

March 10, 2023

MEMORANDUM

To: Finance and Housing Committee
From: Karina Bull, Analyst
Subject: App-Based Worker Paid Sick and Safe Time Ordinance

On March 15, 2023, the Finance and Housing Committee will discuss and possibly vote on Council Bill (CB) 120514, that would establish permanent requirements for network companies to provide paid sick and safe time (PSST) for app-based workers. This memo provides a background and summary of the legislation, describes potential impacts, and defines next steps.

Background

In summer 2020, the City of Seattle (City) enacted the PSST for Gig Workers Ordinance ([Ordinance 126091](#)), a labor standard establishing temporary protections for food delivery network company workers and transportation network company (TNC) drivers during the COVID-19 emergency. Since the nature of delivery and transportation services provided by these workers could involve close contact with the public, they were at risk of catching or spreading COVID-19 and other illnesses. However, unlike employees covered by the Paid Sick and Safe Time Ordinance ([Seattle Municipal Code 14.16](#)), these workers did not have a right to paid leave to stay home when sick because network companies hired them as independent contractors.

The PSST for Gig Workers Ordinance established a temporary right for food delivery network company workers and TNC drivers to accrue and use PSST (i.e., paid leave to care for their personal or family member's health conditions and safety needs) and tasked the Office of Labor Standards (OLS) with implementation and enforcement. For TNCs, these requirements ended on January 1, 2023, when a statewide paid sick leave system established by [Engrossed Substitute House Bill \(ESHB\) 2076](#) took effect and (with certain exceptions) preempted the City from regulating the field of TNCs and drivers. For food delivery network company workers, these requirements will end on April 30, 2023.

The City has established other protections for food delivery network company workers. The Premium Pay for Gig Workers Ordinance ([Ordinance 126094](#)) temporarily required premium pay for food delivery network company workers during the COVID-19 emergency and ended on October 31, 2022. The App-Based Worker Minimum Payment Ordinance ([Ordinance 126595](#)), will require network companies to comply with minimum payment standards for food delivery network company workers and other app-based workers as of January 13, 2024.

The enactment of the App-Based Worker Minimum Payment Ordinance signaled the City's recognition that the workforce for the rapidly expanding app-based economy warrants permanent workplace protections.

A study by Mastercard projected double-digit annual growth of the app-based economy between 2019-2023.¹ Sales for app-based, food delivery services collectively grew eight percent year over year from 2018 through May 2022 and similar growth is projected through 2026.² Other industries driving the app-based economy include delivery of retail items (e.g., clothing, electronics, home goods, fuel and cooking gas) and services related to staffing, laundry, car washing, in-home salon and beauty care, health and wellness, education, carpentry, cleaning, moving, professional services and more.³

A 2021 Pew Research Center study found that 16 percent of American adults earned money from app-based work and the rates were higher for those who are Black, Indigenous, and other People of Color (BIPOC).⁴ While most surveyed workers (68 percent) reported that app-based work was a side job, 31 percent reported that app-based work was their main job during the past year. Surveyed workers also reported being very (15 percent) or somewhat (36 percent) concerned about contracting a contagious illness (e.g., COVID-19) on the job, with BIPOC workers (59 percent) reporting being at least somewhat concerned compared to white workers (38 percent).⁵

CB 120514

This legislation would establish a permanent right to PSST for app-based workers providing services in whole or part in Seattle for network companies. The legislation would largely adopt the framework of the PSST for Gig Workers Ordinance, with a substantive change in coverage and other changes to improve clarity, align with other labor standards, and facilitate implementation of permanent requirements.

¹ [The Global Gig Economy: Capitalizing on a \\$500B Opportunity](#). Mastercard and Kaiser Associates, May 2019.

² Perri, Janine. [Which Company is Winning the Restaurant Food Delivery War?](#) Bloomberg, *Second Measure*, June 15, 2022; Dalin-Kaptzan, Zahava. [Food Delivery: Industry Trends for 2022 and Beyond](#). BRINGG, 2022; [Online Food Delivery](#). Statista, 2022.

³ Vyas, Manish. [Eight Service Industries that Drive the On-Demand Economy](#). Peerbits, January 18, 2023.

⁴ Anderson, Monica; McClain, Colleen; Faverio, Michelle; Gelles-Watnick, Risa. [The State of Gig Work in 2021](#). Pew Research Center, December 2021.

⁵ *Id.*

Coverage would expand from the limited focus on food delivery network companies under the PSST for Gig Workers Ordinance to all network companies covered by the App-Based Workers Minimum Payment Ordinance. To prevent disruption of temporary benefits, the legislation would become effective for food delivery network companies on May 1, 2023, and for other covered entities on January 13, 2024 (i.e., the effective date of the App-Based Worker Minimum Payment Ordinance). See Attachment A for a comparison chart summarizing the differences between the PSST for Gig Workers Ordinance and the App-Based Worker PSST Ordinance.

