

FTC Policy Statement on Enforcement Related to Gig Work

American workers deserve fair, honest, and competitive labor markets. Over the past decade, internet-enabled “gig” companies have grown exponentially, and gig work now composes a significant part of the United States economy.¹ One study suggests the gig economy will generate \$455 billion in annual sales by 2023.² The rapid growth of the gig economy is made possible by the contributions of drivers, shoppers, cleaners, care workers, designers, freelancers, and other workers. Protecting these workers from unfair, deceptive, and anticompetitive practices is a priority, and the Federal Trade Commission (“FTC” or “Commission”) will use its full authority to do so.³ As the Commission’s past work and current initiatives illustrate, the agency’s broad-based jurisdiction and interdisciplinary approach to market harms make it well positioned to confront the challenges this model can pose to workers.⁴

¹ See, e.g., Ben Zipperer et al., Econ. Pol’y Inst., [National Survey of Gig Workers Paints a Picture of Poor Working Conditions, Low Pay](#), at 1 (June 1, 2022) (“While the concept of nontraditional, short-term, and contract work has been around since well before the digital age, it wasn’t until the 2010s that digital platform companies like Uber, DoorDash, Instacart, and TaskRabbit began to rise to prominence and shape the way we define gig work today.”).

² Mastercard & Kaiser Assocs., [Mastercard Gig Economy Industry Outlook and Needs Assessment](#), at 2 (May 2019).

³ While this Statement focuses on potential harms to gig workers and how the Commission might address them, misconduct against any consumer—customers who use services offered through the platform, workers who supply labor, and businesses on or off the platform—is prohibited. See, e.g., Decision & Order, *In re Uber Techs., Inc.*, Dkt. No. C-4662 (FTC Oct. 25, 2018) (requiring Uber to implement a comprehensive privacy program to protect personal data collected from both riders and drivers); Decision & Order, *Amazon.com.*, Dkt. No. C-4746 (FTC June 10, 2021) (requiring Amazon to refund Amazon Flex drivers \$61.7 million in tips that Amazon promised drivers but failed to pay); Compl. ¶¶ 61–69, *In re HomeAdvisor, Inc.*, Dkt. No. 9407 (FTC Mar. 11, 2022) (FTC challenging a lead-generation platform’s alleged misrepresentations to small businesses about the platform’s effectiveness); see also [Letter from Protect Our Rests. to Fed. Trade Comm’n](#) (July 21, 2021) (explaining how various practices that result in diners paying higher prices to food delivery platforms also harm small businesses).

⁴ This Policy Statement elaborates on principles adopted by the Commission in individual cases and rules over the course of many years. This Policy Statement does not confer any rights on any person and does not operate to bind the FTC or the public. In any enforcement action, the Commission must prove the challenged act or practice violates at least one existing statutory or regulatory requirement. In addition, this Policy Statement does not preempt federal, state, or local laws. Compliance with those laws, however, will not necessarily preclude Commission law enforcement action. Pursuant to the Congressional Review Act, 5 U.S.C. §§ 801 *et seq.*, the Office of Information and Regulatory Affairs designated this Policy Statement as not a major rule, as defined by 5 U.S.C. § 804(2).

I. Background on Gig Work

The gig economy touches nearly every aspect of American life, from food delivery to transportation to household services. Gig work involves activity where people earn income providing on-demand work, often through a digital service like an app.⁵ Ride-hailing companies recruit workers to drive customers in the worker's personal vehicle. Food delivery services find workers to deliver items from restaurants, grocery stores, and other merchants to customers. Service apps connect workers with customers seeking help with cleaning, home repair, and other temporary jobs. The gig work model is expanding into healthcare, retail, and other segments of the economy.⁶ Demand for some services gig workers provide grew during the COVID-19 pandemic.⁷ Demand for other gig services, particularly transportation, decreased during that same time and caused financial struggles for some workers, illustrating the precarious nature of gig work.⁸

Sixteen percent of Americans report earning money through an online gig platform.⁹ Gig workers live throughout the United States, in urban, suburban, and rural areas.¹⁰ As highlighted

⁵ See, e.g., Internal Revenue Serv., [Gig Economy Tax Center](#) (last updated Mar. 15, 2022); Elka Torpey & Andrew Hogan, [Working in a Gig Economy](#), U.S. Bureau of Labor Stat. (May 2016). Gig work also may be referred to as “crowdwork,” contract work, on-call arrangements, or temporary work. See Gallup, Inc., [Gallup's Perspective on the Gig Economy and Alternative Work Arrangements](#), at 7 (2018).

⁶ See, e.g., Fiona Greig & Daniel M. Sullivan, [The Online Platform Economy Through the Pandemic](#) JPMorgan Chase Inst. (Oct. 2021) (reporting that some gig workers “transport people or goods” while other workers “offer a growing variety of services including dog walking, home repair, telemedicine, and many others”); see also U.S. Census Bureau, [Selected Industries That Contributed to the U.S. Gig Economy: 2019](#) (June 30, 2022).

⁷ See, e.g., Accenture, [Platforms Work](#), at 21 & ex.4 (2021) (showing with Uber data that “COVID-19 suppressed demand for rideshare and enabled strong growth in delivery”).

⁸ See, e.g., Greig & Sullivan, [The Online Platform Economy Through the Pandemic](#) (noting that drivers for rideshare platforms were “most likely to have received unemployment insurance” during the COVID-19 pandemic).

