

June 21, 2021

**By email to:**

Tony West, General Counsel, Uber  
[REDACTED]

Emilie Boman, Head of Global Public Policy, Safety, & Delivery, Uber  
[REDACTED]

Adam Blinick, Director of Public Affairs, Uber  
[REDACTED]

**RE: Transgender Drivers' Displayed Name and Safety**

Dear Mr. West,

We write concerning our client, Laine Repic, who currently works as a driver for UberEats. Mr. Repic, a transgender man, has repeatedly tried to update his driver profile through your company so that it shows his correct name and pronouns. Instead, your company continues to force Mr. Repic to have his driver profile display his legal name, which he no longer uses and which does not match his gender presentation. Despite repeated attempts to get this resolved by contacting UberEats through email and phone, Mr. Repic has yet to receive any assistance. We urge UberEats to change this problem and update its technology to avoid violating state and federal laws and to ensure the safety and dignity of its transgender drivers in Kansas and beyond.

**I. Factual Background**

Mr. Repic is a transgender man living in the Topeka, Kansas area. He began driving for UberEats in April 2021. Mr. Repic readily complied with all of UberEats' protocols when signing up to be a driver, and submitted all required documentation for a pre-employment background check. As part of this process, Mr. Repic provided a copy of his current drivers' license, which contained his legal name.<sup>1</sup> Mr. Repic has not yet legally changed his first name to Laine, although plans to do so in the future.

Immediately upon accepting the terms and conditions for employment with UberEats, Mr. Repic attempted to contact your company to ensure that his

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<sup>1</sup> The name that appears on Mr. Repic's license is hereinafter referred to as his dead name.



**Kansas**

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driver profile page in the UberEats app displayed his correct first name. Mr. Repic received a response from what Mr. Repic presumed to be UberEats's IT department that repeatedly referred to him by the name on his license. The response initially confirmed that Mr. Repic's dead name would not display on the app, and that his profile would appear as Laine.

However, this change did not actually happen. Mr. Repic contacted UberEats again attempting to resolve this matter. The automated response Mr. Repic received stated that he needed to submit a new license reflecting the name change in order to have his name changed in the app. The response, once again, referred to Mr. Repic by his dead name. Mr. Repic replied, once again, that he had not yet changed his name legally and therefore could not produce the documentation requested. Mr. Repic contacted UberEats a final time, by phone and email, the week of June 14, 2021. He has yet to receive a response.

As a result, Uber is still forcing Mr. Repic to drive under his dead name, which effectively outs Mr. Repic as transgender to all of the customers he serves. Mr. Repic has experienced harassment and ridicule as a result: he has made deliveries where he has endured demeaning comments and felt fearful for his safety because his displayed name does not match his male gender or presentation. Additionally, Mr. Repic believes that UberEats' outing of his transgender status has led to decreased tips and ride opportunities, which are essential to him making money in this role. And, despite all of this, it remains unreasonably difficult for Mr. Repic to get ahold of anyone in UberEats who is willing to help address this situation, prompting the need for this letter.

## **II. UberEats' name display policy unnecessarily places drivers at risk.**

In addition to possibly violating state and federal law<sup>2</sup>, forcing transgender UberEats drivers to deliver under their dead names is bad policy. It needlessly places transgender drivers at risk of harassment, degradation, and violence.<sup>3</sup> Over the last year, a number of states—including Kansas—have seen an unprecedented wave of anti-transgender bills introduced and passed in state legislatures.<sup>4</sup> And notably, your company signed on to the Human

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<sup>2</sup> See Section III.

<sup>3</sup> The 2015 U.S. Trans Survey showed that having identification that lists the wrong name and gender causes negative outcomes for transgender people: 25% of people reported experiencing verbal harassment. ACLU, *They The People: Accurate Gender Markers for All*, <https://www.aclu.org/news/topic/they-the-people-accurate-gender-markers-for-all/> (last updated June 8, 2021).

<sup>4</sup> Wyatt Ronan, *2021 Officially Becomes Worst Year in Recent History for LGBTQ State Legislative Attacks as Unprecedented Number of States Enact Record-Shattering Number of*



Rights Campaign’s Business Statement on Anti-LGBTQ State Legislation.<sup>5</sup> Those with anti-transgender animus may feel emboldened to discriminate or engage in hateful acts towards your drivers who are transgender or non-binary. It is therefore more important than ever to make sure that all of your company’s drivers feel protected in doing the work that makes your corporation money.