New Labor Standard

The legislation would require network companies to provide app-based workers with PSST to care for themselves and family members.

- **Paid sick time:** paid leave for the diagnosis care, or treatment of an injury, illness, or health condition; or preventative care.
- **Paid safe time:** paid leave for when a network company has discontinued operations by order of a public official during a public health emergency, or for any health or safety reason; closure of a family member's school or place of care; or for reasons related to domestic violence, sexual assault, or stalking.

Coverage

The legislation would apply to app-based workers providing services in whole or part in Seattle for network companies with 250 or more app-based workers worldwide.

Network company coverage would broadly include “on-demand network companies” primarily engaged in facilitating “on-demand offers” (i.e., offers that require workers to initiate services within two hours of acceptance) and certain network companies facilitating “pre-scheduled offers” (i.e., offers that require workers to initiate services two or more hours after acceptance).

Coverage would exclude “marketplace network companies” that primarily facilitate pre-scheduled offers but exert less control over the worker or performance of services (e.g., workers can interface with prospective customers to determine the scope of services before the customer places an online order, workers can set their own rates, the network company does not monitor offers by mileage or time). Coverage would also exclude TNCs due to state preemption of the field of regulating TNCs and drivers under ESHB 2076.

Accrual, Use and Payment

The legislation would condition an app-based worker's accrual, use, and payment of PSST on days worked for the network company in whole or part in Seattle.

Upon commencing work for the network company, app-based workers would accrue one day of PSST for every 30 days with at least one work-related stop in Seattle (e.g., shopping at a store in Seattle, making a delivery in Seattle). Food delivery network company workers who accrued PSST under the PSST for Gig Workers Ordinance would be entitled to retain and use that paid leave after the effective date of this legislation.

App-based workers would be entitled to use PSST in 24-hour increments if they had worked in whole or part in Seattle within the preceding 90 calendar days. App-based workers could request PSST for immediate use and consecutive days of use. The legislation's anti-retaliation provision would prevent network companies from penalizing app-based workers (e.g., charging fees, offering less work) for using PSST.

Payment for PSST would be the app-based worker's "average daily compensation," a daily average of compensation for each calendar day worked in whole or part in Seattle in the preceding 12 months. The calculation of average daily compensation would include earnings for services performed in Seattle and outside Seattle for each covered calendar day.⁶ The rate of average daily compensation would be recalculated every calendar month.

In addition to providing accrual, use, and payment of PSST, network companies would need to follow other requirements:

- Establish an accessible system for workers to understand and readily access their PSST,
- Provide each worker with monthly notification of their accrued, used, and available PSST and rate of average daily compensation,
- Wait until after a worker has used PSST for more than three consecutive days to ask for reasonable verification,
- Carry-over up to nine days accrued, unused PSST to the following calendar year, and
- Provide each worker with a written notice of rights (at hire and annually) and PSST policy.

Enforcement

OLS would implement and enforce these requirements and aggrieved parties would have a private right of action. As with the City's other labor standards, OLS would be required to commence any investigation within three years of the alleged violation and could order penalties, fines, and unpaid compensation for violations.

⁶ As of the effective date of the App-Based Worker Minimum Payment Ordinance (i.e., January 13, 2024), the calculation for average daily compensation would include compensation for any engaged time and engaged miles covered by the App-Based Worker Minimum Payment Ordinance but would *not* include tips.

Potential Impacts

This legislation is intended to protect and promote public health, safety, and welfare by establishing a right for app-based workers to accrue and use paid leave to stay home and take care of themselves and family members for health and safety reasons. Providing access to paid leave is intended to support recovery from illness, reduce the spread of illness, and enhance financial and health outcomes for workers, their families, and the community.

Workers

When the PSST Ordinance for Gig Workers went into effect during the early phase of the COVID-19 emergency, consumer demand for food delivery services had sharply accelerated and food delivery network company workers were exposed to a heightened risk for exposure to serious illness while performing their jobs. Several years later, the hazards of working in close contact with the public remain (although less extreme) while consumer demand for food delivery and other app-based services is predicted to continue growing at a steady rate.

Given that workers may need to miss days of work for health and safety reasons on an ongoing basis (regardless of pandemic risks), establishing a permanent right to PSST could provide an important benefit for app-based workers who would otherwise receive no paid leave. This benefit could especially impact BIPOC workers. Black and Latinx workers are overrepresented in the app-based industry, comprising almost 42 percent of app-based workers but less than 29 percent of the overall labor force.⁷

A potential tradeoff of establishing this right, however, is a possible increase in the number of individuals vying for app-based work due to improved benefits, resulting in increased competition for offers and potentially less income for each worker.