⁹ Anderson et al., [The State of Gig Work in 2021](#), at 3, 16; see also Fed. Rsrv. Sys. Bd. of Governors, [Report on the Economic Well-Being of U.S. Households in 219, Featuring Supplemental Data from April 2020](#), at 18 (May 2020) (“Nearly one in three adults earned money from gigs.”); cf. Katherine G. Abraham et al., Nat'l Bureau of Econ. Rsch. Working Paper 24950, [Measuring the Gig Economy: Current Knowledge and Open Issues](#) (Aug. 2018) (explaining why precisely measuring the number of gig workers in the U.S. economy is so difficult).

¹⁰ See Anderson et al., [The State of Gig Work in 2021](#), at 24 (noting that comparable percentages of adults in urban, suburban, and rural areas have earned money through an online gig platform in the past year); see also Ctr. for Rural Innovation & Rural Innovation Strategies, Inc., [The Growing Gig Economy in Rural America](#), at 4 (Nov. 2021).

in the FTC’s *Serving Communities of Color* report, gig workers are disproportionately people of color¹¹: 30% of Latino adults, 20% of Black adults, and 19% of Asian adults report having engaged in gig work, compared to only 12% of White adults.¹² Many gig workers have lower incomes and, because they may not be covered by wage and hour laws, can earn less than the minimum wage.¹³ More than half of American gig workers report that the money they earn through the gig economy is essential or important for meeting their basic needs.¹⁴

Gig workers are paid in different ways, including weekly, in “batches” after completing multiple gigs, or immediately upon completing a gig (for a fee).¹⁵ Many workers are heavily dependent on customer tips.¹⁶ Gig companies may generate revenue from multiple sources, including a “take rate”¹⁷ (a percentage of customer payments for workers’ services), customer fees, and commissions charged to merchants.

¹¹ Fed. Trade Comm’n, *Serving Communities of Color: A Staff Report on the Federal Trade Commission’s Efforts to Address Fraud and Consumer Issues Affecting Communities of Color*, at 19 & n.70 (Oct. 2021).

¹² Anderson et al., *The State of Gig Work in 2021*, at 5; see DoorDash, *2021 DoorDash ESG Report: Growing and Empowering Local Economies*, at 41 (Apr. 19, 2022) (nearly 40% of DoorDash gig workers identify as people of color, 58% are women, and 15% are veterans); Uber, *2021 ESG Report*, at 28 (July 2021) (about half of Uber’s U.S. delivery personnel identify as people of color).

¹³ See Zipperer et al., *National Survey of Gig Workers*, at 1 (“[A] survey of gig workers reveals that these workers often are paid low wages, in some instances less than the minimum wage [and] they face economic insecurity at high rates”); see also Anderson et al., *The State of Gig Work in 2021*, at 4–5, 7, 23; Gallup, *Gallup’s Perspective on the Gig Economy and Alternative Work Arrangements*, at 8.

¹⁴ See Anderson et al., *The State of Gig Work in 2021*, at 31 (reporting that 58% of current or recent gig workers said that money earned via gig jobs has been “essential or important for meeting their basic needs”).

¹⁵ See, e.g., DoorDash, *What Is Fast Pay?* (2020); Grubhub for Drivers, *What Is Instant Cashout?* (2020); Uber Techs., Inc., *Your Money When You Need It* (2022).

¹⁶ See Chris Benner, UC Santa Cruz, *On-Demand and On-the-Edge: Ride-Hailing and Delivery Workers in San Francisco*, at 28 (May 5, 2020) (“Delivery workers are particularly dependent on tips, which account for 30% of their estimated earnings.”).

¹⁷ See Cong. Rsch. Serv., R44365, *What Does the Gig Economy Mean for Workers?*, at 3 (Apr. 28, 2017); see also Aaron Gordon & Dhruv Mehrotra, *Uber and Lyft Take a Lot More from Drivers Than They Say*, Jalopnik (Aug. 26, 2019, 12:04 PM).

II. The Market for Gig Workers

As with any evolving sector of the economy, the Commission is attuned to gig work’s promises and pitfalls. This Statement focuses on three market features that implicate the Commission’s consumer protection and competition missions:

Control Without Responsibility. Companies frequently promote gig work as a flexible opportunity for people to set their own hours and work on their own terms.¹⁸ These companies often categorize their workers as independent contractors. Yet in practice these firms may tightly prescribe and control their workers’ tasks in ways that run counter to the promise of independence and an alternative to traditional jobs. This tension has contributed to litigation across the country over allegations that gig workers are being misclassified as independent contractors rather than employees.¹⁹ When misclassification occurs, workers are often deprived of critical rights to which they are entitled under law (such as the right to organize, overtime pay, and health and safety protections), and saddled with inordinate risks (such as unclear and unstable pay, or responsibility for a vehicle, equipment, or supplies) and business expenses that employers commonly bear (such as insurance, gas, maintenance, and taxes).²⁰ At the same time,

¹⁸ See, e.g., Cong. Rsch. Serv., [What Does the Gig Economy Mean for Workers?](#), at i (“The apparent availability of gig jobs and the flexibility they seem to provide workers are frequently touted features of the gig economy.”).

¹⁹ See, e.g., *Lawson v. Grubhub, Inc.*, 13 F.4th 908 (9th Cir. 2021); *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10 (1st Cir. 2020); *Razak v. Uber Techs., Inc.*, 951 F.3d 137 (3d Cir. 2020); *Hood v. Uber Techs., Inc.*, Case No. 1:16-CV-998, 2019 WL 93546 (M.D.N.C. Jan. 3, 2019).

