

CB 120580 – App-Based Worker Deactivation Rights Ordinance Proposed Amendment Packet
Public Safety & Human Services Committee – Tuesday, June 27, 2023

No.	Short title	Sponsor(s)	Pg.
1a	Narrow definition of deactivation to exclude temporary deactivations unrelated to worker's actions	Herbold & Lewis	1
1b	Narrow Definition of Deactivation	Nelson	2
2a	Broaden definition of egregious misconduct	Herbold & Lewis	4
2b	Broaden definition of egregious misconduct	Nelson	6
2c	Broaden definition of egregious misconduct	Pedersen	8
3	Moving violations – egregious misconduct	Herbold & Lewis	10
4	Revise App-based worker coverage	Nelson	12
5	Revise Network company coverage	Nelson	13
5b	Revise Network company coverage – pet care	Pedersen	16
6	Revise Deactivation requirements	Nelson	18
7	Revise Notice of deactivation requirements	Pedersen	23
8a	Revise records substantiating deactivation requirements	Herbold & Lewis	25
8b	Records substantiating deactivation requirements	Nelson	30

Note: Highlighted amendments are mutually exclusive.

Forthcoming amendments

No.	Short title	Sponsor(s)
11	Revise Internal Deactivation Challenge Procedure	Nelson
12	Revise Notice of Deactivation	Nelson
13	Revise Affirmative Production of Records	Nelson
14	Revise Notice of Rights Requirement	Nelson
15	Revise Network Company Records Requirement	Nelson
16	Revise Enforcement Procedures	Nelson

Amendment #1a Version 1 to CB 120580 – App-Based Worker Deactivation Rights

Sponsor: Councilmembers Herbold and Lewis

Amend definition of “deactivation” to exclude temporary deactivations unrelated to the worker’s actions

Effect: This amendment would revise the definition of “deactivation” to exclude restricted access for reasons unrelated to the app-based worker’s actions (e.g., platform is unavailable due to technological or maintenance issues, or inclement weather endangering the safety of app-based workers in performing services in Seattle).

For these instances, the network company would not be required to follow the deactivation requirements in CB 120580 (e.g., advance notice of deactivation, provision of records substantiating deactivation, facilitation of internal challenge procedure).

Amend Section 2 of CB 120580 as follows:

8.40.020 Definitions

For purposes of this Chapter 8.40:

* * *

“Deactivation” means the blocking of an app-based worker’s access to the worker platform, changing an app-based worker’s status from eligible to accept offers to perform services to ineligible, or other material restriction in access to the worker platform that is effected by a network company. Deactivation” does not include temporary suspensions lasting less than 48 hours when the worker platform is unavailable to an app-based worker due to reasons unrelated to the action or behavior of the app-based worker and that are clearly communicated to the app-based worker at the time of the temporary suspension. Such reasons include but are not limited to: technology, software, or network outages; account access or security issues; routine maintenance; and inclement weather endangering the safety of app-based workers in performing services in Seattle.

Amendment 1b Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Narrow definition of “deactivation.”

Effect: This amendment would revise the definition of “deactivation” to exclude the following instances:

1. Restricted access for reasons unrelated to the app-based worker’s actions (e.g., platform is unavailable due to technological or maintenance issues) and
2. Up to 48-hour temporary suspension to determine whether the app-based worker has committed egregious misconduct.

For these instances, the network company would not be required to follow the deactivation requirements in CB 120580 (e.g., advance notice of deactivation, provision of records substantiating deactivation, facilitation of internal challenge procedure).

Amend Section 2 of CB 120580 as follows:

8.40.020 Definitions

For purposes of this Chapter 8.40:

* * *

“Deactivation” means the blocking of an app-based worker’s access to the worker platform, changing an app-based worker’s status from eligible to accept offers to perform services to ineligible, or other material restriction in access to the worker platform that is intentionally effected by a network company and cannot be reversed at the discretion of the app-based worker.

