Massachusetts Uber/Lyft Ballot Proposition Would Create Subminimum Wage

Drivers Could Earn as Little as $4.82 an Hour

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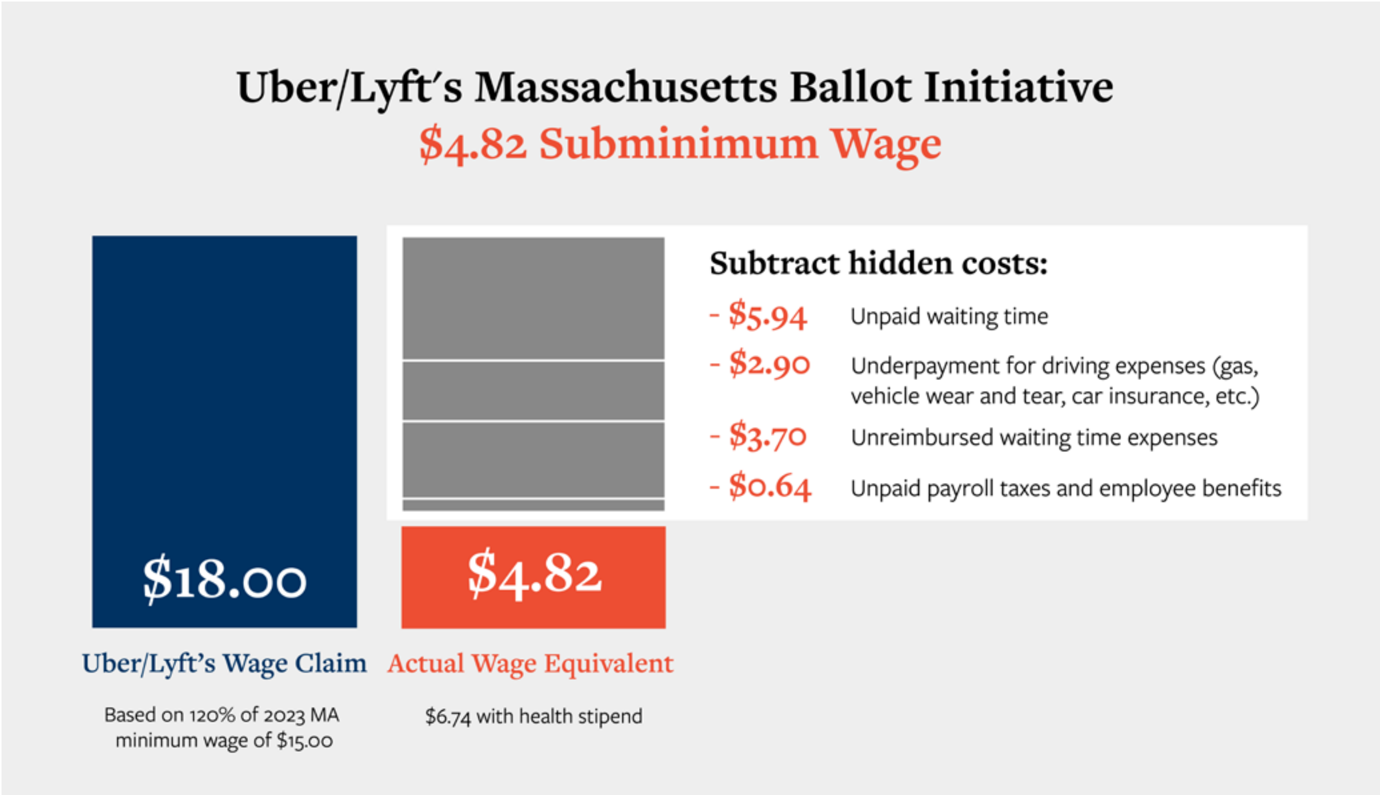
Uber and Lyft, along with a group of delivery network companies, have filed a ballot proposition in Massachusetts to create a separate set of labor standards for their drivers. The proposition, which could be on the November 2022 ballot, is modeled on Proposition 22 in California. As in California, the Massachusetts proposition claims drivers will receive a guaranteed pay equal to 120 percent of the minimum wage, which would calculate to $18 when the proposition would take effect.