We note that for many people, including Mr. Repic, obtaining a legal name change can be a long, difficult, and expensive process. Roughly 68% of transgender people in the United States report that none of their identification documents list their correct name and pronouns. In Kansas, clerks in some courts have resisted allowing individuals to submit their own legal name change paperwork, even though there is no requirement in state law that those petitioning for name changes be represented by counsel.<sup>6</sup> Although the Kansas legal community has done significant work to try to make this process easier, including establishing a clinic at the University of Kansas Law School<sup>7</sup> and creating a toolkit<sup>8</sup> to assist individuals in filing their *pro se* name change paperwork, legally changing one’s name is still an arduous task. Changing one’s gender marker on legal identification documents such as a driver’s license, birth certificate, or previously issued passport involves even more steps.<sup>9</sup> It is also expensive: in Kansas, the filing fee and surcharge for name change paperwork is \$166.<sup>10</sup> The person must then pay additional fees

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*Anti-LGBTQ Measures Into Law*, HUMAN RIGHTS CAMPAIGN, <https://www.hrc.org/press-releases/2021-officially-becomes-worst-year-in-recent-history-for-lgbtq-state-legislative-attacks-as-unprecedented-number-of-states-enact-record-shattering-number-of-anti-lgbtq-measures-into-law> (last visited June 11, 2021).

<sup>5</sup> *Business Statement on Anti-LGBTQ State Legislation*, HUMAN RIGHTS CAMPAIGN, <https://www.hrc.org/resources/business-statement-on-anti-lgbtq-state-legislation> (last visited June 11, 2021).

<sup>6</sup> This has been a particular issue in Kansas for transgender youth. See Letter to Chief Justice Luckert, Kansas Supreme Court (Jan. 15, 2021), <https://www.aclukansas.org/en/letter-kansas-supreme-court-re-rejections-requests-name-change>.

<sup>7</sup> Sarah Motter, *KU Law students honored with national award for pro bono work with trans, nonbinary individuals* (May 14, 2021, 3:44 PM CDT), WIBW, <https://www.wibw.com/2021/05/14/ku-law-students-honored-with-national-award-for-pro-bono-work-with-trans-nonbinary-individuals/>.

<sup>8</sup> Kansas Legal Services, *Kansas Adult Name Change*, <https://www.kansaslegalservices.org/node/216/kansas-name-change> (last visited June 11, 2021).

<sup>9</sup> KU Gender Marker and Name Change Clinic, *Kansas Gender Marker Change Process*, Fall 2019, <https://resources.finalsite.net/images/v1572535641/smsdorg/knx4iqg46oz8f3h7pl0i/GenderMarkerChangeInfoandFAQ.pdf> (last visited June 11, 2021).

<sup>10</sup> Kansas Judicial Counsel, *Instructions and Petition for Adult Name Change*, <http://www.kansaslegalservices.org>



to change their legal identification documents once the court issues an order of legal name change.

We can think of no significant justification for forcing drivers such as Mr. Repic to deliver under their dead names, especially when, as here, Mr. Repic had no issue providing whatever documentation was necessary for his background check. There is no conceivable risk to the customers of UberEats if Mr. Repic and other transgender drivers were to drive under their correct names and gender markers, even if they have not completed a legal name change yet. Conversely, however, the risk to Mr. Repic is great if Uber does not correct this policy immediately.

Allowing transgender drivers like Mr. Repic to deliver for UberEats under their correct name and gender identity without requiring a legal name change is a win-win. It would lift the burden your company currently places on transgender drivers, keeping them safer and make it possible to earn a living wage.

### **III. UberEats’ name display policy may violate state and federal law.**

Both Kansas and Federal law prohibit sex discrimination. Under *Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020), discrimination because of a person’s transgender status is discrimination because of sex and thus prohibited by Title VII of the Civil Rights Act of 1964. And while, given the facts we know now, it does not appear that Uber is intentionally discriminating against transgender drivers with this policy, the company’s conduct may nevertheless support such claims.

First, Uber may be liable for any harassment Mr. Repic suffers after the company knew of the issue. “Employers may be held liable [for co-worker or customer harassment] if they ‘fail to remedy or prevent a hostile or offensive work environment of which management-level employees knew, or in the exercise of reasonable care should have known.’” *Lockard v. Pizza Hut*, 162 F.3d 1062, 1074 (10th Cir. 1998), citing *Hirschfeld v. New Mexico Corrections Dep’t*, 916 F.2d 572, 577 (10th Cir. 1990).