1. “Deactivation” does not include temporary suspensions when the worker platform may be unavailable to an app-based worker for reasons unrelated to the action or behavior of the app-based worker, including but not limited to: technology, software, or network

Karina Bull
Public Safety Human Services Committee
June 27, 2023
D2

outages: account access or security issues: routine maintenance: or inclement weather

endangering the safety of app-based workers in performing services in Seattle.

2. “Deactivation” does not include a temporary suspension, lasting 48 hours or less, of a worker’s access to the worker platform in order to determine whether the worker has committed egregious misconduct.

* * *

Amendment #2a Version 1 to CB 120580 – App-Based Worker Deactivation Rights

Sponsor: Councilmembers Herbold and Lewis

Broaden definition of “egregious misconduct”

Effect: This amendment would broaden the definition of “egregious misconduct” to include:

1. Threats to the physical safety of network companies and animals, in addition to customers and third parties; and
2. Conduct that threatens or harasses customers or third parties

The amendment would include a wider range of behaviors and actions in the definition of “egregious misconduct.” For actions that constitute “egregious misconduct,” network companies may deactivate an app-based worker before completing an investigation and may provide notice of the deactivation on the effective date of such action (rather than 14 days prior to the date of such action). The network company would then have ten days to complete the investigation except in case of extraordinary circumstances.

Amend Section 2 of CB 120580 as follows;:

8.40.020 Definitions

For purposes of this Chapter 8.40:

* * *

“Egregious misconduct” means an action or behavior by an individual app-based worker that: (1) endangers the physical safety of the customer, ~~((or))~~ a third person, network company, or animal((,or)); (2) intentionally causes economic harm to the customer, a third person, or the network company; or (3) threatens or harasses the customer or a third person. “Egregious misconduct” includes conduct that occurs outside of an app-based worker’s provision of app-based services if the network company can prove by clear and convincing evidence that the conduct directly relates to the app-based worker’s fitness to provide app-based services. “Egregious misconduct” includes but is not limited to the following conduct in connection with

an app-based worker's provision of app-based services: assault, sexual assault, sexual harassment, communicating with a minor for immoral purposes, sexual conduct as defined in RCW 7.105.010 as amended, unlawful harassment as defined in RCW 7.105.010 as amended, unlawful imprisonment as defined in RCW 9A.40.040 as amended, solicitation of any sexual act, theft, fraud, robbery, burglary, prostitution, issuing racial slurs or verbal threats, reckless driving, or driving under the influence of alcohol or drugs(~~(; and)~~), animal cruelty, or failing to maintain a valid state driver's license. The Director may issue rules further defining what constitutes economic harm or egregious misconduct.

Amendment 2b Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Broaden definition of “egregious misconduct.”

Effect: This amendment would broaden the definition of “egregious misconduct” as follows:

1. Add to the definition:
 - a. Actions or behaviors that endanger the emotional well-being of the customer, any other person, or an animal;
 - b. Other specific criminal offenses (e.g., kidnapping, money laundering),
 - c. Actions related to cybercrimes;
 - d. Posting or transmission of certain content, such as threatening, harassing, or abusive materials;
 - e. Animal cruelty; and
 - f. Violations against a network company policy intended to protect the safety of a person or animal;
2. Require network company to “demonstrate by a preponderance of evidence” that the conduct directly relates to the app-based worker’s fitness to provide services or use the platform, rather than prove the nexus by “clear and convincing evidence.”

The amendment would include a wider range of behaviors and actions in the definition of “egregious misconduct,” notably adding actions against animals as well as persons, and would lower the evidentiary standard for showing that these actions directly relate to the app-based worker’s fitness to provide services or use the platform.

For actions that constitute “egregious misconduct,” network companies may deactivate an app-based worker before completing an investigation and may provide notice of the deactivation on the effective date of such action (rather than 14 days prior to the date of such action). The network company would then have ten days to complete the investigation except in case of extraordinary circumstances.