Our review of the proposition leads to a very different estimate. After considering multiple loopholes, we find that the majority of Massachusetts drivers could earn as little as the equivalent of a $4.82 wage, while the minority of drivers who qualify for a health care stipend could earn the equivalent of just $6.74 per hour.[1] The pay guarantee under the proposition is therefore well below the Massachusetts minimum wage and about one-third of the required minimum pay for drivers under industry-specific pay standards in New York City and Seattle.

Here are the five loopholes that change the guaranteed pay from $18 to as little as $4.82 (see also the accompanying graphic):



1. Driver "waiting" time is not counted as work time

The proposition's guarantee applies only when the drivers are "engaged" with passengers—that is, when they are en route to picking up a passenger and when they have a passenger in their vehicle. Uber's own data indicate that engaged time amounts to only 67 percent of the drivers' actual working time. The companies would not pay for the approximately 33 percent of the time that drivers are waiting between passengers or returning from trips to outlying area.[2] But such time is a necessary part of drivers' work.[3] Whether a driver wants to work one hour a day, eight hours, or any amount in between, they will experience intervals between dropping off a passenger and getting their next fare. Not paying for that time would be the equivalent of a fast-food restaurant or retail store paying the cashier only when a customer is at the counter. We have labor and employment laws precisely to protect workers from this kind of exploitation.

Since drivers would receive pay for only 67 percent of all the time they are working, the guaranteed earnings per actual working hour would be 67 percent of $18, or $12.06 an hour.

2. Under-reimbursed costs during drivers' engaged driving time

The ballot proposition states that rideshare drivers' expenses for owning and operating their vehicle will be reimbursed at a rate of 26 cents per mile—30 cents less than the current IRS standard mileage reimbursement rate of 56 cents per mile.[4] A U.S. District Court for Massachusetts recently affirmed the IRS standard mileage rate as a "reasonable approximation" of vehicle expenses for a group of food delivery workers. This rate applies whether workers use their vehicle for business purposes for one hour per week or forty hours per week.

Separately, Uber and Lyft would cover insurance costs for the time during which their drivers are engaged with passengers; this needs to be included in the calculation of reimbursed costs. Insurance costs are estimated to be 8.34 cents a mile,[5] so drivers' expenses when they are engaged with a passenger would be shortchanged by 30 cents minus 8.34 cents, or 21.66 cents per mile.

Uber's own studies have found that their drivers average 20 miles an hour, with 13.4 of these miles considered to be engaged driving. We therefore multiply the 21.66 cents per mile reimbursement deficit by 13.4 miles per hour. The result is $2.90 in under-reimbursed driving costs per working hour.

Subtracting $2.90 from $12.06, we obtain $9.16.

3. Unreimbursed vehicle work expenses between rides

Much of the drivers' time between paying rides is spent driving and cruising. Drivers may be returning from a low demand drop off site to an area where they are more likely to pick up a ride, or they may be circling in downtown areas where there is no place to park. Under the companies' proposal, none of the costs of owning and operating their vehicles between rides would be included in the drivers' reimbursed employee expenses. To estimate these expenses, we again use Uber's own studies, which find that 6.6 of the miles driven each hour (20 total miles minus 13.4 engaged miles) incur costs that would not be reimbursed under the ballot proposal.

Multiplying this IRS mileage reimbursement rate of 56 cents a mile by 6.6 miles of completely unreimbursed costs per hour, we obtain $3.70 of unreimbursed expenses per hour of driving while between paying rides.

Subtracting this $3.70 from $9.16 leaves $5.46.

4. Health care stipend

The companies would offer a health care stipend to drivers who average at least 15 engaged hours a week in a calendar quarter and who are enrolled in a qualifying ACA health plan. The size of the stipend depends on the number of engaged hours driven. Drivers averaging between 15 and 25 engaged hours per week during a quarter could receive a stipend equivalent to 41 percent of the average premium for a Bronze ACA plan; drivers averaging more than 25 engaged hours per week could receive a stipend equal to 82 percent of the same plan. Since one-third of drivers' work time is between rides, we estimate that a typical driver would need to average at least 22.5 hours a week of actual work time during a quarter to receive the lower stipend, and 37 hours a week for the higher stipend.

