



SEATTLE CITY COUNCIL
CENTRAL STAFF

CB 120294

App-Based Worker Minimum Payment

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Overview

Pay-Up Proposal

Suite of labor standards for app-based workers*

1. Minimum payment
2. Transparency
3. Flexibility
4. Deactivation
5. Background checks
6. Bathroom access
7. Protections against discrimination and right to reasonable accommodations
8. App-based workers' advisory board

** Proposal would also include amendments to the Independent Contractor Protections Ordinance*

CB 120294: App-Based Worker Minimum Payment

Creation of Title 8 Labor Standards ♦ Chapter 8.37

1. **Minimum payment**
2. **Transparency**
3. **Flexibility**
4. Notice of rights
5. Recordkeeping
6. Prohibited retaliation
7. Enforcement by Office of Labor Standards (OLS)

Community Engagement

1. Stakeholder Meetings

- 12+ Meetings

2. Public Safety & Human Services Committee presentations

- July 13, 2021
- September 14, 2021
- February 8, 2022
- April 8, 2022

Coverage: App-based Workers

Covered

- Workers accepting offers to perform services for pay via a network company's worker platform.

Not covered

- Workers accepting offers for sale/rental of goods or real estate; licensed professional services (by rule); creative work; wholly digital services; and transportation provided by TNCs, taxis, or for-hire vehicles.
- Workers considered employees of a network company or the customer.

Coverage: Network Companies

Covered

- Companies using online-enabled applications or platforms to connect customers with workers, present offers to workers, and/or facilitate the provision of services by workers.
- 250 or more app-based workers worldwide.

Coverage: Network Companies

Not covered

- Companies offering services that enable individuals to schedule appointments with and/or process payments to users when the entity does not engage in additional intermediation of the relationships between customers and workers, nor engages in any oversight of services provided by workers.
- Companies operating digital advertising and/or messaging platforms, when the entity neither engages in intermediation of the payments or relationships between parties nor engages in any oversight of service provision.
- Taxis and Transportation Network Companies

Coverage: Network Companies

On-demand network company

- Primarily engaged in facilitating or presenting on-demand offers to app-based workers including, but not limited to, delivery services from one or more of the following:
 - Eating and drinking establishments,
 - Food processing establishments,
 - Grocery stores, or
 - Any facility supplying groceries or prepared food and beverages for an online order.

Coverage: Network Companies

Marketplace network company

- Facilitates pre-scheduled offers.
- Company or Customer and worker exchange information on scope and detail of services.
- Facilitates services without the company monitoring offers by geographic location, mileage, or time.
- Excludes on-demand network companies and companies that primarily provide delivery services.

Minimum Payment



Policy Goals

Provide or ensure payment of minimum wage plus expenses with a per-minute and per-mile floor for the engaged time to perform each offer.

Minimum payment

Network company must pay, or ensure that worker receives, a minimum payment amount for “engaged time” and “engaged miles.”

Engaged time = time that a worker performs services for an offer.

- For marketplace network companies, engaged time is estimated by company/customer and worker prior to the offer acceptance.

Engaged miles = miles travelled by a worker during engaged time.

- Engaged miles do not include any miles that are traveled as part of an offer facilitated by a marketplace network company.

Engaged Time ➡ Covered Work

1. Offer from “on-demand network company” OR offer with performance expected within two hours.
 - Engaged time begins upon acceptance of offer.
 - Engaged time ends upon completing performance of offer, cancellation of offer by network company/customer, or cancellation with cause by worker.