Amend Section 2 of CB 120580 as follows:

8.40.020 Definitions

For purposes of this Chapter 8.40:

* * *

“Egregious misconduct” means an action or behavior by an individual app-based worker that: (1) endangers the physical safety or emotional well-being of the customer or ~~((a third))~~ any other person, or an animal, or (2) ~~((intentionally))~~ causes economic harm to the customer, ~~((a third))~~ any other person, or the network company. “Egregious misconduct” includes conduct that occurs outside of an app-based worker’s provision of app-based services or use of the network company’s worker platform if the network company can demonstrate by a preponderance of evidence ~~((prove by clear and convincing evidence))~~ that the conduct directly relates to the app-based worker’s fitness to provide app-based services or to use the network company’s worker platform. “Egregious misconduct” includes but is not limited to the following conduct in connection with an app-based worker’s provision of app-based services or use of the network company’s worker platform: assault, sexual assault, sexual harassment, communicating with a minor for immoral purposes, sexual conduct as defined in RCW 7.105.010 as amended, unlawful harassment as defined in RCW 7.105.010 as amended, unlawful imprisonment as defined in RCW 9A.40.040 as amended, kidnapping, unlawful possession of a firearm, solicitation of any sexual act, registration as a sex offender, theft, fraud, robbery, burglary, money laundering, prostitution, reckless driving, ~~((or))~~ driving under the influence of alcohol or drugs; ~~((and))~~ failing to maintain a valid state driver’s license, animal cruelty, cybercrimes as defined in RCW Chapter 9A.90, as amended, or posting or transmitting content or materials that are threatening, harassing, abusive, or defamatory, or violate a network company policy intended to protect the safety of a person or an animal. The Director may issue rules further defining what constitutes economic harm or egregious misconduct.

* * *

Amendment 2c Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Pedersen

Broaden definition of “egregious misconduct.”

Effect: This amendment would broaden the definition of “egregious misconduct” as follows:

1. Add:
 - a. Actions or behaviors that endanger the physical safety of the network company or an animal;
 - b. Other specific criminal offenses (e.g., animal cruelty, hate crimes, registration as a sex offender, cybercrimes); and
 - c. Other conduct that would constitute a Class A felony offense under Title 9 or 9A RCW as amended.
2. Require network company to prove that the conduct directly relates to the app-based worker’s fitness to provide services or use of the platform by “preponderance of the evidence, a lower standard than “clear and convincing evidence.”

The amendment would include significantly more types of conduct in the definition of “egregious misconduct” and would lower the evidentiary standard for showing that this conduct directly relates to the app-based worker’s fitness to provide services or use the platform.

For allegations of “egregious misconduct,” network companies may deactivate an app-based worker before completing an investigation and may provide notice of the deactivation on the effective date of such action (rather than 14 days prior to the date of such action). The network company would then have ten days to complete the investigation except in case of extraordinary circumstances.

Amend Section 2 of CB 120580 as follows:

8.40.020 Definitions

For purposes of this Chapter 8.40:

* * *

“Egregious misconduct” means an action or behavior by an individual app-based worker that: (1) endangers the physical safety of the customer, ~~((or))~~ a third person, the network company, or an animal; or (2) intentionally causes economic harm to the customer, a third person, or the network

company. “Egregious misconduct” includes but is not limited to conduct that occurs outside of an app-based worker’s provision of app-based services or use of the network company’s worker platform if the network company can prove ~~((by clear and convincing evidence))~~ by a preponderance of the evidence that the conduct directly relates to the app-based worker’s fitness to provide app-based services or to use the network company’s worker platform.

“Egregious misconduct” includes but is not limited to the following conduct in connection with an app-based worker’s provision of app-based services or use of the network company’s worker platform: assault, sexual assault, sexual harassment, communicating with a minor for immoral purposes, sexual conduct as defined in RCW 7.105.010 as amended, unlawful harassment as defined in RCW 7.105.010 as amended, hate crimes, unlawful imprisonment as defined in RCW 9A.40.040 as amended, kidnapping, unlawful possession of a firearm, solicitation of any sexual act, registration as a sex offender, stalking, theft, fraud, robbery, burglary, money laundering, animal cruelty, cybercrimes as defined in chapter 9A.90 RCW as amended, prostitution, reckless driving, ~~((or))~~ driving under the influence of alcohol or drugs, ~~((;))~~ and failing to maintain a valid state driver’s license, and other conduct that would constitute a Class A felony offense under Title 9 or 9A RCW as amended. The Director may issue rules further defining what constitutes economic harm or egregious misconduct.

