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Testimony to the California Future of Work Commission

Thank you for the opportunity to submit this testimony on behalf of the National Employment Law Project (NELP). NELP is a nonprofit law and policy organization with 50 years of experience providing research, advocacy and public education on issues affecting workers in low-wage jobs. NELP has offices in Washington DC, New York City and Berkeley, California.

We would like to focus our testimony on the Future of Work and its implications for worker safety and health. Work can and should provide working people with stability and safety. It should be a place where we are treated fairly and with respect. Advances in technology should mean that jobs in the future will be safer and better for all working people. Current trends and practices by many employers, including some of our largest employers, however, clearly point to the need for the Future of Work Commission, and policymakers across California, to prioritize solutions that ensure that California's jobs of the future will be quality jobs in every way. Below we highlight two key issue areas of concern as it relates to the health and safety of workers.

Warehouse Jobs Must Be Better

New Amazon-style warehouses are filled with robots and technology to assure that consumers are getting their packages on time. But data from the company's own records shows that Amazon warehouses have shockingly high injury rates. Amazon has invested billions in artificial intelligence (AI) and robotics to automate its warehousing and distribution network, but it still relies on hundreds of thousands of workers to pull orders, make deliveries, and keep its distribution network running.

With more than 200,000 employees in the U.S. and 640,000 around the world, Amazon is the country's second-largest private-sector employer, behind only Walmart. As Amazon sets the standard for delivery and fulfillment in the eCommerce industry, it also undeniably sets the standards for employment practices and working conditions in the industry. That is alarming news for the millions of workers in the warehouse and logistics industry. Inside Amazon's fulfillment centers, delivery stations and other warehousing operations, tens of thousands of workers are paying for the cost of free two-day shipping with their bodies.

NELP recently coauthored a report based on Amazon's own internal injury data – data that paints a very troubling picture about what is happening inside the company's fulfillment centers. In 2018, the injury rate at Amazon facilities was three times as high as the injury rate for all private sector employers, and twice as high as the notoriously hazardous general warehousing industry. Workers at Amazon suffered the most serious injuries – those that require time off work or restricted duty – at rates five times the national average for all private industries.

Amazon workers around the country have reported being subject to unsustainably fast productivity requirements resulting in injury and exhaustion. High turnover is the norm at Amazon facilities. NELP's recently published analysis of California county-level census data shows that when Amazon opens a fulfillment center, warehouse worker turnover in that county skyrockets. Counties hosting Amazon fulfillment centers have turnover

rates that are much higher than the average rate of turnover for warehouse workers in California and workers in other industries overall in the state.

The communities bearing the brunt of the health and safety implications of these jobs are those that are already harmed by lower wages and other harmful workplace conditions. Warehouse workers in California are overwhelmingly people of color, with the large majority being Latinx. Fifty-four percent of warehouse workers in California in 2017 were Latinx. Asian and Black workers represented 9.5 percent and 9 percent, respectively.

The Structure of a Job Should Not Determine the Quality of a Job

Increasingly, companies have used the tactic of changing the structure of their relationships with workers – including the increased use of temporary workers, outsourcing and subcontracting out, and classifying workers as independent contractors rather than employees – arrangements that are too frequently characterized by low wages, limited benefits and increased safety risk to workers.

Recent studies have found that temp workers face increased risk of injury as compared to permanent workers in similar occupations. According to a study that analysed workers' compensation claims in Ohio from 2001 to 2013, temp workers had higher injury rates than permanent workers. A similar study of workers' compensation claims in Washington State from 2011 to 2015 found that temp workers experienced twice the rate of injury as permanent workers. Finally, a *ProPublica* analysis of workers' compensation programs found that in California and Florida, the two largest states analyzed, temp workers had about a 50 percent greater risk of being injured on the job than permanent workers.

According to the Occupational Safety and Health Administration (OSHA), new workers are at greater risk of injury, and most temp workers are “new” multiple times a year. The increased risk is partly because new workers are less familiar with safety procedures and protocols. Temp agencies and host employers can exacerbate this risk by failing to adequately train temp workers.^v Temp workers may not know which party – the temp agency or the host employer – is responsible for safety training and for injuries on the job, and this employment arrangement diminishes employer accountability. OSHA has expressed concern that some host employers use temporary workers as a way to avoid their obligations under the Occupational Safety and Health Act and related laws; that temp workers get placed in the most hazardous jobs; that temp workers are more vulnerable to workplace hazards and retaliation for reporting these hazards than permanent workers; and that temp workers are not given adequate safety and health training or explanation of duties by either the temp agency or the host employer.^v

As a result, temp agencies and host companies can more easily exploit temp workers—who are disproportionately people of color—and consign them to a second-tier employment status. While Black workers comprise 12.1 percent of the overall workforce, they comprise 25.9 percent of temporary help agency workers; Latinx workers are 16.6 percent of all workers, but 25.4 percent of temporary help agency workers.^v Temp workers are especially vulnerable to illegal conduct such as wage theft, unsafe working conditions, and discrimination. These conditions exacerbate occupational segregation, income inequality, and the wealth gap for people of color.