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[/sites/kansaslegalservices.org/files/Petition%20for%20Adult%20Name%20Change.doc](https://sites/kansaslegalservices.org/files/Petition%20for%20Adult%20Name%20Change.doc) (last visited June 11, 2021).



Mr. Repic has already notified the company that its policy prohibiting him from using his name puts him at risk of harassment, and this letter should be read to do the same.

Second, even unintentionally discriminatory conduct can run afoul of the Civil Rights Act. Under § 2000e-2(k)(1)(a), an employee can establish a *prima facie* case of disparate impact discrimination by establishing (a) an employment practice that (b) disparately affects a protected group. *Ricci v. DeStefano*, 557 U.S. 557, 567 (2009). The practice need not be motivated by a discriminatory intent, and policies which are “fair in form, but discriminatory in operation” can run afoul of Title VII. *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971); *Tabor v. Hilti, Inc.*, 703 F.3d 1206, 1220-1221 (10th Cir. 2013). Here, Uber’s policy of requiring drivers to use the name on their driver’s license necessarily affects transgender drivers who have not yet legally changed their names.

Finally, if it were to come to light that Uber allows name changes in other circumstances (e.g., for nicknames or for those who go by their legal middle name) but disallows them for transgender drivers, there would likely be a straightforward discrimination claim.<sup>11</sup>

#### **IV. Changing UberEats’ policy and technology would be consistent with Uber’s stated values.**

Allowing transgender drivers to use their names and making this simple change would also help Uber live up to its stated ideals of LGBTQI+ support and allyship. Uber has previously communicated support of the transgender community, joining 55 other companies in opposing the Trump administration’s 2018 proposal to change federal policy defining gender on the basis of sex assigned at birth.<sup>12</sup> Uber also goes through great lengths to

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<sup>11</sup> We are aware that Uber considers its drivers to be contractors rather than employees. It remains to be seen whether Tenth Circuit courts would agree. The so-called “hybrid test” applies, *Bristol v. Bd. of County Comm’rs.*, 312 F.3d 1213, 1218 (10th Cir. 2002), *abrogated by statute on other grounds*, and the language of the contract would not end the analysis. *Tyler v. Uber Techs., Inc.*, 487 F. Supp. 3d 27 (D.C. Dist. 2020) (“Uber’s motion repeatedly references the terms of the Agreement plaintiff signed.... they would not be dispositive....”). There are also facts here that cut against an independent contractor finding. For example, if Mr. Repic were truly an independent contractor, he could no doubt go by his own name.

<sup>12</sup> Tony Romm, *Apple, Facebook and Google among 56 businesses telling Trump not to weaken transgender rights*, THE WASHINGTON POST (Nov. 1, 2018), <https://www.washingtonpost.com/technology/2018/11/01/apple-facebook-google-among-businesses-telling-trump-not-weaken-transgender-rights/>.



celebrate Pride month through your company’s various social media accounts and your Pride at Uber handbook.<sup>13</sup>

It is time for Uber to make these commitments and ideals concrete by enacting changes to better protect and support transgender drivers across the Uber and UberEats platforms. We ask that you immediately fix the UberEats platform to allow transgender drivers to work under their correct names and gender identity, regardless of whether they have legally changed their names and gender markers, so long as the driver provides documentation sufficient for a background check to be completed. We also ask that your company apologize to Mr. Repic for the pain and frustration that he has had to endure trying to get this fixed.

We welcome a conversation at your earliest convenience and look forward to reaching a quick resolution. You can reach us at [sbrett@aclukansas.org](mailto:sbrett@aclukansas.org) and [jpierson@aclukansas.org](mailto:jpierson@aclukansas.org).

Happy Pride.

Sincerely,

A handwritten signature in black ink that reads "Sharon Brett".

Sharon Brett  
Legal Director  
ACLU of Kansas

A handwritten signature in black ink that reads "Josh Pierson".

Josh Pierson  
Senior Staff Attorney  
ACLU of Kansas

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<sup>13</sup> Pride at Uber, <https://www.uber.com/us/en/about/diversity/pride-at-uber> (last visited on June 11, 2021).