* * *

Amendment #3 Version 1 to CB 120580 – App-Based Worker Deactivation Rights

Sponsor: Councilmembers Herbold and Lewis

Clarify when moving violations can constitute egregious misconduct.

Effect: This amendment would clarify that a network company cannot determine that an app-based worker engaged in “egregious misconduct” for non-criminal moving violations unless the app-based worker has accumulated more than three at-fault accidents or non-criminal moving violations in the previous three years.

For actions that constitute “egregious misconduct,” network companies may deactivate an app-based worker before completing an investigation and may provide notice of the deactivation on the effective date of such action (rather than 14 days prior to the date of such action). The network company would then have ten days to complete the investigation except in case of extraordinary circumstances.

Amend Section 2 of CB 120580 as follows:

8.40.020 Definitions

For purposes of this Chapter 8.40:

* * *

“Egregious misconduct” means an action or behavior by an individual app-based worker that: (1) endangers the physical safety of the customer or a third person or (2) intentionally causes economic harm to the customer, a third person, or the network company. “Egregious misconduct” includes conduct that occurs outside of an app-based worker’s provision of app-based services if the network company can prove by clear and convincing evidence that the conduct directly relates to the app-based worker’s fitness to provide app-based services.

1. “Egregious misconduct” includes but is not limited to the following conduct in connection with an app-based worker’s provision of app-based services: assault, sexual assault, sexual harassment, communicating with a minor for immoral purposes, sexual conduct as

defined in RCW 7.105.010 as amended, unlawful harassment as defined in RCW 7.105.010 as amended, unlawful imprisonment as defined in RCW 9A.40.040 as amended, solicitation of any sexual act, theft, fraud, robbery, burglary, prostitution, ~~((reckless driving, or driving under the influence of alcohol or drugs; and))~~ failing to maintain a valid state driver's license, or any driving-related crime pursuant to RCW 46.61.500 through 46.61.540.

2. Egregious misconduct shall not include conduct related to non-criminal moving violations as defined by WAC 308-104-160, as amended or traffic collisions unless the app-based worker has accumulated more than three non-criminal moving violations or at-fault collisions in the previous three years.

3. The Director may issue rules further defining what constitutes economic harm or egregious misconduct.

Amendment #4 Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Narrow threshold for app-based worker coverage.

Effect: This amendment would revise the threshold for app-based worker coverage as follows:

1. Increase threshold for app-worker coverage from ten percent of completed offers in Seattle to 50 percent of completed offers in Seattle; and
2. Exclude offers cancelled with cause from the threshold calculation.

Amend Section 2 of CB 120580 as follows:

8.40.030 App-based worker coverage

A. For the purpose of this Chapter 8.40, except for Section 8.40.100, covered app-based workers are limited to those for whom, during the previous 180 days, at least ~~((ten))~~ 50 percent of their completed offers ~~((, or offers cancelled with cause,))~~ involved performing services in Seattle for a covered network company.

* * *

Amendment #5a Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Exclude marketplace network companies and certain other companies.

Effect: This amendment would exclude the following types of network companies from coverage:

1. Marketplace network companies; and
2. Network companies facilitating or presenting offers for unsupervised services with access to pets, children, or vulnerable adults, and services that primarily occur inside or around, a customer's home.

Amend Section 2 of CB XXXXXX as follows:

8.40.020 Definitions

For purposes of this Chapter 8.40:

* * *

“Marketplace network company” means a network company primarily engaged in facilitating or presenting pre-scheduled offers in which (a) the application or platform enables the prospective customer and app-based worker to exchange information about the scope and details of services to be performed, prior to the customer placing the online order for those services or the app-based worker accepting the offer; (b) the app-based worker sets their own rates; and (c) the network company does not monitor offers by mileage or time. On-demand network companies and companies that primarily provide delivery services are not marketplace network companies.

