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The New Racial Wage Code

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The legal identity of on-demand platform workers has become a central site of conflict between labor and industry. Amidst growing economic inequality, labor representatives and workers have demanded that platform workers be afforded employee benefits and protections, including minimum wage and overtime rights. Platform industrialists, meanwhile, have proffered a new regulatory category of worker—neither employee nor independent contractor—that limits the protections available to the workforce, legalizes unpredictable, digitally-personalized piece-pay, and constricts a worker’s right to negotiate different terms. To date, legal and socio-legal scholars have primarily analyzed this third category of worker, codified by Proposition 22 in the state of California, in race-neutral terms. In this Article, I make visible the racial politics of this tiered system of worker protection. Using historical, legal, and ethnographic methodologies, I argue that the wage system created by Prop 22 and the third category of worker has been both rationalized (by industry) and contested (by labor) through a recognition of systemic racial inequalities. Drawing on historical comparisons made by platform workers campaigning against Prop 22, Part I situates the third category of worker within a genealogy of industry-sponsored racial wage codes, proposals, and debates during the First and Second New Deals. In Part II, I argue that companies supporting Prop 22, like their early twentieth century counterparts, strategically used race as a resource to eliminate access to employment protections. Finally, in Part III, I analyze how platform workers who collectively fought the passage of Prop 22 rejected the rhetorical liberalism of their employers and examine their actions and visions for a path to racial and economic justice. Building on the workers’ analyses and actions, I argue that facially neutral employment and labor rights carve-outs for the gig workforce are made possible by and reproduce racial subjugation. As the platform companies attempt to spread their Prop 22 wage model in other locales, lawmakers and labor representatives shaping or re-defining minimum employment standards must consider the racialized consequences of this formative reality.

PLACE Zoom and In-Person in Room 244, Berkeley Law | [Masking requirements.](#)
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TIME 12:45 – 2:00pm.

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