²⁰ See, e.g., National Labor Relations Act, 29 U.S.C. §§ 151 *et seq.* (protecting, among other rights, employees’ rights to act together to address working conditions); U.S. Dep’t of the Treasury, [The State of Labor Market Competition](#), at 12 (“Classifying workers as independent contractors can especially reduce costs by shifting non-wage costs typically paid by employers (e.g. healthcare benefits) onto the employee. These costs are non-trivial—approximately 30 percent of per-hour employer costs come from costs other than wages and salaries.”); see also Ken Jacobs & Michael Reich, Inst. for Rsch. on Labor & Emp., [Massachusetts Uber/Lyft Ballot Proposition Would Create Subminimum Wage](#), at 2, Univ. Cal. Berkeley. (Sept. 2021) (estimating the financial impact of undisclosed terms of work for rideshare drivers); James A. Parrott & Michael Reich, [An Earnings Standard for New York City’s App-Based Drivers: Economic Analysis and Policy Assessment](#), at 49 (July 2018) (noting the large amount of unpaid “idle” time for rideshare drivers). Moreover, high inflation and other economic shocks may cause certain worker-borne costs to rise without any corresponding increase in pay. See Gerrit De Vynck et al., [Inflation Is Helping Gig Companies Like Uber—and Hurting Their Workers](#), Wash. Post (Aug. 7, 2022, 6:00 AM EDT).

gig companies may use nontransparent algorithms to capture more revenue from customer payments for workers' services than customers or workers understand.²¹ This dynamic calls for scrutiny of promises gig platforms make, or information they fail to disclose, about the financial proposition of gig work.

Diminished Bargaining Power. Gig workers often do not have the information they need to know when work will be available, where they will have to perform it, or how they will be evaluated.²² Behind the scenes, ever-changing algorithms may dictate core aspects of workers' relationship with a given company's platform, leaving them with an invisible, inscrutable boss.²³ Workers have little leverage to demand transparency from gig companies: A decentralized work environment, the potential lack of legal protections to organize, and a high turnover rate driven by companies' treatment of workers as replaceable all contribute to workers' diminished bargaining power.²⁴ Mandatory arbitration and class-action waivers are also increasingly common among gig workers, meaning that most efforts to vindicate worker rights occur in nonpublic, isolated proceedings.²⁵ This power imbalance may leave gig workers more

²¹ See, e.g., Compl. ¶¶ 30–34, *In re Amazon.com, Inc.*, Dkt. No. C-4746 (alleging that Amazon adopted a “variable base pay” model for Amazon Flex so it could capture drivers' tips); Dan Calacci, MIT Media Lab, [Bargaining with the Algorithm: Pooling Worker Data to Estimate Gig Economy Worker Pay](#) (Oct. 15, 2020).

²² See, e.g., Compl. ¶¶ 35–47, *Amazon.com*, Dkt. No. C4746 (alleging that Amazon concealed changes to an algorithm by falsely telling workers that no change had actually occurred).

²³ See, e.g., Hatim A. Rahman, *The Invisible Cage: Workers' Reactivity to Opaque Algorithmic Evaluations*, 66 Admin. Sci. Q. 945, 976 (2021); Spencer Soper, [Fired by Bot at Amazon: “It's You Against the Machine”](#), Bloomberg (June 28, 2021, 5:00 AM); see also Noam Scheiber, [How Uber Uses Psychological Tricks to Push Its Drivers' Buttons](#), N.Y. Times (Apr. 2, 2017).

²⁴ See U.S. Dep't of the Treasury, [The State of Labor Market Competition](#), at 11 (“By removing the immediate nexus between workers and the firm for which they provide services, workers are prevented from bargaining directly with the entity that has the economic power.”); Christopher Mims, [In a Tight Labor Market, Gig Workers Get Harder to Please](#), Wall St. J. (May 4, 2019) (noting “[t]he unusually high rate of turnover [of workers] in the gig economy”); see also Zipperer et al., [National Survey of Gig Workers](#), at 7.

²⁵ See, e.g., Elizabeth C. Tippet & Bridget Schaaf, *How Concepcion and Italian Colors Affected Terms of Service in the Gig Economy*, 70 Rutgers U. L. Rev. 459, 461 (2018) (analyzing the high prevalence of mandatory arbitration and class-action waivers in the gig economy even before *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018)).

exposed to harms from unfair, deceptive, and anticompetitive practices and is likely to amplify such harms when they occur.

Concentrated Markets. Markets populated by businesses that run online platforms are often concentrated, resulting in reduced choice for workers, customers, and businesses. As a platform grows by attracting more users (e.g., riders), it can become more valuable to users on the other side of the platform (e.g., drivers) by generating so-called “network effects.” Because network effects can lock in a dominant player’s market position, these businesses can be incentivized to pursue tactics designed to quickly capture a large share of the market, leading the market to “tip” and raising significant barriers to entry. Gig companies in concentrated markets may be more likely to have and exert market power over gig workers or engage in anticompetitive unilateral or coordinated conduct. Such conduct may eliminate or further weaken competition among existing gig companies for workers’ services or prevent new gig companies from getting off the ground or being able to enter the market. The resulting loss in competition may enable gig companies to suppress wages below competitive rates, reduce job quality, or impose onerous terms on gig workers.²⁶ In the absence of robust competition among gig companies, unfair and deceptive practices by one platform can proliferate across the labor market, creating a race to the bottom that participants in the gig economy, and especially gig workers, have little ability to avoid.

III. FTC Enforcement Priorities

The FTC plays a vital role in addressing these and other challenges facing gig workers, including practices directed toward customers, workers, and honest businesses. As the only federal agency dedicated to enforcing consumer protection and competition laws in broad sectors

²⁶ See, e.g., Exec. Order No. 14,036, Promoting Competition in the American Economy, § 1, 86 Fed. Reg. 36,987, 36,987 (July 14, 2021); U.S. Dep’t of the Treasury, [The State of Labor Market Competition](#), at i.

of the economy, the FTC examines unlawful business practices and harms to market participants holistically, complementing the efforts of other enforcement agencies with jurisdiction in this space. This integrated approach to investigating unfair, deceptive, and anticompetitive conduct is especially appropriate for the gig economy, where law violations often have cross-cutting causes and effects.