As is already evident in California, the hours thresholds combined with the requirement that drivers are enrolled in ACA coverage mean that the vast majority of drivers will not qualify for any health care stipend, and only a very small share will qualify for the higher stipend.[6] The requirement for coverage on an ACA plan excludes the high share of drivers that qualify Medicaid or Medicare, or obtain coverage through a spouse's plan.[7]

Since the stipend is a lump sum per month, the value per hour changes with the number of hours of worked. At the higher end, we estimate that an eligible driver averaging 40 actual hours a week for a quarter could receive a stipend equivalent to $2.18 an hour.[8]

The pay guarantee for these drivers would then be $5.46 + $2.18 = $7.64.[9]

The pay for drivers who are not eligible for the stipend would remain $5.46.

5. Unpaid payroll taxes and compulsory employee benefits

Since the drivers would be classified as independent contractors under the proposition, they would not receive unemployment insurance, workers' compensation, and other mandatory benefits provided employees under Massachusetts and federal laws. Instead, they would be required to pay both the employer and employee shares of payroll taxes and they would receive Occupational Accident Insurance from the companies, which is inferior to workers' compensation benefits for comparable workers. These taxes and benefits minus the value of the benefits included in the proposition add up to 11.8 percent of payroll.[10]

We calculate 11.8 percent of $5.46 is $0.64; 11.8 percent of $7.64 is $0.90.[11]

Subtracting these amounts, we arrive at an hourly pay equivalent of $4.82 an hour for a typical 15-hour a week driver ($5.46 minus $0.64), and $6.74 an hour for a typical 40-hour a week driver receiving a health stipend ($7.64 minus $0.90).

Discussion

Our analysis applies only to the two transportation network companies (TNCs)—Uber and Lyft. We have not examined the consequences for delivery network companies like DoorDash; many of the same considerations would apply. We have also assumed that driver supply recovers to pre-pandemic levels by 2023.

We have used the best available data to analyze the effects on the pay of TNC drivers. Regrettably, the companies have repeatedly refused to make their own data public. For a complete analysis, the state needs much more data from the companies, including detailed numbers on wait times, hours worked, and earnings, especially for the regular part- and full-time drivers who do most of the driving.

Uber contested two points of our similar analysis of Proposition 22 in California. The company rejected the idea that it should be responsible for covering the cost of time between rides. We take the commonsense view that driver work time comprises all the time their apps are on and they are available for rides.

Uber also argued that most drivers' use of their existing vehicles for Uber is minimal, so only marginal vehicle operating costs should be reimbursed. As we have shown in another analysis, the regular part-time and full-time drivers account for most of the miles driven for the companies. The casual drivers account for the largest number of drivers in any given year, but only a small share of the miles driven. In any case, the IRS reimbursement rate applies whether the vehicle use for work is primary or marginal.

Independent researchers consistently find that drivers' average net earnings—after expenses—fall below the applicable minimum wage in all jurisdictions where studies have been conducted. They also find that earnings vary considerably from day to day and location to location. Importantly, minimum wage laws are not concerned with average earnings; they set a floor that always applies and to all workers. Consistent with these prior studies, we find that the proposition would result in a dramatic lowering of legal standards for drivers in Massachusetts.

Conclusion

The rideshare companies can choose to comply with worker protection laws in Massachusetts. In this study, we have focused on the value of the pay guarantee in the companies' Massachusetts proposition—that is, on how little drivers could be paid. We find that under the proposition drivers could lawfully be paid as little as $4.82 per hour, compared to the $15 minimum wage that will be in effect in 2023.

The ballot proposition would thus reduce pay standards for gig drivers by two-thirds from existing law—and rescind protections for workers that have been in place since the 1930s. The companies, in short, want to obtain legal permission to pay their drivers a subminimum wage.

About the Authors

Ken Jacobs is the chair of the UC Berkeley Labor Center. Michael Reich is a professor at UC Berkeley and co-chair of the Center on Wage and Employment Dynamics; he has co-authored reports that led to driver pay standards in New York City and Seattle.

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Appendix: Comparison to our Earlier Estimate for Proposition 22 in California

Our November 2019 analysis estimated that Proposition 22 guaranteed California gig drivers as little as $5.64 an hour. The difference between the two estimates stems from methodological differences and a difference in the policies.

