



December 13, 2023

The Honorable Bob Good
Chair
Subcommittee on Health, Education, Labor
and Pensions
U.S. House of Representatives
Washington, DC 20515

The Honorable Mark DeSaulnier
Ranking Member
Subcommittee on Health, Education, Labor
and Pensions
U.S. House of Representatives
Washington, DC 20515

Dear Chair Good, Ranking Member DeSaulnier, and Members of the Subcommittee:

Thank you for holding today’s hearing on policy activity at the National Labor Relations Board (NLRB or the Board), particularly with respect to worker classification under the National Labor Relations Act (NLRA). I write on behalf of Flex¹ to express concern with recent NLRB activity that could undermine independent work opportunities and the choices that millions of Americans make to live, work, and run their businesses on their own terms.

Technological innovation has made flexible, independent work available to more people than ever before. App-based workers have unparalleled freedom and control over the time they choose to spend earning on and across platforms—autonomy that is distinct from the close and deliberate management associated with the traditional employer-employee relationship. There are nearly 9 million unfilled jobs across the United States, yet nearly 23 million people continue to choose a new economic path where they have the means to determine where, when, how often—and with which platforms—they want to earn income. With that in mind, app-based work has drawn a diverse array of people – including parents, caregivers, veterans, students, and entrepreneurs – to Flex members’ platforms. These earning opportunities have brought countless workers off the economic sidelines and represent an indispensable tool in enhancing earning power – which is particularly critical during a time of inflationary pressure.²

¹ Flex is the voice of the app-based economy, representing America's leading app-based rideshare and delivery platforms and the people who count on them. Our member companies — DoorDash, Grubhub, HopSkipDrive, Instacart, Lyft, Shipt, and Uber— help provide access to crucial goods and services to customers safely and efficiently, offer flexible earning opportunities to workers, and support economic growth in communities across the country.


² Nearly all (85%) of app-based workers say the ability to earn income on app-based platforms has been helpful for dealing with inflation. See Flex, Morning Consult Survey on the App-Based Economy, April 2023. Available at: <https://www.flexassociation.org/national-survey>

Flex is concerned by the Board's recent decision in *Atlanta Opera*,³ which narrowed the scope of independent contractor status under the NLRA in a manner that does not reflect the modern economic landscape. By ignoring the realities of 21st century, technology-driven work, the standard adopted in *Atlanta Opera* will generate confusion, uncertainty, and could undermine the independent work that millions of Americans have chosen – often in lieu of traditional employment. In fact, survey data shows that the vast majority of app-based workers prefer to remain independent contractors,⁴ and many look to app-based platforms as a means to earn supplemental income.⁵

Flex is eager to work with the Committee to pursue policies that support app-based work and the millions of individuals who chose to secure income on their own terms. To that end, we commend Reps. Stefanik, Kiley, and Steel for their leadership in introducing the Modern Worker Empowerment Act (MWEA), which would incorporate a clear and workable standard for determining independent contractor status across federal laws, including the NLRA. The MWEA's definition would support economic agency and 21st century entrepreneurship while preserving the ability to address bona fide misclassification.

Thank you again for holding today's hearing and your leadership on this important issue.

Sincerely,



Kristin Sharp
CEO, Flex

³ Atlanta Opera, Inc. 371 NLRB No. 45 (2021) Available at: <https://www.nlr.gov/case/10-RC-276292>

⁴ 77% of app-based workers prefer to remain independent contractors. This is true across all demographic groups: 76% of white, 73% of Hispanic, and 72% of Black app-based earners wish to maintain this status. See Flex, Morning Consult Worker Survey, September 2022. Available at: <https://www.flexassociation.org/workersurvey>

⁵ 80% of workers choose to earn on app-based platforms 20 hours or less per week with most – 61% – working 10 or fewer hours per week. See Flex, Morning Consult Worker Survey, September 2022. Available at: <https://www.flexassociation.org/workersurvey>