While online gig platforms may seem novel, traditional legal principles of consumer protection and competition apply.²⁷ And the manifold protections enforced by the Commission do not turn on how gig companies choose to classify working consumers.²⁸ The Commission will use the full portfolio of laws it enforces to prevent unfair, deceptive, anticompetitive, and otherwise unlawful practices affecting gig workers.

A. Holding Gig Companies Accountable for Their Claims and Conduct Concerning Gig Work’s Costs & Benefits

Gig companies that classify their workers as independent contractors may seek to retain control over their workforce while simultaneously shifting costs and risks onto workers. So classified, workers may be deprived of the protections of an employment relationship to, for example, insist on minimum pay and recordkeeping standards,²⁹ understand what comprises an hour of payable work,³⁰ or share information about their income with coworkers to assess unfair compensation practices or organize for higher compensation.³¹ A range of FTC authorities can apply when gig companies seek to exploit this vulnerability by disclosing pay and costs in an

²⁷ For example, the Commission regulates earnings claims made to gig workers just as it would in any other business or money-making opportunity. *See* Advance Notice of Proposed Rulemaking: Deceptive or Unfair Earnings Claims, 87 Fed. Reg. 13,951, 13,953 & n.26 (Mar. 11, 2022) [hereinafter “Earnings Claims ANPRM”].

²⁸ “The use of the word ‘consumer’” in the FTC Act “is to be read in its broadest sense.” S. Rep. No. 93–151, at 27 (1973); *see, e.g.*, Decision & Order, *Amazon.com*, Dkt. No. C-4746 (FTC recovering \$61.7 million in unpaid tips to Amazon Flex drivers, regardless of the drivers’ employment classification); Compl. ¶ 5, *Uber Techs.*, Dkt. No. C-4662 (“Uber Drivers are consumers who use the [Uber] App to locate Riders in need of transportation.”).

²⁹ *See* 29 U.S.C. §§ 206–07 (minimum pay and overtime), 211(c) (recordkeeping).

³⁰ *See id.* § 203(o) (defining “[h]ours worked” for purposes of calculating minimum pay and overtime pay).

³¹ *See id.* § 157.

unfair or deceptive manner. The Commission also recognizes that misleading claims about the costs and benefits of gig work can impair fair competition among companies in the gig economy and elsewhere.

Deceptive or Unfair Pay Practices. False, misleading, or unsubstantiated claims about earnings may violate Section 5 of the FTC Act,³² the Franchise Rule, or the Business Opportunity Rule,³³ and can trigger civil penalties.³⁴ Likewise, withholding money owed to workers without consent can violate Section 5’s prohibition against unfairness.³⁵ Gig companies often advertise hourly pay to prospective workers or promise a specific amount or range of pay to existing workers for completing a gig.³⁶ Yet fewer than half of gig workers understand how their pay is determined, and misleading or unsupported claims about their earnings can leave workers in a financial bind.³⁷ Deceptive earnings claims and opaque compensation criteria can also impede competition by preventing workers from accurately comparing opportunities presented by gig companies.

³² 15 U.S.C. § 45. Unfortunately, the Commission’s ability to refund consumers for violations of Section 5 is hampered following the U.S. Supreme Court’s decision in *AMG Capital Management, LLC v. FTC*, 141 S. Ct. 1341 (2021), which stripped the Commission of its most potent tool to recover money for consumers. Indeed, *AMG* would have prevented recovery of more than \$81 million in consumer redress obtained in two of the Commission’s recent victories for gig workers. *See* Decision & Order, *Amazon.com*, Dkt. No. C-4746 (recovering \$61.7 million for Section 5 violations); Stipulated Order, *FTC v. Uber Techs., Inc.*, Case No. 3:17-cv-261-JST (N.D. Cal. Jan. 19, 2017) (recovering \$20 million for Section 5 violations).

³³ 16 C.F.R. pts. 436 (Franchise Rule), 437 (Business Opportunity Rule). Whether the Franchise Rule or the Business Opportunity Rule applies to a particular gig arrangement requires a case-by-case factual analysis. *See id.* § 436.1(h) (defining a franchise); *id.* § 437.1(c) (defining a business opportunity). The Commission may seek civil penalties and consumer redress from companies that violate FTC rules. *See* 15 U.S.C. §§ 45(m)(1)(A), 57b(a)–(b).

³⁴ *See* Fed. Trade Comm’n, Press Release, [FTC Puts Businesses on Notice That False Money-Making Claims Could Lead to Big Penalties](#) (Oct. 26, 2021); *see also* 15 U.S.C. § 45(m)(1)(B).

³⁵ *Cf.* Decision & Order, *Amazon.com*, Dkt. No. C-4746 (requiring a gig company to obtain workers’ “express informed consent” before changing how workers’ tips are distributed).

³⁶ *See, e.g.*, Compl. ¶¶ 21–22, *Uber Techs.*, Case No. 3:17-cv-261-JST (FTC alleging that Uber made various hourly earnings claims targeted to multiple U.S. cities that did not align with what drivers in those cities actually earned); *see also* Compl. ¶¶ 30–34, *Amazon.com*, Dkt. No. C-4746 (alleging that Amazon promised that workers would keep 100% of their tips, but instead used tips to reduce workers’ base pay).

³⁷ *See* Anderson et al., [The State of Gig Work in 2021](#), at 35 (“Overall, 44% of people who have ever earned money through online or delivery platforms say they at least somewhat understand how the companies that run these apps or sites determine how much they get paid”); *see also* Zipperer et al., [National Survey of Gig Workers](#), at 6–7 (describing high rates of financial hardship among gig workers).