“Network company” means an organization, whether a corporation, partnership, sole proprietor, or other form, operating in Seattle, that uses an online-enabled application or platform, such as an application dispatch system, to connect customers with app-based workers,

present offers to app-based workers through a worker platform, and/or facilitate the provision of services for compensation by app-based workers.

1. The term “network company” includes any such entity or person acting directly or indirectly in the interest of a network company in relation to the app-based worker.

2. The term “network company” excludes:

a. An entity offering services that enable individuals to schedule appointments with and/or process payments to users, when the entity neither engages in additional intermediation of the relationships between parties to such transactions nor engages in any oversight of service provision;

b. An entity operating digital advertising and/or messaging platforms, when the entity neither engages in intermediation of the payments or relationships between parties to resulting transactions nor engages in any oversight of service provision;

c. An entity that meets the definition of “transportation network company” as defined by RCW 46.04.652 as amended; or

d. An entity that meets the definition of “for-hire vehicle company” or “taxicab association” as defined in Section 6.310.110.

A company that meets the definition of network company in this Section 8.40.020 and does not fall within any of the exclusions contained in this Section 8.40.020 is subject to this Chapter 8.40. (~~Network companies include marketplace network companies, as defined by Section 8.37.020~~)).

* * *

8.40.040 Network company coverage

* * *

D. For the purposes of this Chapter 8.40, covered network companies do not include any company that meets the definition of a marketplace network company.

E. For the purposes of this Chapter 8.40, covered network companies do not include any network company that is primarily engaged in facilitating or presenting offers in which the app-based worker 1) performs unsupervised services for pets, children, or vulnerable adults, as defined by RCW 7.105.010, or 2) performs services that primarily occur inside or around, a customer's home.

When determining whether a network company is "primarily engaged in facilitating or presenting offers in which the app-based worker 1) performs unsupervised services for pets, children, or vulnerable adults, as defined by RCW 7.105.010, or 2) performs services that primarily occur inside or around, a customer's home," the Agency may consider any number of factors, including but not limited to the following examples: number of offers for performing such services relative to the network company's overall offers; information from app-based workers performing offers through the application or platform; marketing or promotional materials from the network company; or other public statements from representatives of the network company.

Amendment 5b Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Pedersen

Exclude pet care service companies from coverage.

Effect: This amendment would exclude companies that are primarily engaged in facilitating or presenting offers for pet care services from coverage.

Amend Section 1 of CB 120580 as follows:

Section 1. The City Council ("Council") finds and declares that:

* * *

X. The regulation of app-based workers better ensures that such workers can perform their services in a safe and reliable manner and thereby promotes the welfare of the people and is thus a fundamental governmental function.

Y. Marketplace Network Companies that routinely offer pet care or pet services allow unique, unsupervised access to pet caretakers' clients' homes and pets that introduce a higher level of inherent risk than services like deliveries.

Z. Background checks and other safety measures are a norm and expectation in the pet care industry and are necessary for independent pet care proprietors to attract clients.

* * *

Amend Section 2 of CB 120580 as follows:

8.40.040 Network company coverage

* * *

D. For the purposes of this Chapter 8.40, covered network companies do not include any network company that is primarily engaged in facilitating or presenting offers in which the app-based worker performs pet care services.

When determining whether a network company is “primarily engaged in facilitating or presenting offers in which the app-based worker performs pet care services,” the Agency may consider any number of factors, including but not limited to the following examples: number of offers for performing pet care services relative to the network company’s overall offers; information from app-based workers performing offers through the application or platform; marketing or promotional materials from the network company; or other public statements from representatives of the network company.

Amendment #6 Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Revise pre-deactivation requirements.