Engaged time ➔ Covered work

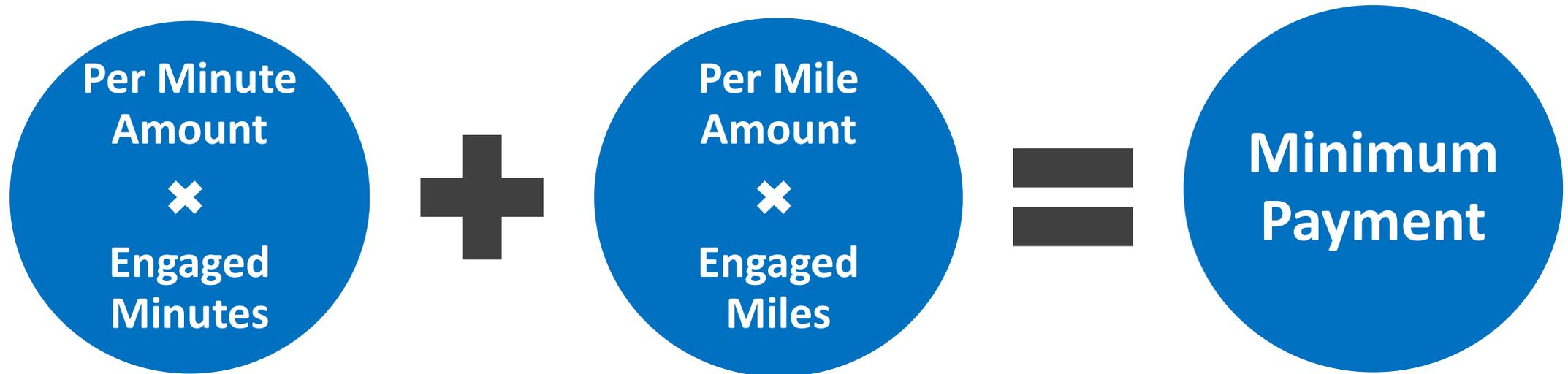
2. Marketplace Network Company Offers

- **Engaged time** for an offer is estimated by the company or customer and the app-based worker prior to offer acceptance.

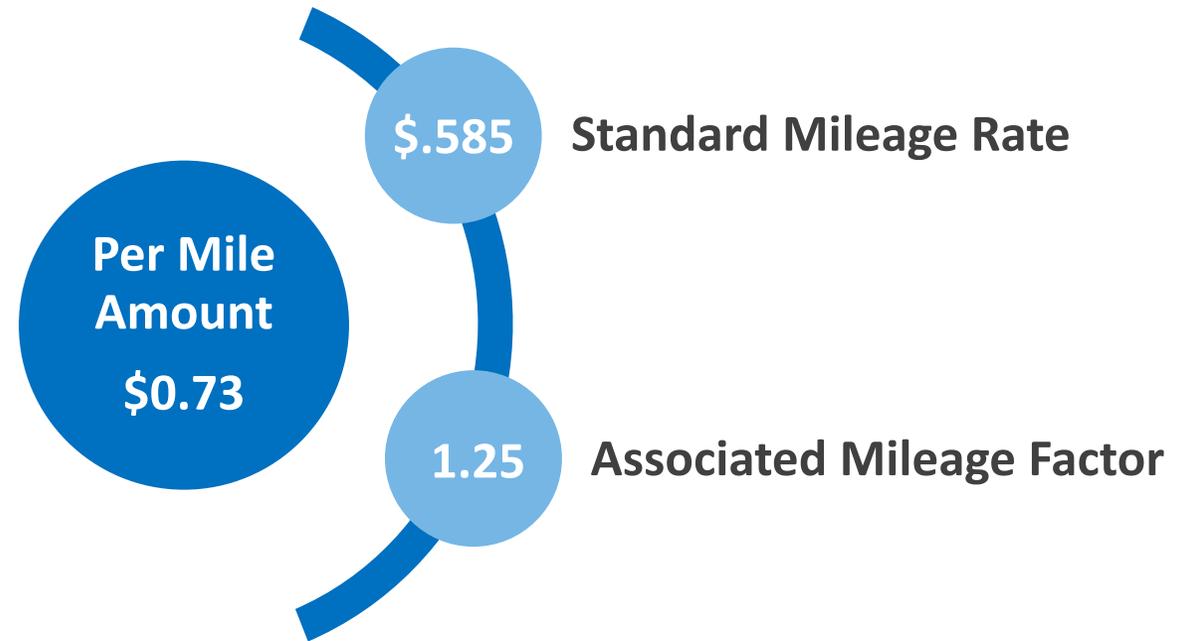
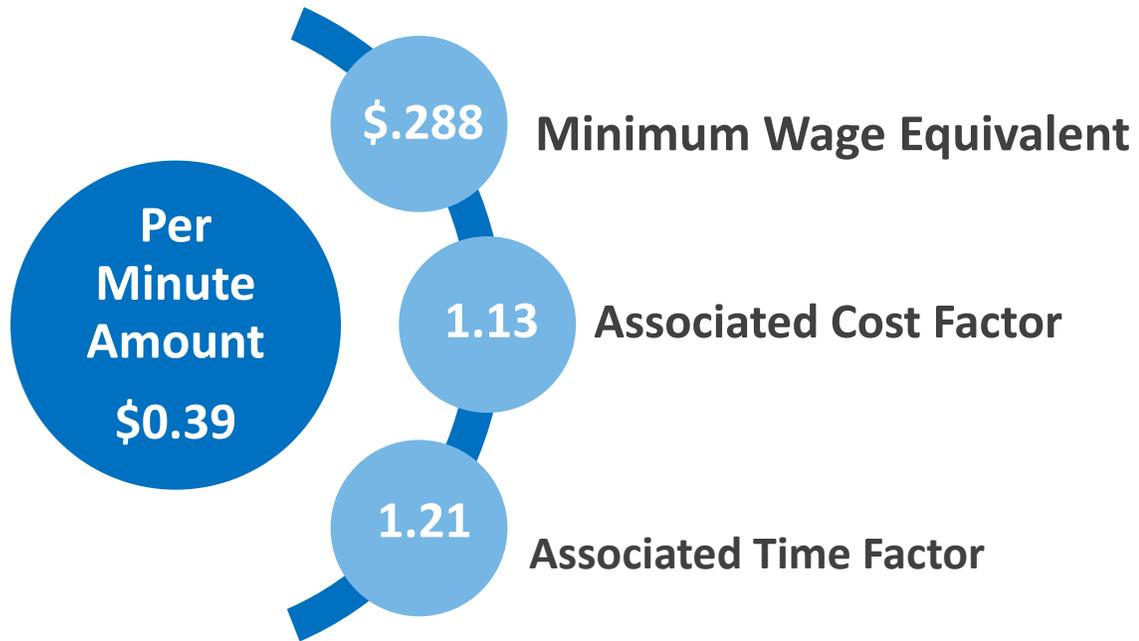
3. All other offers.