The Commission has initiated rulemaking proceedings to strengthen its ability to detect and deter deceptive earnings claims and has sought comment on the prevalence of deceptive earnings claims relating to gig work.³⁸ In the meantime, misleading earnings claims remain prohibited by Section 5 of the FTC Act.³⁹ Likewise, pursuant to the Franchise Rule or the Business Opportunity Rule, gig companies that require new participants to make required payments may need to disclose any claims they make about potential earnings and have a reasonable basis for, and written materials on hand to support, those claims.⁴⁰ The Commission has also issued Notices of Penalty Offenses related to earnings claims and testimonials⁴¹ to place gig companies, among others, on notice that the Commission is working to deter misleading representations throughout the gig economy, including by seeking civil penalties where appropriate.⁴²

Undisclosed Costs or Terms of Work. By the same token, deceptive claims or nondisclosures about startup costs, training fees, other expenses, or other material terms can violate Section 5,⁴³ and the failure to make required disclosures can violate the Franchise Rule or Business Opportunity Rule.⁴⁴ When a firm requires consumers to make one or more required payments to sign up for a work opportunity, that arrangement may fall under the Franchise Rule

³⁸ See Earnings Claims ANPRM, 87 Fed. Reg. at 13,955–56.

³⁹ See *id.* at 13,951–52 (describing the FTC’s extensive history of prior enforcement actions against a wide variety of companies offering employment and other work opportunities with misleading earnings claims).

⁴⁰ See 16 C.F.R. § 436.5(s) (describing the disclosures that franchisors must make to franchisees about financial performance); *id.* § 437.4 (explaining how sellers of business opportunities must substantiate any earnings claims regarding the opportunity, including when claims are presented in the general media).

⁴¹ See Fed. Trade Comm’n, [Notice of Penalty Offenses Concerning Money-Making Opportunities](#) (Oct. 26, 2021); Fed. Trade Comm’n, [Notice of Penalty Offenses Concerning Deceptive or Unfair Conduct Around Endorsements and Testimonials](#) (Oct. 26, 2021).

⁴² See FTC Press Release, [FTC Puts Businesses on Notice That False Money-Making Claims Could Lead to Big Penalties](#) (announcing that Notices of Penalty Offenses were sent to more than 1,100 businesses and advising that violating the Notices could result in civil penalties that now amount to \$46,517 per violation, see 16 C.F.R. § 1.98(e)).

⁴³ See, e.g., Compl. ¶¶ 31–33, 38, *Uber Techs.*, Case No. 3:17-cv-261-JST (alleging that Uber violated Section 5 by understating the price and overstating the advantages of its auto financing program for drivers).

⁴⁴ See 16 C.F.R. §§ 436.2, 437.2.

or the Business Opportunity Rule.⁴⁵ The Rules require accurate, upfront disclosures—including information about the franchise or business opportunity, other workers, and prior lawsuits—before consumers make any commitment.⁴⁶

B. Combating Unlawful Practices and Unlawful Constraints Imposed on Gig Workers

Gig workers may lack key information about their working conditions, and can be subject to onerous contract terms and arbitrary evaluation requirements. Increasingly, gig workers are managed by algorithms, which use extensive data collected from workers and other consumers to make important management decisions using undisclosed criteria. Multiple laws enforced by the Commission may apply when these practices are deceptive, unfair, anticompetitive, or otherwise unlawful.

Unfair or Deceptive Practices by an Automated Boss. Section 5 of the FTC Act prohibits unfair or deceptive practices in any form, including practices involving artificial intelligence (“AI”) tools or algorithm-based decision-making.⁴⁷ In the gig economy, companies may employ algorithms to govern how gigs are made available to workers, how workers are paid, how worker performance is rated, and when workers are suspended or terminated from the platform. Firms may deploy surveillance technology to monitor workers’ every move without

⁴⁵ See *id.* § 436.1(h) (defining a franchise); *id.* § 437.1(c) (defining a business opportunity).

⁴⁶ See *id.* §§ 436.2(a), 436.4, 436.5 (requiring franchisors to provide a disclosure document in business relationships that qualify as franchises covered by the Franchise Rule); *id.* §§ 437.3, 437.4, apps. A–B (requiring a disclosure document for business opportunities and providing templates).

⁴⁷ Running these algorithms requires collecting troves of sensitive data from workers, which heightens the importance of FTC rules governing data security, *see, e.g.*, 16 C.F.R. pt. 314 (Safeguards Rule), and gig companies’ obligation under Section 5 to safeguard collected information in line with their promises, *see* Compl. ¶¶ 28–32, *Uber Techs.*, Dkt. No. C-4662 (alleging that, despite public representations, Uber failed to monitor internal access to drivers’ personal information and failed to provide reasonable security against potential data breaches). Workers are also entitled under the Fair Credit Reporting Act to know when a gig platform uses a background screening or other consumer report to take an adverse action against them, whether through an algorithm or otherwise. *See* 15 U.S.C. § 1681m(a). If information in a consumer report results in a worker being denied the requested opportunity, the consumer must receive notice that the denial was based on a consumer report and a chance to view the report and request any needed corrections. *See id.*

transparency about how it impacts worker pay or performance evaluation.⁴⁸ Workers report unexpected drops in their performance ratings,⁴⁹ unexplained changes in their pay,⁵⁰ assignment of impossible or dangerous delivery routes,⁵¹ or other arbitrary evaluations that could lead to wrongful terminations.⁵² Companies are responsible for fulfilling their promises to their workers, even if they use automated management technologies.⁵³ Gig companies that employ algorithmic tools to govern their workforce should ensure that they do so legally.⁵⁴

Unfair Contractual Terms & Restrictions on Mobility. Restrictive contract terms may constitute unfair or deceptive acts and practices in violation of Section 5 of the FTC Act if they unfairly harm workers, render a gig company’s representations misleading, or prevent fair competition for workers. Gig companies often present workers with nonnegotiable contracts that may include lopsided provisions.⁵⁵ Such take-it-or-leave-it provisions may, for example, hinder workers from seeking other jobs during or after their time with a company, bar negative reviews,

⁴⁸ See Advance Notice of Proposed Rulemaking: Trade Regulation Rule on Commercial Surveillance and Data Security, 87 Fed. Reg. 51,273, 51,274 (Aug. 22, 2022) (noting the lack of transparency and informed consent around increasingly extensive data collected from workers).

