



# JENNIFER DAVENPORT

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## *Attorney General*



Law

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**Office of the Attorney General**

– Matthew J. Platkin, *Attorney General*

**New Jersey Department of Labor & Workforce Development**

– Robert Asaro-Angelo, *Commissioner*

**Division of Law**

– Michael C. Walters, *Acting Director*

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dollars in losses each year. As a result, as Amazon flouts the law, other New Jersey employers suffer because they must make up any shortfalls to the trust funds.

Amazon's Flex drivers deliver packages for the e-commerce giant to both commercial and residential locations, using their own vehicles and paying for their own expenses, including gas, insurance, maintenance, and tolls. Amazon advertises Flex as a "flexible" way to make money. While Amazon Flex drivers may have a choice when they work, Amazon exercises significant control over how drivers perform their work, including the time, method, and manner of how deliveries are made.

No matter the label or tax form issued to Flex drivers, this relationship between Amazon and these drivers constitutes employment. This unlawful misclassification of employees as independent contractors deprives them of their rights to the minimum wage, mandated overtime, earned sick leave, and job-protected family leave.

"Let's not make any mistake about this: when a trillion-dollar company says it is providing you with 'a flexible way of earning extra money on your own schedule,' it is not offering this opportunity for your benefit. Amazon is looking out for itself," **said Attorney General Platkin.** "Amazon is taking advantage of Flex drivers and enriching its bottom line by failing to obey our labor laws and offloading its business expenses for the benefit of shareholders."

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Filed in the Superior Court of Essex County, Law Division, the lawsuit seeks a trial by jury. The lawsuit illustrates some of the ways in which Flex drivers are harmed by Amazon’s refusal to follow New Jersey law:

- For example, one driver often works over 40 hours a week driving for Amazon but never receives State-mandated overtime pay at one-and-one-half times their regular rate of pay.
- Another Flex driver injured her back while picking up a package and was unable to work for Amazon for 11 days. She lost income because she does not receive State-mandated sick leave. She resumed driving before she recovered because she could not afford the time off.
- Another driver regularly paid for tolls out of pocket, effectively lowering his pay to below the minimum wage.

In New Jersey, most workers are generally presumed to be employees, rather than independent contractors, unless a business can satisfy all three criteria of what is commonly referred to as the “ABC Test.” By statute, N.J. Stat. § 43:21-19(i)(6), businesses must establish that:

“(A) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact;

(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all



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phones;

- Amazon closely monitors the time Drivers spend on their deliveries, the order they make them, and how many stops they make along the way;
- Amazon evaluates drivers with “Standings” that affect how much work Amazon assigns them;
- Drivers report to Amazon warehouses or other locations to pick up packages and to return undelivered packages;
- Drivers are unable to negotiate their pay;
- Amazon may choose to provide incentives to drivers; and
- Drivers can be fired from the Flex program without notice.

Furthermore, Amazon caps the number of shifts drivers can sign up for each week, but the company does not restrict the actual hours drivers work, nor does Amazon pay drivers for routes that take longer than anticipated. If a driver needs to complete extra tasks in a day or week to follow Amazon’s delivery policies, such as returning undeliverable packages, Amazon does not pay them, even if the company’s policies cause the driver to work over 40 hours a week.

Today’s complaint alleges several counts of labor law violations:

- Unlawful deduction, diversion, and withholding of wages
- Minimum wage violations
- Failure to pay overtime

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Under Attorney General Platkin and in conjunction with NJDOL, New Jersey has vigorously fought to protect workers from various forms of worker misclassification, which continues to be a priority for the Murphy Administration. For example, ridesharing companies Lyft and Uber have resolved worker misclassification cases for millions. Attorney General Platkin and NJDOL have also filed lawsuits against trucking firms and construction companies and have settled significant misclassification matters involving [Publishers Circulation Fulfillment](#), a newspaper delivery and distribution company, and [Horseless Carriage Carrier, Inc.](#), a transporter of luxury cars.

In addition, since 2020 when a bipartisan law was signed providing additional tools to deter worker misclassification, NJDOL has assessed penalties to companies found to have misclassified their workers, including a penalty of not more than 5% of misclassified workers' gross earnings over the past twelve months, which goes directly back into workers' pockets. To date, NJDOL has assessed \$11,223,560.61 for 13,567 workers.

The Century Foundation estimates that in 2021, New Jersey taxpayers lost \$329.3 million from worker misclassification, including lost unemployment insurance contributions, Social Security and Medicare contributions, and federal and state income taxes.



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visit [myworkrights.nj.gov](https://myworkrights.nj.gov).

Businesses can learn about legal requirements and services provided to them at: [nj.gov/labor](https://nj.gov/labor).

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