Effect: This amendment would revise network company pre-deactivation requirements as follows:

1. Fair notice
 - a. Remove requirements for deactivation policy to define what constitutes a violation and how to avoid violating the policy.
 - b. Remove requirement to make deactivation policy accessible to the app-based worker three years after deactivation.
2. Reasonable policy
 - a. Reduce list of unreasonable deactivations
 - b. Add good faith requirements for app-based workers exercise of rights.
3. Investigation
 - a. Permit network company to complete the investigation on reasonably available sources of information if the app-based worker does not participate in good faith.
4. Confirmation of violation
 - a. Change evidentiary standard from “preponderance of evidence” to “preponderance of evidence reasonably available”.
 - b. Remove preponderance of evidence requirements for situations involving safety of people or animals (i.e., permit deactivation based on network company good faith judgment).
5. Proportionate penalty
 - a. Remove requirement for the penalty of deactivation to be reasonably related to the offense and account for mitigating circumstances.

Amend Section 2 of CB 120580 as follows:

8.40.050 Deactivation requirements

A. A network company shall adopt the following measures prior to deactivating an app-based worker, except as provided in subsection 8.40.050.C:

1. Fair notice of deactivation policy. A network company must inform the app-based worker in writing of the network company's deactivation policy (~~((, defining what constitutes a violation that may result in deactivation))~~). The network company's written deactivation policy must be specific enough for an app-based worker to understand what constitutes a violation (~~((and how to avoid violating the policy))~~). The deactivation policy must be available to the app-based worker in English and any language that the network company knows or has reason to know is the primary language of the app-based worker. (~~((The deactivation policy must be accessible to the app-based worker at least three years after deactivation. The Director may issue rules governing the form and description of the deactivation policy, the manner of its distribution, and required languages for its translation.))~~)

2. Reasonable policy. The policy that may lead to a deactivation must be reasonably related to the network company's safe and efficient operations. Examples of policies that are not reasonably related to the network company's safe and efficient operations include, but are not limited to:

a. Any rule or policy that would result in a deactivation based on an app-based worker's availability to work or number of hours worked, consistent with subsection 8.37.080.A.1;

b. Any policy that would result in a deactivation based on an app-based worker's acceptance or rejection of any individual offer, any types of offers, or any number or proportion of offers, consistent with subsection 8.37.080.A.2;

c. Any policy that would result in a deactivation based on an app-based worker's cancellation of an offer with cause, consistent with subsection 8.37.080.C, provided that this requirement does not apply to marketplace network companies;

d. Any policy that would result in a deactivation based on an app-based worker contacting the network company;

~~((e. Any policy that would result in a deactivation based solely on a quantitative metric derived from aggregate customer ratings of an app-based worker's performance;~~

~~((f.))~~ e. Any policy that would result in a deactivation based on statements by an app-based worker regarding compensation and/or working conditions made to customers, other app-based workers, network companies, the media, public officials, and/or the public; and

~~((g.))~~ f. Any policy that would result in a deactivation based on an app-based worker asserting their legal rights in good faith, whether in court or via procedures provided by any local, state, or federal agency~~((; and~~

~~h. Any policy that would deactivate a worker based on the results of a background check, consumer report, driver record, or record of traffic infractions, except in cases of egregious misconduct or where required by other applicable law)) .~~

3. Investigation. A network company must conduct a fair and objective investigation prior to deactivating an app-based worker. The investigation must be sufficiently thorough to justify the deactivation ~~((and demonstrate an unbiased and neutral view of facts collected)).~~ If the app-based worker does not participate or does not act in good faith in the investigation, the network company may complete the investigation based on other reasonably available sources of information.

4. Confirmation of violation. The network company must demonstrate by a preponderance of the evidence reasonably available to the network company that the alleged violation of the network company's policy or rule occurred or the network company must

demonstrate that its decision is based on a reasonable, good faith judgment to protect the safety of people or animals.

5. Consistent application. The network company must apply the rule or policy, and penalty for violations, in a consistent manner.

~~((6. Proportionate penalty. The penalty of deactivation must be reasonably related to the offense, and account for mitigating circumstances, such as the app-based worker's past work history with the network company.))~~

B. Deactivation of an app-based worker will be considered unwarranted if the action is intended to or results in discrimination or a discriminatory act.