⁴⁹ See, e.g., Soper, [Fired by Bot at Amazon: “It’s You Against the Machine”](#); see also Rahman, *The Invisible Cage*, 66 Admin. Sci. Q. at 964; Pierre Bérastégui, Eur. Trade Union Inst., [Exposure to Psychosocial Risk Factors in the Gig Economy: A Systemic Review](#), at 47 (Jan. 2021) (noting that workers “are unsure about what data is gathered from them and how it is used to compute wages and ratings,” leading to “frustration about not being rated on the basis of ‘true’ performance”).

⁵⁰ See, e.g., Alina Selyukh, [At the Mercy of an App: Workers Feel the Instacart Squeeze](#), NPR (Nov. 25, 2019, 9:15 AM) (reporting that multiple gig platforms use “ever-changing pay structures” governed by algorithms); see also Calacci, [Bargaining with the Algorithm](#) (describing a gig platform’s pay structure as a “black-box algorithm”).

⁵¹ See Eve Livingston, [Food Delivery Drivers Fired After “Cut Price” GPS App Sent Them on “Impossible” Routes](#), Guardian (July 2, 2022, 2:39 PM EDT).

⁵² See, e.g., Madhumita Murgia, [Workers Demand Gig Economy Companies Explain Their Algorithms](#), Fin. Times (Dec. 12, 2021).

⁵³ See Compl. ¶ 32, *Amazon.com*, Dkt. No. C-4746 (alleging that Amazon Flex changed the algorithm governing delivery drivers’ base pay, allowing Amazon to capture a greater portion of customer tips than it had disclosed).

⁵⁴ Elisa Jillson, Fed. Trade Comm’n, [Aiming for Truth, Fairness, and Equity in Your Company’s Use of AI](#) (Apr. 19, 2021).

⁵⁵ See U.S. Dep’t of the Treasury, [The State of Labor Market Competition](#), at 14, 18 (noting that “restrictive employment agreements can both result from and reinforce employer market power,” while other clauses can reduce workers’ options “within the legal system”); Fed. Trade Comm’n, [Strategic Plan for Fiscal Years 2022-2026](#), at 19 (Aug. 26, 2022) (announcing FTC interest in “non-compete and other potentially unfair contractual terms resulting from power asymmetries between workers and employers”).

or waive fundamental protections.⁵⁶ If those provisions cause substantial injury that is not reasonably avoidable and not outweighed by countervailing benefits, they may constitute an unfair act or practice under Section 5(n) of the FTC Act.⁵⁷ The Commission has used its unfairness authority to prohibit certain one-sided clauses in credit contracts,⁵⁸ to stop abusive use of a one-sided clause allowing a financing entity to obtain uncontested judgments against small businesses,⁵⁹ to prevent contractual clauses suppressing negative consumer reviews,⁶⁰ and to invalidate illusory choice-of-law and venue-selection clauses that, in very fine print, left the forum state undetermined.⁶¹ The Commission will continue to scrutinize potentially unfair terms companies impose on gig workers or other consumers.

Certain unfair terms may also implicate the antitrust laws and raise concerns about unfair methods of competition with respect to gig labor markets. The Commission will continue to investigate the effects on workers and competition of any non-compete clauses in the gig economy. Non-compete provisions may undermine free and fair labor markets by restricting workers' ability to obtain competitive offers for their services from existing companies, resulting in lower wages and degraded working conditions.⁶² These provisions may also raise barriers to

⁵⁶ See, e.g., Exec. Order No. 14,036, 86 Fed. Reg. at 36,987–88; *FTC v. Roca Labs, Inc.*, 345 F. Supp. 3d 1375, 1393–97 (M.D. Fla. 2018); U.S. Dep't of the Treasury, [The State of Labor Market Competition](#), at 18.

⁵⁷ 15 U.S.C. § 45(n); FTC Unfairness Policy Statement, Letter from the FTC to Hon. Wendell Ford & Hon. John Danforth, S. Comm. on Commerce, Sci. & Transp. (Dec. 17, 1980), *appended to In re Int'l Harvester Co.*, 104 F.T.C. 949, 1070 (1984).

⁵⁸ See FTC Trade Regulation Rule; Credit Practices, 49 Fed. Reg. 7,740, 7,744 (Mar. 1, 1984) (codified at 16 C.F.R. pt. 444).

⁵⁹ See 1st Am. Compl. ¶¶ 24–28, 39–41, *FTC v. RCG Advances, LLC*, Case No. 20-CV-4432 (S.D.N.Y. June 10, 2021).

⁶⁰ See *Roca Labs*, 345 F. Supp. 3d at 1393; see also 15 U.S.C. § 45b; *FTC v. World Patent Mktg., Inc.*, Case No. 17-cv-20848-GAYLES, 2017 WL 3508639, at *15–16 (S.D. Fla. Aug. 16, 2017) (preliminarily enjoining a defendant's "consumer complaint suppression practices" as unfair).