In the context of the “gig” economy, where the majority of the workforce are treated as independent contractors, the lack of health and safety protections, due to being denied employment status, put workers at risk. These “gig” jobs are among the most dangerous in the country: three of the most common types of work in this sector are transportation, delivery, and home services, including domestic work like caregiving. Workers doing these jobs are exposed to high rates of injury and job-related dangers.^v California passed bold legislation in 2019, AB 5, which should bring most of these workers under the basic protections of employment status, but so far these “gig” companies have signalled only that they refuse to comply with the law, and will seek to use their prodigious financial resources to buy their way out of compliance at the ballot box in November.

California Should Lead in Prioritizing Worker Health and Safety

Workplace injuries can take a terrible toll on workers, their families and their communities. A workplace injury can force a worker and their family out of the middle class and into poverty, contributing to growing inequality. The costs to the economy of a workplace injury is staggering—almost \$200 billion a year.^v New statistics confirm that workers of color and immigrant workers suffer higher fatal injury rates than all others^x. Worker should not have to sacrifice their lives for a pay check.

Beyond injuries sustained on the job, the current coronavirus pandemic draws urgent attention to the lack of benefits such as workers' compensation and paid sick leave for too many workers across the state and the country. We can see the devastating impact of the lack of paid sick leave, job security, and other protections on underpaid, gig, and misclassified workers. One of the key lessons in this crisis is that our interconnected lives depend on workplace protections for everyone. Fortunately, we have the ability to advance solutions to ensure that the most vulnerable individuals have better protections as workers, so that families, and the communities we are part of, can stay safe and healthy.

We urge the Commission to additionally consider the recommendations proposed by Worksafe and the Labor Occupational Health Program of the University of California, Berkeley. These recommendations underscore the importance of funding research and developing policies to ensure that workers are protected, as well as the need to bring an explicit focus on race equity to any considerations of the future of work.

Sincerely,

Deborah Berkowitz, Worker Health and Safety Program Director, Washington, DC
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Packaging Pain: Workplace Injuries in Amazon's Empire, Jan. 2020, <https://www.nelp.org/publication/packaging-pain-workplace-injuries-amazons-empire/>

ⁱⁱ Irene Tung and Deborah Berkowitz, *Amazon's Disposable Workers: High Injury and Turnover Rates at Fulfillment Centers in California*, National Employment Law Project, March 2020, <https://www.nelp.org/publication/amazons-disposable-workers-high-injury-turnover-rates-fulfillment-centers-california/>.

ⁱⁱⁱ Laura Padin, *Lasting Solutions for America's Temporary Workers*, National Employment Law Project, Aug. 2019, <https://s27147.pcdn.co/wp-content/uploads/Lasting-Solutions-for-Americas-Temporary-Workers-Brief.pdf>.

^{iv} Laura Padin, *Lasting Solutions for America's Temporary Workers*, National Employment Law Project, Aug. 2019, <https://s27147.pcdn.co/wp-content/uploads/Lasting-Solutions-for-Americas-Temporary-Workers-Brief.pdf>.

^v National Employment Law Project, *America's Nonstandard Workforces faces Wage, Benefit Penalties, According to U.S. Data*, June, 7, 2018, <https://www.nelp.org/news-releases/americas-nonstandard-workforce-faces-wage-benefit-penalties-according-us-data/>.

^{vi} Laura Padin, *Lasting Solutions for America's Temporary Workers*, National Employment Law Project, Aug. 2019, <https://s27147.pcdn.co/wp-content/uploads/Lasting-Solutions-for-Americas-Temporary-Workers-Brief.pdf>.

^{vii} Deborah Berkowitz and Rebecca Smith, *Gig Economy Workers Should Be Covered By Workers' Compensation*, National Employment Law Project, June 2016, <https://www.nelp.org/publication/gig-economy-workers-should-be-covered-by-workers-compensation/>.

^{viii} David Michaels, *Adding Inequality to Injury: The Costs of Failing to Protect Workers on the Job*, Occupational Safety and Health Administration, June 2015, https://www.osha.gov/Publications/inequality_michaels_june2015.pdf.

^{ix} U.S. Bureau of Labor Statistics, *Census of Fatal Occupational Injuries Summary*, 2018, <https://www.bls.gov/news.release/cfoi.nr0.htm>.