- **Engaged time begins** upon performance of offer or upon reporting to assigned location.
- **Engaged time ends** upon completing performance of offer, cancellation of offer by network company/customer, or cancellation with cause by the worker.

Minimum Payment Calculation



Minimum Payment → 2022



Minimum Wage Equivalent

Minimum Wage Equivalent for app-based workers = per-minute equivalent of the hourly minimum wage for Schedule 1 employers (large employers with more than 500 employees worldwide) under the Minimum Wage Ordinance, SMC 14.19.

- **2022 Minimum Wage for employees** = \$17.27 per hour
- **2022 Minimum Equivalent for app-based workers** = \$0.288 per minute

Associated Cost Factor

Associated Cost Factor for baseline expenses paid by app-based workers treated as independent contractors (vs. baseline expenses paid by companies).
Adjustable by OLS Director after the ordinance is in effect for three years.

Item	Amount	Notes
Pay roll tax	7.65%	Additional “employer share” of payroll taxes
State Paid Family Medical Leave	0.25%	Expense of contractor opt-in to PFML
Unemployment compensation	1.06%	Average cost of state unemployment insurance
Workers Compensation	2.84%	Average cost of state workers comp coverage
Miscellaneous expenses	1.2%	Equipment, business taxes & license fees
Total associated cost factor	113%	1.13

Associated Time Factor

Associated Time Factor for additional working time to successfully perform work. Adjustable by OLS Director after the ordinance is in effect for three years.

Item	Amount per engaged hour	Notes
Rest breaks	2.5 minutes	10 minutes of rest time per 4 hours of work
Time to review offers	3 minutes	Minimal estimate of time to review offers
Time to availability	5 minutes	Minimal estimate of time from performing offer to availability for next offer
Time for administrative tasks	2 minutes	Minimal estimate of time for managing account, recordkeeping & customer support
Total associated time factor	121%	1.21

Associated Mileage Factor

Associated Mileage Factor for miles driven while a worker is not engaged on a specific offer, but when those miles are required to successfully perform work.

Amount	Notes
For every 10 engaged miles:	Non-exclusive examples
<ul style="list-style-type: none">• 1.25 miles	Miles to travel to locations where offers are available or return to starting location when dispatched from hub
<ul style="list-style-type: none">• 1.25 miles	Miles to travel to locations for rest breaks, meal breaks, restroom access, and administrative needs.
Total associated mileage factor 125%	1.25

Minimum Per Offer Amount ➡ \$5

Minimum per offer amount

- Minimum payment per offer of at least \$5.
- Annual adjustment to reflect the rate of inflation.
- OLS Director rules could establish a “grace period” (between acceptance and cancellation of an offer) as exemption.

Transparency



Policy Goals

- *Provide workers with information to make informed choices about which offers to accept and to verify compliance with minimum pay requirements.*
- *Provide end customers with information on the nature of charges, including amounts paid to workers and retained by the company.*
- *Provide OLS with regular and routine access to aggregated and disaggregated company records.*

Transparency (1/2)

- 1. Offer information** – a network company shall provide, and/or ensure a customer provides:
 - Offer information for at least three minutes.
 - Best estimate of engaged time and mileage to complete performance.
 - Locations of work (e.g., geographic and business locations).
 - Guaranteed minimum amount of payment.
 - Physical requirements of work (e.g., flights of stairs, weight of materials).
 - Contents of unsealed online orders (e.g., network company shares info from customer).