1. In the California analysis, we included the health care stipend and assumed that the part- and full-time drivers who account for the greatest share of miles driven for the companies would be eligible for the stipend. It has since become clear that only a small share of such drivers (approximately 10 percent) receives the subsidy. An estimate of the minimum wage guaranteed by the Massachusetts proposition should exclude a stipend that applies to so few. For clarity, we instead present that figure separately.
2. For California we reported the health stipend for a typical 30-hour a week driver. For the Massachusetts analysis we use a higher stipend amount, that for a 40-hour a week driver.
3. For those who receive the health stipend, the cost of the average Bronze plan is 15 percent lower in Massachusetts than in California.
4. The mileage reimbursement rate in the Massachusetts proposition is 26 cents a mile, compared to 30 cents in California.
5. In the California analysis we underestimated the difference between the reimbursement provided in the initiative and actual driving costs. More specifically, we credited the companies with an additional 20 cents a mile in insurance costs. For this analysis, we used AAA data on driving expenses related to car insurance (8.34 cents a mile), which we confirmed was the correct cost of car insurance in Massachusetts.
6. California's mandated employee benefits are higher than in Massachusetts; the greatest difference is the CA requirement for a ten-minute paid rest break for every four hours of work.

Endnotes

1 Health insurance is usually considered a benefit and not a part of wages. We include it here because the proposition offers to reimburse some drivers' health insurance costs through a cash stipend.

2 The 33 percent figure was the norm in the pre-pandemic era, and we expect a return to that norm by 2023

3 Time and expenses spent cleaning and sanitizing vehicles, acquiring cell phones and data contracts, etc., are also not compensated under the proposition. We do not include these in our analysis because of lack of data. See Parrott and Reich 2018 for such costs in New York City, https://irle.berkeley.edu/an-earnings-standard-for-new-york-citys-app-based-drivers/.

4 The IRS standard mileage rate includes the variable costs (gas, oil, tires, maintenance, repairs, etc.) and the fixed costs (insurance, registration, depreciation or lease payments, etc.) of owning and operating a vehicle.

5 AAA, Your Driving Costs. 2019. Estimate assumes an average of 15,000 annual miles on a medium sized sedan. https://exchange.aaa.com/wp-content/uploads/2019/09/AAA-Your-Driving-Costs-2019.pdf

6 Using Uber data on driver work hours and JP Morgan Chase data on months worked in a year, we estimate that 30 percent of the drivers who receive a stipend would qualify for the higher stipend. So if 10 percent receive a stipend, 3 percent would receive the higher stipend.

7 A survey of 500 California rideshare drivers found that 40 percent were enrolled in public health care coverage, and 17 percent were covered through an ACA plan; only 10 percent received a health care subsidy through a TNC.

8 The average Bronze plan in California cost $499 in 2021. Using data from the Kaiser Family Foundation, we find that the average marketplace plan in Massachusetts costs 15 percent less than the average such plan in California. We therefore estimate $424 as the average monthly premium for a marketplace Bronze plan in Massachusetts. We then project 2023 rates using forecasted increases in directly purchased health insurance for 2022 and 2023, obtained from the Centers for Medicare and Medicaid Services National Health Expenditure Data. We obtain an average 2023 monthly Bronze premium of $461.41 in 2023. 82 percent of $461.41 is $378.36; 41 percent of $461.41 is $189.18.

9 The stipend would equal about $1.46 an hour for a 30-hour a week driver.

10 The details: Unemployment insurance in Massachusetts is 2.42 percent (newly subject employer rate), workers' compensation insurance is 1.72 percent; and employers' share of payroll taxes is 7.65 percent. We discount the value of workers' compensation insurance to take into account the provision for Occupational Accident Insurance in the proposition, which we estimate equals half of the workers' compensation taxi rate in Massachusetts. Given the much lower level of coverage than in Massachusetts workers' compensation, this approach likely overestimates the value of that company benefit. We do not include the value of paid sick days since both the ballot initiative and state law require them for employees, although the ballot initiative proposes a lesser benefit.

11 Health care stipends are counted as taxable income. We therefore include the health care stipend in the base to estimate the value of mandated employer benefits.