Network companies

Establishing permanent requirements for network companies to provide PSST to app-based workers could result in changes to the costs, demand, and supply of app-based services. Due to the new nature of the app-based industry and the limited, recent establishment of industry regulations, the presence or scale of such impacts is unknown. Potential impacts could include reduction of services in Seattle; an increase in the cost of services (or new fees); and a corresponding decrease in demand for services due to higher costs.

Notably, the delayed effective date for newly covered network companies is intended to allow more time for those companies to adjust their policies and procedures, thereby potentially increasing their compliance.

⁷ [Labor Force Statistics from the Current Population Survey: Electronically Mediated Employment](#). U.S. Bureau of Labor Statistics, May 2017.

OLS Implementation

Establishing a permanent right to PSST with an expanded scope of coverage presents opportunities and costs for OLS. There is an opportunity for streamlined implementation since OLS could adapt materials created for the PSST for Gig Workers Ordinance and incorporate outreach into similar activities for the App-Based Worker Minimum Payment Ordinance. However, expanded coverage could also result in increased inquiries and investigations, creating more work for the enforcement team.

OLS fielded more questions about PSST for Gig Workers Ordinance than for any other gig worker or independent contractor ordinance over the past two years.⁸ Since mid-2020, OLS has responded to over 200 inquiries about the PSST for Gig Workers Ordinance and initiated nine compliance inquiries or formal investigations, recovering over \$5 million in remedies for over 30,000 workers. OLS anticipates that company-wide investigations of newly covered network companies (potentially involving hundreds of thousands of aggrieved parties) would be time intensive and dramatically impact investigator workloads.

To implement this legislation, OLS estimates \$115,000 in 2023 costs and \$148,000 in ongoing annual costs. Costs in 2023 would cover \$46,000 for initial implementation activities (e.g., creation of model notice of rights and educational documents, translation and interpretation services, rulemaking, outreach, communication campaigns) and \$69,000 for six months of salary for 1.0 FTE Senior Investigator position. On-going annual costs would cover the full year salary for 1.0 FTE Senior Investigator and a reduced scope of outreach. See Attachment B for more information on OLS's estimated implementation costs.

The 2023 Adopted and 2024 Endorsed Budgets do not include these resources. OLS received additional funding to implement the App-Based Worker Minimum Payment Ordinance and co-enforcement initiatives: \$552,000 OLS Fund in 2023 and \$527,000 OLS Fund in 2024. These appropriations support initial set-up costs, outreach, community partnerships for enforcing all labor standards, and the addition of 3.0 FTEs (i.e., Administrative Specialist, Policy Analyst, Data Analyst).

For reference, OLS did not receive additional funds to implement the PSST Gig Workers Ordinance. To reduce costs, OLS did not issue rules, create a model notice of rights, or engage in a broad communications campaign. Instead, OLS's implementation included the creation of a [PSST for Gig Workers webpage](#), [questions and answer document](#), and [fact sheet](#); translation of materials in [written](#) (eight languages) and [recorded formats](#) (seven languages); and responding to inquiries and enforcement needs with existing staff and contracts with community partners. OLS also partnered with the Department of Neighborhoods for additional outreach activities made possible through one-time funding from the American Rescue Plan Act of 2021. Without additional funding, OLS could potentially forego rulemaking, engage in limited outreach efforts (e.g., outreach efforts for the PSST for Gig Workers Ordinance), use funds

⁸ See [OLS Interactive Data Dashboards](#).

appropriated for the App-Based Worker Minimum Payment Ordinance, reprioritize work and funding to focus on App-Based Worker PSST rather than other labor standards, and/or delay responses to PSST inquiries and requests for investigations (thereby relegating such cases to “backlog status”).

Next Steps

If the Committee votes to recommend approval of CB 120514 on March 15, Council could consider the legislation on March 21.

If the Committee extends deliberations until a second Committee meeting (e.g., March 20), please contact me with any amendment proposals by close of business day, March 15.

Council would need to consider the legislation on March 21 or March 28 for the legislation to go into effect by April 30 (i.e., before temporary benefits expire under the Paid Sick and Safe Time for Gig Workers Ordinance).

Please contact me if you have questions about this proposed legislation.

Attachments:

- A. Comparison Chart (ORD 126091 and CB 120514)
- B. Office of Labor Standards Budget Estimate

cc: Esther Handy, Director
Aly Pennucci, Deputy Director
Yolanda Ho, Supervising Analyst