We, the undersigned, reject the legitimacy of the recently announced [Workforce Recovery Advisory Committee](https://www.ontario.ca/page/ontarios-workforce-recovery-advisory-committee-leading-future-work-ontario) as it is currently structured. We call on the Government of Ontario to presume all workers as employees with full labour and employment rights, unless their employers can demonstrate otherwise.

We agree that the future of work should be seriously studied and that labour and employment laws should be reformed as a consequence, but the composition of this Workforce Recovery Advisory Committee raises grave doubts that the interests of workers will be meaningfully represented. Few of the Committee members have any expertise in labour and employment law and none are consistent worker or union representatives. The total time between the announcement of this Committee (June 15th) and the deadline for submissions to its online ‘consultations’ (originally July 12th, now July 31st) is totally inadequate. Its slate of issues—technological change, ‘work from anywhere’ employment, and skills development—is so broad that it couldn’t do adequate consultations in a few months, let alone one-and-a-half months.

By contrast, the last process to update Ontario’s labour laws, the [Changing Workplaces Review](https://www.labour.gov.on.ca/english/about/workplace/), took two years, featured worker representatives, had more extensive consultations across the province, and commissioned independent studies to make evidence-based recommendations. We would encourage the Government of Ontario to adopt this model, but we suspect the Workforce Recovery Advisory Committee has been created so that backroom dealing can be presented as public ‘consultation.’

So-called gig economy employers like Uber have had privileged access to government officials in advance of the Advisory Committee. Uber has been [lobbying politicians](https://pressprogress.ca/uber-is-lobbying-canadian-provinces-to-rewrite-labour-laws-and-create-a-new-underclass-of-workers/) in Canada for its [Flexible Work+](https://www.uber.com/en-CA/newsroom/a-modern-approach-to-app-based-work-in-canada/) proposal, which would change labour laws to deny people doing app-based work recognition as employees, further depriving them of the minimum standards, rights, and benefits achieved by most employees, including the right to unionize. Uber has [met](https://www.thestar.com/news/gta/2021/04/28/uber-pitches-new-provincial-rules-to-keep-gig-workers-as-contractors-as-workers-resistance-ramps-up.html) at least three times with the Ontario Ministry of Labour, and at least once with the Minister of Labour, Monte McNaughton. The question is not, will companies like Uber shape the Advisory Committee’s recommendations, but rather, will anyone else?

When Advisory Committee Chair Susan McArthur, [asserts](https://www.thestar.com/news/gta/2021/06/25/a-new-committee-is-exploring-the-future-of-work-but-critics-say-it-lacks-a-crucial-voice-workers.html), “We are looking for a balanced and thoughtful perspective that encompasses employees and employers,” we can only wonder if this is a basic misunderstanding of the issues involved, or clever wording that implies the intended outcome, because the problem is precisely that *app-based workers have not been recognized as employees by their employers*.

Uber intends to keep it that way. Uber [claims](https://www.thestar.com/news/gta/2021/06/25/a-new-committee-is-exploring-the-future-of-work-but-critics-say-it-lacks-a-crucial-voice-workers.html) its proposals were “developed by listening to drivers and delivery people.” Uber refers to its own surveys, which claim that a majority of Uber workers prefer being independent contractors. Such surveys [cannot](https://www.theguardian.com/technology/2021/mar/01/uber-accused-of-using-loaded-questions-in-drivers-survey) be taken as representative of workers’ true intentions as they are not independent of the employer, a key norm in our labour relations system. Further, Uber suggests that worker support for flexibility in their work activities necessarily implies their rejection of employment rights, but this is a false dichotomy, as is demonstrated by developments in other countries, including the unionization of Uber workers in [Norway](https://www.itfglobal.org/en/news/union-win-historic-agreement-food-delivery-workers) and [Japan](https://english.kyodonews.net/news/2019/10/d2198529f08b-update1-uber-eats-delivery-staff-in-japan-form-labor-union.html).

