



Office of Commissioner
Rebecca Kelly Slaughter

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Statement of Commissioner Rebecca Kelly Slaughter
FTC Policy Statement on Enforcement Related to Gig Work
September 15, 2022

I am very pleased to vote for the Statement on Enforcement Related to Gig Work, which makes clear that the FTC is going to use the full breadth of its authority to examine conduct related to gig work and protect gig workers from unfair, deceptive, and anticompetitive conduct. I want to add my thanks to our staff from throughout the agency, for their joint work on this statement, and in particular I want to recognize the efforts of the GigWork@FTC team for their initiative.

I also want to particularly thank the Dashers who spoke earlier during the public comment of our meeting. I was especially moved by your comments about the value of gig work to you in terms of providing flexibility and opportunity to spend time with your families and your other professional pursuits. And I want to be clear – I think workers SHOULD have flexibility and opportunity. Our job as enforcers is to make sure you get what you’ve been promised, and that you aren’t taken advantage of in the gig economy. I strongly support the benefits you’ve discussed, and object only to the idea that in order to get those benefits, workers have to be denied all other protection and fair competition for their labor.

This Statement is one of many ways our staff has been collaborating across missions to identify how we can deploy our authority to protect the public from unfair, deceptive and anticompetitive conduct in all of their roles in the marketplace: as purchasers, as small business owners, and as workers.

Just as consumers deserve the benefits of competition when it comes to purchasing goods and services, gig workers deserve the benefit of competitive markets for their labor. Robust competition for workers’ labor can help boost wages, improve benefits, and lead to better working conditions. Scrutiny of business practices and enforcement against law violations are key components in this effort. The Bureau of Competition has reoriented in recent years to pay closer attention to mergers and conduct that may harm workers, and especially workers who are disproportionately people of color, as is the case with gig workers.¹

Competition and labor experts can help us think about how labor law and antitrust law might complement one another to protect workers. And I’m pleased the FTC recently entered

¹ Fed. Trade Comm’n, *Serving Communities of Color*, at 19 (Oct. 2021) (“Research has shown that communities of color are disproportionately represented in the internet-enabled gig economy.”).



Office of Commissioner
Rebecca Kelly Slaughter

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

into a MOU with the National Labor Relations Board.² Worker classification, including worker *misclassification* as independent contractors instead of employees, is not only deeply troubling from a labor law standpoint, but it can adversely affect competition. As I told the last administration's Department of Labor in a comment on a horribly misguided rule regarding worker classification, firms that misclassify workers may gain an unfair competitive advantage over their rivals, reducing worker bargaining power, and increasing the likelihood of more workers being subjected to anticompetitive contract terms.³

Today's Statement notes that the Commission will *not* focus its attention on organizing efforts by gig workers. I want to add that I would oppose devoting any resources, policy or investigative, to challenging gig workers who engage in collective action to fight back against unfair labor practices and to seek better wages, terms of employment, and working conditions.⁴ For example, I would not have supported the FTC's amicus brief in support of the Chamber of Commerce in its case against the City of Seattle, for an ordinance it enacted to permit independent for-hire drivers to collectively negotiate their contracts with taxicab associations, and transportation network companies such as Uber and Lyft. I also think there is a case to be made that even properly classified independent contractors should get the benefit of the labor exemption for labor organizing efforts.

The Bureau of Consumer Protection has long looked at conduct that harms people simply trying to earn a living, and specifically challenged false and deceptive earnings claims, which are some of the most pernicious and financially ruinous schemes. I am especially proud of our staff's work on the Amazon Flex case. In 2021, we brought suit against Amazon for allegedly keeping a portion of drivers' tips. As alleged in the complaint, Amazon actively concealed its conduct and only stopped after becoming aware of the FTC's investigation. The FTC recovered over \$60 million from Amazon to pay back the more than 140,000 Amazon Flex drivers whose tips were withheld.

² Memorandum of Understanding Between the Federal Trade Commission (FTC) and the National Labor Relations Board (NLRB) Regarding Information Sharing, Cross-Agency Training, and Outreach in Areas of Common Regulatory Interest (July 19, 2022) https://www.ftc.gov/system/files/ftc_gov/pdf/ftcnlrb%20mou%2071922.pdf

³ See Docket, [Request for Public Comment on Independent Contractor Status under the Fair Labor Standards Act, 29 C.F.R. pts. 780, 788, 795] (October 26, 2020), https://www.ftc.gov/system/files/documents/public_statements/1582178/comment_of_commissioner_rebecca_kelly_slaughter_on_the_department_of_labor_proposed_rule_on_0.pdf

⁴ See Brief for the United States & FTC as Amici Curiae Supporting Appellant, *Chamber of Commerce v. City of Seattle*, 890 F.3d 769 (9th Cir. 2018).



Office of Commissioner
Rebecca Kelly Slaughter

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Returning lost money to workers and consumers had been a mainstay of our enforcement until the Supreme Court eliminated the Commission’s primary and best tool to seek monetary remedies for violations of the FTC Act. In response, the Commission has issued an advance notice of proposed rulemaking regarding earnings claims. This inquiry means we can gather evidence on how best to protect against these scams and begin to think about how a possible Trade Regulation Rule could help level the playing field between workers and those that employ them. Pursuing rule violations would also reopen an avenue to return stolen money to these workers – something we can no longer do under Section 13(b) until Congress steps in to fix it. Moving forward in this rulemaking may be another way we can ensure gig workers get fair compensation for their labor.