Transparency (2/2)

2. **Electronic receipts** within 24 hours of performed and/or cancelled offers.
 - Worker receipts
 - Customer receipts
3. **Weekly statements** to workers on performed and/or cancelled offers.
4. **14-day notice** to workers before significant change(s) to payment calculation.
5. **Routine and affirmative disclosure to OLS** of aggregated and disaggregated. company records, subject to rules.

Flexibility



Policy Goals

Protect workers' flexibility, including the right to freely choose jobs and hours, while maintaining companies' provision of services to end customers and third-party businesses.

Rights for App-based Workers (1/2)

1. Right to be logged into platform for any dates and times of day.
2. Right to be logged onto platform without limitation except for health and safety restrictions.
3. Right to decide work availability.
4. Right to accept or reject any individual offer, any types of offers, and any number or proportion of offers.

Rights for App-based Workers (2/2)

5. Right to cancel offer with cause (“cancellation with cause”).
 - Offer information is substantially inaccurate.
 - Offer cannot be completed due to customer actions. (e.g., customer not present, customer fails to communicate).
 - Timely completion of the offer is unsafe or impracticable due to an unforeseen obstacle or occurrence.
 - Good faith complaint about sexual harassment or discrimination.

Effective Date

- Legislation will take effect 30 days after signing.
- Provisions of new Chapter 8.37, including requirements for minimum payment, transparency and flexibility requirements will take effect 12 months after the effective date of the ordinance.

Policy Considerations

1. Impacts to Workers, Customers, and Businesses

Legislation will likely result in changes to the costs, demand, and supply of network company services, however it is difficult to determine the scale of these impacts.

Options:

- a. Enact the legislation as proposed, and, in addition, fund a study to monitor the impacts of the regulations with the intention of modifying regulations based on the study findings; or
- b. Delay enacting legislation in order to fund a study to examine and model the potential impacts to inform regulations; or
- c. No change

2. Coverage (1/2)

Legislation creates broad definitions for company coverage, to be clarified and detailed during rulemaking, however some stakeholders would prefer that additional detail be determined by Council and codified in the legislation.

2. Coverage (2/2)

Options:

- a. Amend the legislation to clarify that offers performed by workers covered by an employee relationship while they are performing the offer are excluded; and/or
- b. Amend the legislation to clarify the definition of covered network companies to provide more detail on concepts such as “facilitate”, “present” and “intermediation”; and/or
- c. Amend the legislation to provide other clarifying language related to coverage; and/or
- d. Amend the legislation to require additional clarification through rulemaking; and/or
- e. No change.

3. Marketplace Network Companies (1/2)

Marketplace Network Companies use a model which does not track time, mileage or geography of work, which makes applying the payment standards difficult. The legislation establishes different regulations for marketplace companies, which may result in diminished worker protections, but also may not fully reflect the operational model of all marketplace network companies.

3. Marketplace Network Companies (2/2)

Options:

- a. Amend the legislation with additional regulations for marketplace network companies to strengthen and clarify requirements; or
- b. Amend the legislation to require additional clarification through rulemaking; or
- c. Amend the legislation to exempt all or some marketplace companies or offers from the minimum network payment; or
- d. No change.

4. Adjustments to Associated Factors

Associated factors reflect cost of performing app-based work and cost factor and time factor may be adjusted by the OLS Director, but they may never go below the initial rate set in this legislation. The legislation does not give express authority to the Director to adjust the mileage factor.

Options:

- a. Amend the legislation to allow associated factors to be decreased by the OLS Director if the needed components change or if the cost of those components decrease significantly; and/or
- b. Amend the legislation to allow the OLS Director to adjust the associated mileage factor; and/or
- c. No change.

5. Rulemaking

Legislation authorizes OLS Director to promulgate, revise, or rescind rules to administer and enforce standards. In some cases, rulemaking is required and in some cases rulemaking is discretionary.

Options:

- a. Amend the legislation to include specific policies rather than delegating to rulemaking; or
- b. Amend the legislation to include more specific guidelines for policies delegated to rulemaking; or
- c. Amend the legislation to change whether specific rulemaking is required or discretionary; or
- d. No change.

6. OLS Resources

OLS estimates that the total cost to implement the minimum payment standards would be \$566,900 for one-time, initial costs and \$1.2 million per year for on-going staffing and other costs. These costs cannot be absorbed by the Department.

Options:

- a. Increase funding for OLS to perform these responsibilities in the 2022 and/or 2023 Annual Budget through separate legislation; or
- b. Do not allocate additional funding and allow OLS to prioritize work as determined by the Department.

Next Steps

Next Steps

- Amendments to CB 120294 discussed in April 26 PSHS Committee
 - Please contact me about amendments **by Friday, April 15**
- Introduction of Deactivation Protections
- Introduction of Protections against Discrimination

Questions?