

Amendment 11 Version 2 to CB 120294 – App-Based Worker Minimum Payment

Sponsor: Councilmembers Herbold and Lewis

Exclude engaged time for cancellations without cause, and require network companies to create and share a fraudulent use policy

Effect: This amendment would change the definition of engaged time to clarify that offers ending in a cancellation without cause by the app-based worker shall not incur any engaged time.

This amendment would also require network companies to create and share a policy with app-based workers regarding how fraudulent use would be identified and what actions may be taken to remedy or prevent fraudulent use of the network company’s platform.

Amend Section 3 of CB 120294 as follows:

8.37.020 Definitions

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“Cancellation without cause” means cancellation or incomplete performance of a previously accepted offer by an app-based worker without a given reason, or for a reason not listed in subsection 8.37.080.C.

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“Engaged time” means the period of time in which an app-based worker performs services in furtherance of an offer facilitated or presented by a network company or participates in any training program required by a network company. Engaged time ~~((begins and ends))~~ shall apply as described below:

1. If an offer is being facilitated or presented by an on-demand network company, or is an on-demand offer, “engaged time” begins upon the app-based worker’s acceptance of the offer and ends upon the app-based worker’s completing performance of the offer, cancellation of the

offer by the network company or customer, or cancellation with cause of the app-based worker's acceptance of the offer pursuant to subsection 8.37.080.C.

2. If an offer is being facilitated or presented by a marketplace network company, "engaged time" is the reasonable estimate of engaged time required to perform the offer as mutually agreed by the marketplace network company or customer and the app-based worker when the offer is accepted. Engaged time may be non-consecutive and/or performed flexibly during an agreed upon range of time and is subject to rulemaking regarding offers that are cancelled with cause. ((-))

3. In all other circumstances, "engaged time" begins when the app-based worker begins performance of the offer or when the app-based worker reports to a location designated in the offer. Engaged time ends upon the app-based worker's completing performance of the offer, cancellation of the offer by the network company or customer, or cancellation with cause of the app-based worker's acceptance of the offer pursuant to subsection 8.37.080.C.

4. Offers ending in a cancellation without cause by an app-based worker shall not incur any engaged time.

The Director may issue rules on "engaged time" for (a) offers with non-compensable time, such as sleep time or other periods of off-duty time; or (b) offers with periods of time when the worker is not completely relieved of the duty to perform services and cannot use the time effectively for their own purposes.

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8.37.080 Flexibility

A. An app-based worker has the right to decide when to make themselves available to work and which offers to accept or reject. A network company shall not subject an app-based

worker to an adverse action, nor institute a policy subjecting an app-based worker to an adverse action, for engaging in the following activities:

1. Limiting hours of availability, including but not limited to being logged into the worker platform for limited hours, only at certain hours of the day, or during certain days of the week.

2. Accepting or rejecting any individual offer, any types of offers, or any number or proportion of offers. An app-based worker may indicate rejection of an offer by declining to respond to the offer. A network company shall ensure that its worker platform enables an app-based worker to communicate a rejection of each offer.

B. A network company shall allow an app-based worker to be logged into the network company's worker platform at any date, time of day, or for any amount of time, except in the following circumstances:

1. Certain instances of deactivation as defined in rules, or other applicable law.
2. Limitations on a maximum amount of consecutive work time to protect worker and public safety.

C. A network company shall not subject an app-based worker to an adverse action, nor institute a policy subjecting an app-based worker to an adverse action, for cancelling their acceptance of an offer with cause. An app-based worker may cancel their acceptance of an offer with cause (i.e., "cancellation with cause") when any of the following conditions occur:

1. Information provided pursuant to subsection 8.37.070.A.1 was substantially inaccurate; provided, that a customer's alteration of a tip amount shall not constitute grounds for cancellation with cause;

2. The app-based worker cannot complete performance of the offer because the customer is not present or fails to respond to communications from the app-based worker, the customer's presence or response is required for the app-based work to complete performance of the offer, and the app-based worker has made attempts to contact and/or wait for the customer in accordance with an applicable network company policy, provided that the no-contact or limited-contact deliveries are not considered to require the end customer's presence;

3. Timely completion of the offer has become impracticable due to an unforeseen obstacle or occurrence; or

4. The app-based worker makes a good faith complaint regarding sexual harassment or discrimination that is alleged to have occurred during performance of the offer.

D. For all cancelled offers, network companies shall allow the app-based worker to communicate the reason for cancellation, including ~~((at least all))~~ but not limited to reasons included in subsection 8.37.080.C, via the worker platform. The network company shall review the stated reason for cancellation for a reasonable time of no less than ~~((three days))~~ 72 hours before ~~((taking any action))~~ determining, based on clear and convincing evidence, whether an app-based worker cancelled an offer without cause.

8.37.090 Fraudulent use policy

A. A network company may take actions not expressly prohibited in this Chapter 8.37 or other applicable law, which are reasonably necessary to remedy or prevent fraudulent use of the network company's application or platform. A network company shall provide an app-based worker a written policy and procedure for remedying or preventing fraudulent use ("fraudulent use policy"). The network company's fraudulent use policy shall include, but not be limited to:

1. A description of what actions undertaken by the app-based worker constitute fraudulent use, which may include but not be limited to cancellations without cause;

2. The consequences to an app-based worker who is determined to have committed a fraudulent use of the of the network company's online enabled application or platform;

3. The method of notification to the app-based worker that the app-based worker is suspected of committing a fraudulent use of the network company's online enabled application or platform;

4. An opportunity, process, and timeline for an app-based worker to appeal a finding of fraudulent use; and

5. Pursuant to rules that the Director may issue, other information that is material and necessary to effectuate the terms of this Section 8.37.090.

8.37.100 Notice of rights

A. Network companies shall provide each app-based worker with a written notice of rights established by this Chapter 8.37. The Agency may create and distribute a model notice of rights in English and other languages. However, upon the effective date of this Chapter 8.37, and subsequently upon an initial offer to a new app-based worker, network companies are responsible for providing app-based workers with the notice of rights required by subsection 8.37.100.B, in a form and manner sufficient to inform app-based workers of their rights under this Chapter 8.37, regardless of whether the Agency has created and distributed a model notice of rights.

B. The notice of rights shall provide information on:

1. The right to the applicable minimum per-minute amount, per-mile amount, and per-offer amount guaranteed by this Chapter 8.37, including a clear statement of the current applicable amounts;

2. The right to receive the information required to be disclosed by this Chapter 8.37 before accepting an offer and performing services in furtherance of an offer;

3. The right to flexibility in making themselves available for work and accepting, rejecting, or cancelling offers under this Chapter 8.37;

4. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 8.37; and

5. The right to file a complaint with the Agency or bring a civil action for violation of the requirements of this Chapter 8.37, including but not limited to a network company's or any person's failure to pay the minimum per-minute amount, per-mile amount, or per-offer amount, and a network company's or other person's retaliation against an app-based worker or other person for engaging in an activity protected by this Chapter 8.37.

6. The right to a clear statement of the network company's tip policy, including but not limited to whether the network company's online-enabled application or platform allows customers to tip in advance of completion of an online order and whether the network company permits customers to modify or remove tips after performance.

7. The right to a clear statement of the network company's fraudulent use policy pursuant to Section 8.37.090, including where the app-based worker can locate that policy.