⁶¹ See Compl. ¶¶ 18, 32–33, *FTC v. NorVergence, Inc.*, Civil Action No. 04-5414 (D.N.J. Nov. 4, 2004).

⁶² See Exec. Order No. 14,036, 86 Fed. Reg. at 36,987 (noting that non-compete agreements can "mak[e] it harder for workers to bargain for higher wages and better work conditions"); Matthew S. Johnson et al., [The Labor Market Effects of Legal Restrictions on Worker Mobility](#), at 2 (Oct. 12, 2021) ("We find that increases in [non-compete clauses] decrease workers' earnings and mobility."); Evan P. Starr et al., *Noncompetes in the U.S. Labor Force*, 64 J.L. & Econ. 53, 81 (2021) (finding that non-compete provisions imposed in employment contracts "appear to be

entry for new companies.⁶³ Such provisions may violate Section 1 of the Sherman Act⁶⁴ and the FTC Act’s prohibition on unfair methods of competition.⁶⁵ The Commission will also investigate contractual limitations, such as liquidated damages clauses⁶⁶ or nondisclosure agreements,⁶⁷ that may be excessive or overbroad and effectively operate as non-compete provisions. Moreover, the Commission recognizes that companies may be able to effectuate the same harmful results through imposing a variety of other restraints that restrict worker mobility.

C. Policing Unfair Methods of Competition That Harm Gig Workers

Anticompetitive mergers or practices may prevent gig workers from obtaining competitive compensation or more favorable terms or working conditions. Such conduct may also lead to higher prices or fees, diminished service, or less favorable contractual terms for customers or businesses. Firms that undertake such conduct may run afoul of the antitrust laws, and the Commission will focus its resources on investigating potential unlawful conduct by or

linked to lower job satisfaction” and do not correlate with greater pay or training); *see also* FTC Comm’r Noah J. Phillips, Prepared Remarks at FTC Workshop on Non-compete Clauses in the Workplace, at 2–3 (Jan. 9, 2020) (“When you can exit a job, you have greater leverage to improve the terms of your employment.”); FTC Comm’r Rebecca Kelly Slaughter, [Prepared Remarks at FTC Workshop on Non-Compete Clauses in the Workplace](#), at 5 (Jan. 9, 2020) (prioritizing investigation into “potential restraints that may be inhibiting competition for labor” and noting that non-compete clauses can “affect people’s livelihoods and ability to earn a living”).

⁶³ *See, e.g.*, Matt Marx & Lee Fleming, *Non-Compete Agreements: Barriers to Entry ... and Exit?*, 12 *Innovation Pol’y & Econ.* 39, 51 (2012) (“Non-competes assist in preserving the firm’s competitive position by discouraging entry.”); *see also* U.S. Dep’t of the Treasury, [The State of Labor Market Competition](#), at 16 (“Lower worker mobility increases recruitment costs for all firms as fewer workers are seeking to switch jobs than otherwise would, absent the post-employment restrictive employment agreement.”).

⁶⁴ 15 U.S.C. § 1.

⁶⁵ *See, e.g.*, Statement of Interest of the United States at 6, *Beck v. Pickert Med. Grp., P.C.*, Case No. CV21-02092 (Nev. Dist. Ct. Feb. 25, 2022) (“Non-compete agreements between employers and employees constitute concerted action properly subject to scrutiny under Section 1 of the Sherman Act.”); *see also* U.S. Dep’t of the Treasury, [The State of Labor Market Competition](#), at 16 (“[R]estrictive employment agreements can both result from and reinforce employer market power.”).

⁶⁶ *See, e.g.*, *Wegmann v. London*, 648 F.2d 1072, 1073 (5th Cir. Unit A 1981) (“The contract clauses to which plaintiff object are, given the prohibitive magnitudes of liquidated damages they specify, de facto covenants not to compete . . .”).

⁶⁷ *See, e.g.*, *Brown v. TGS Mgmt. Co.*, 271 Cal. Rptr. 3d 303, 319 (Cal. Ct. App. 2020) (“Collectively, these overly restrictive [confidentiality] provisions operate as a de facto noncompete provision . . .”).

among gig companies, from wage-fixing to the unlawful consolidation or exercise of market power.⁶⁸

Wage-Fixing & Coordination. The Commission will investigate evidence of agreements between gig companies to fix wages, benefits, fees, or other terms relating to gig work that should be subject to competition.⁶⁹ The Commission will also investigate evidence of no-poaching agreements, where companies agree not to solicit or hire each other’s workers, and agreements to share competitively sensitive information that might suppress compensation for workers.⁷⁰ The Commission may further examine any use by gig companies of technology-enabled methods of collusion or exclusion. Agreements among gig companies that anticompetitively harm workers violate Section 1 of the Sherman Act and may be challenged by the Commission directly, and, in the case of wage-fixing or no-poaching agreements, may be referred to the U.S. Department of Justice (“DOJ”) for potential criminal prosecution.⁷¹

Market Consolidation & Monopolization. The Commission will review and, as appropriate, challenge mergers and other combinations of gig companies that may substantially

⁶⁸ At least one court has ruled that the labor-dispute exemption under Section 1 of the Sherman Act applies to workers regardless of whether they are classified as employees or independent contractors. *See Confederación Hípica de P.R., Inc. v. Confederación de Jinetes Puertorriqueños*, 30 F.4th 306, 314–15 (1st Cir. 2022). Commission enforcement therefore will not focus on organizing efforts undertaken by gig workers. Despite past efforts, the Commission will also refrain from other enforcement or policy efforts that might undermine the ability of gig workers to organize. *See, e.g.*, Brief for the United States & FTC as Amici Curiae Supporting Appellant at 2, 8, *Chamber of Commerce v. City of Seattle*, 890 F.3d 769 (9th Cir. 2018) (No. 17-35640), 2017 WL 5166667, at *2, *8 (arguing that the state action doctrine did not apply to shield a municipal ordinance allowing drivers to organize from antitrust scrutiny).

