for millions of Americans to obtain food and other essentials while families adhere to social distancing practices and self-quarantine orders. Your workers make this possible, and the coronavirus pandemic has illustrated how much your company is completely reliant on these workers to provide essential services to the public. In this public health emergency, it is more important than ever to fairly compensate these workers and provide the health and safety protections they deserve. I urge you to rise to the imperative of this public health crisis by providing paid leave, fair compensation, and adequate health and safety protections for all your workers.

Thank you for your consideration of this important matter.

Sincerely,



Elizabeth Warren
United States Senator

¹⁹ Medium, “Instacart Emergency Walk Off,” Gig Workers Collective, March 27, 2020, <https://medium.com/@GigWorkersCollective/instacart-emergency-walk-off-ebdf11b6995a>.

²⁰ New York Times, “Drivers Say Uber and Lyft Are Blocking Unemployment Pay,” Noam Scheiber, March 24, 2020, <https://www.nytimes.com/2020/03/24/business/economy/coronavirus-uber-lyft-drivers-unemployment.html>.