Indeed, the [Ontario Labour Relations Board](https://www.cbc.ca/news/canada/toronto/foodora-couriers-are-eligible-to-join-union-labour-board-rules-1.5475986), in its recent *Foodora* decision, ruled that app-based couriers are “dependent contractors,” a form of employee with the right to unionize. Foodora couriers voted for a union by 88.8%. Other jurisdictions have ruled that gig workers are employees, or workers with many of the rights of employees, including the [UK](https://www.bbc.com/news/business-56123668), [France](https://www.reuters.com/article/us-uber-court-idUSKBN20R23F), [Spain](https://apnews.com/article/business-laws-legislation-spain-economy-b74bfd4c1e8da05271853b069cb012b9), and the [Netherlands](https://www.dutchnews.nl/news/2021/02/deliveroo-to-appeal-to-supreme-court-after-judges-say-riders-are-not-freelancers/). Although it is unclear whether Uber wants to expand the current independent contractor status, or to carve out another watered-down category of worker, in either case, their proposed changes to labour laws would prevent the workers they employ from being recognized as employees. While the Flexible Work+ proposal would make it mandatory for the industry to provide some benefits and protections to gig workers, this change would trade away other important rights. Nothing prevents Uber, especially as an industry leader, from providing these benefits and protections to workers now. But Uber wants to give a little so that it may take a lot.

Companies like Uber, Lyft, and Doordash have also been [consulting](https://www.thestar.com/news/gta/2021/04/28/uber-pitches-new-provincial-rules-to-keep-gig-workers-as-contractors-as-workers-resistance-ramps-up.html) with the leadership of at least one major union about how gig workers might be represented without recognizing them as employees. It is unknown what they will propose for Ontario, but we can get a general idea from Uber’s influence over [recent draft legislation](https://stephluce.medium.com/open-letter-from-labor-scholars-opposing-draft-legislation-on-app-based-workers-86cb0e709cf4) in New York, or its relationship with the [Independent Drivers Guild](https://www.nytimes.com/2017/05/12/business/economy/uber-drivers-union.html), or [prior models](https://canadiandimension.com/articles/view/the-caw-magna-agreement-not-the-way-forward) in Ontario. Uber wants to create what looks like a workers’ advocate, but which is actually a “company union” that serves Uber’s interests first and foremost. Whatever these organizations are called by companies like Uber, or any union that agrees to affiliate with them, they are only unions if they are independent from employers and government. This means they elect their own representatives and leaders, all of their members can run in these elections, and they control their own dues, including the amounts.

All workers should be employees with full labour and employment rights unless otherwise demonstrated. The legal onus should be on employers to prove that the people they hire are independent contractors, not on workers to prove they are employees. The best model is the [‘ABC’ test](https://edd.ca.gov/Payroll_Taxes/ab-5.htm), a law [passed](https://www.latimes.com/california/story/2019-09-18/gavin-newsom-signs-ab5-employees0independent-contractors-california) in California, until companies like Uber spent over $200 million to [repeal](https://www.washingtonpost.com/technology/2021/01/12/prop22-uber-lawsuit/) it in the most expensive ballot measure in the state’s history. According this test, workers are employees if any of the following apply:

1. Their employer directs the way their work is done
2. Their job is a core part of their employer’s business
3. They have not established an independent business or trade

We call on the Province of Ontario to support true workplace law reform that extends full labour and employment rights to all employees, without exception, including gig workers, migrant workers, and agricultural workers. Reforms should end the barriers to accessing these rights and benefits even when workers are recognized as employees. All workers should have a right to form a union without significant obstacles. Finally, since the Advisory Committee’s mandate includes recommendations to not only “recruit” and “retain,” but also to “reward” workers, this should begin with substantial enhancements of wages, working conditions, and job security. Workers deemed essential should be compensated and protected as such.

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