⁶⁹ *See, e.g.*, Compl. ¶¶ 11–27, *In re Your Therapy Source, LLC*, Dkt. No. C-4689 (FTC July 31, 2018) (alleging an agreement and invitation to collude among staffing agencies to lower payments to their independent contractors).

⁷⁰ *See* U.S. Dep’t of Justice & Fed. Trade Comm’n, [Antitrust Guidance for Human Resource Professionals](#), at 4–5 (“[P]eriodic exchange of current wage information in an industry with few employers could establish an antitrust violation because, for example, the data exchange has decreased or is likely to decrease compensation.”); U.S. Dep’t of Justice & Fed. Trade Comm’n, [Antitrust Guidelines for Collaborations Among Competitors](#), at 15 (Apr. 2000) (“[T]he sharing of information related to a market in which the collaboration operates or in which the participants are actual or potential competitors may increase the likelihood of collusion on matters such as price, output, or other competitively sensitive variables.”).

⁷¹ *See* U.S. Dep’t of Justice & Fed. Trade Comm’n, [Antitrust Guidance for Human Resource Professionals](#), at 3–4 (explaining that naked wage-fixing agreements are *per se* illegal and DOJ intends to proceed criminally against naked wage-fixing).

lessen competition between or among gig companies.⁷² The Commission will also investigate any exclusionary or predatory conduct by dominant firms that may unlawfully create or maintain a monopoly (a dominant seller) or a monopsony (a dominant buyer or employer), resulting in harm to customers or reduced compensation or poorer working conditions for gig workers. Such conduct may include the use of exclusive contracting, predatory pricing, or other forms of monopolization, and may be subject to legal action by the Commission as a violation of Section 2 of the Sherman Act.⁷³

IV. Policy, Partnerships, & Outreach

In addition to robust enforcement, the Commission addresses issues in the gig economy through policy work, outreach, and partnerships with other law enforcement agencies.

Governmental Collaboration. The FTC’s Regional Offices have spearheaded the agency’s efforts to identify law violations, develop policy, and collaborate with government partners in this space. The Commission is also partnering with other agencies on broad labor initiatives and individual enforcement actions. In December 2021, the FTC and DOJ hosted a workshop to promote competitive labor markets and worker mobility.⁷⁴ And in July 2022, the FTC and National Labor Relations Board signed a Memorandum of Understanding that deepens the agencies’ collaboration around issues facing gig workers through sharing information, conducting cross-training for staff at each agency, and partnering on investigative efforts within each agency’s authority.⁷⁵

⁷² See Exec. Order No. 14,036, § 1, 86 Fed. Reg. at 36,988 (directing federal attention “to enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony—especially as these issues arise in labor markets”).

⁷³ 15 U.S.C. § 2.

⁷⁴ Fed. Trade Comm’n, [Making Competition Work: Promotion Competition in Labor Markets](#) (Dec. 6–7, 2021).

⁷⁵ [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).

Ensuring Equity. The FTC’s Equity Action Plan reaffirms the Commission’s commitment to protecting the public, including meaningfully addressing barriers that historically underserved communities face in participating in and benefiting from a fair and thriving marketplace.⁷⁶ As outlined in the Equity Action Plan, the FTC’s Bureau of Consumer Protection is focusing resources to aid staff in assessing whether certain communities are disproportionately affected or targeted by unfair or deceptive practices, including in the gig economy.⁷⁷ Similarly, the Equity Action Plan outlines the FTC’s Bureau of Competition’s commitment to consider more explicitly the impact of mergers and anticompetitive conduct on workers, particularly low-wage workers.⁷⁸ The FTC will address any such harms through robust law enforcement, community outreach, and new initiatives to better understand and address the impact of emerging technologies in the gig economy and elsewhere on historically underserved communities.

Public Participation. The Commission continues to seek input from consumer and labor groups, industry, and experts on challenges facing gig workers through monthly Open Commission Meetings⁷⁹ as well as targeted workshops like those on dark patterns⁸⁰ and labor-market competition.⁸¹ Gig workers harmed by unlawful practices should continue to file reports at [ReportFraud.ftc.gov](https://www.reportfraud.ftc.gov) so the Commission and other governmental agencies can promptly identify and take action against deceptive, unfair, and otherwise unlawful acts and practices.

⁷⁶ See Fed. Trade Comm’n, *Federal Trade Commission (FTC) Equity Action Plan*, at 1 (Apr. 14, 2022) (promulgated pursuant to Executive Order No. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. 7,009 (Jan. 25, 2021)).

⁷⁷ See *id.* at 4–5.

⁷⁸ See *id.* at 6–7.

⁷⁹ See Fed. Trade Comm’n, *Open Meetings*.

⁸⁰ Fed. Trade Comm’n, *Bringing Dark Patterns to Light: An FTC Workshop* (Apr. 29, 2021) (exploring how user interfaces can, intentionally or not, obscure, subvert, or impair consumer autonomy, decision-making, or choice).

⁸¹ FTC Workshop, *Making Competition Work* (exploring recent developments at the intersection of antitrust and labor, as well as implications for efforts to protect and empower workers through enforcement and rulemaking).

V. Conclusion

Successfully addressing the range of consumer protection and competition challenges associated with the gig economy requires innovative and collaborative approaches by governmental enforcers that are responsive to the public's concerns and input. The Commission will continue to capitalize on its broad jurisdiction and interdisciplinary expertise to combat unlawful practices that harm gig workers.