C. Subject to the provisions of this Section 8.40.050 and rules issued by the Director, a network company may immediately deactivate an app-based worker if such action is required to comply with any applicable court order or local, state, or federal laws or regulations, or where an app-based worker has engaged in egregious misconduct.

1. In the case of allegations of egregious misconduct, the network company may deactivate the app-based worker before completing an investigation. Except in extraordinary circumstances, the ((The)) investigation shall not take longer than the later of ((ten)) 14 days or seven days after the network company receives all necessary information from the app-based worker, the customer, or third persons ((except in the case of extraordinary circumstances)). If the investigation is delayed due to extraordinary circumstances, the network company must provide the app-based worker with written notice that the investigation is delayed, the reason(s) for the delay, and the date on which the completion of the investigation is anticipated.

* * *

8.40.130 Enforcement power and duties

A. Except as provided in subsection 8.40.130.B, on or after January 1, 2025, the Agency shall have the power to administer and enforce this Chapter 8.40 and shall have such powers and duties in the performance of these functions as are defined in this Chapter 8.40 and otherwise necessary and proper in the performance of the same and provided for by law.

B. The Agency shall not have the power to enforce subsections 8.40.050.A.3, 8.40.050.A.4, 8.40.050.A.5, ~~((8.40.050.A.6,))~~ or 8.40.050.B, or Section 8.40.120. This subsection 8.40.130.B does not limit the ability of an app-based worker to seek other avenues of relief for violations of those subsections.

Amendment 7 Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Revise requirements for notice of deactivation.

Effect: This amendment would revise network company requirements for notice of deactivation.

Amend Section 2 of CB 120580 as follows:

8.40.070 Notice of deactivation

A. Except as provided under subsection 8.40.070.C or 8.40.070.D, a network company shall provide an app-based worker with notice of deactivation 14 days in advance of the deactivation, as well as upon the effective date of deactivation. The notice of deactivation shall include a written statement of the following:

1. The reasons for deactivation; including the network company's policy that was violated, pursuant to Section 8.40.050, and the specific incident or pattern of incidents that violated the deactivation policy;
2. The effective date of deactivation;
3. Any and all records relied upon to substantiate deactivation, pursuant to Section 8.40.080;
4. The length of the deactivation;
5. A description of the steps an app-based worker can take to remedy the deactivation;
6. The app-based worker's right to challenge such deactivation under this Chapter 8.40;

7. The network company's process for challenging a deactivation, pursuant to subsection 8.40.060.B, including the available methods of contact for an app-based worker to initiate a challenge; and

8. Any other items pursuant to Director's Rules.

B. The network company shall provide notice of deactivation in a form and manner designated by the Agency. The Agency may create and distribute a model notice of deactivation in English and other languages as provided by rules issued by the Director. However, network companies are responsible for providing app-based workers with the notice of deactivation required by this subsection 8.40.070, regardless of whether the Agency has created and distributed a model notice of deactivation.

C. For deactivations involving egregious misconduct, pursuant to subsection 8.40.050.C, the network company shall provide an app-based worker with the notice of deactivation no later than the effective date of deactivation.

D. If a network company notifies an app-based worker upon the occurrence of a violation of a company's deactivation policy, provides notice that future violations of the deactivation policy may result in deactivation, and provides a means for the worker to review information regarding past violations of the deactivation policy in a manner as described in subsection 8.40.080.E, were a subsequent violation of the deactivation policy to occur, the network company may provide the notice of deactivation no later than the effective date of the deactivation.

Amendment #8a Version 1 to CB 120580 – App-Based Worker Deactivation Rights

Sponsors: Councilmembers Herbold and Lewis

Revise requirements for records substantiating deactivation

Effect: This amendment would allow for summary information to be provided to the worker upon a notice of deactivation, if the reason for deactivation is based solely on complaints from a customer or third party.

Amend Section 2 of CB 120580 as follows:

8.40.080 Access to records substantiating deactivation

A. Pursuant to subsection 8.40.080.D, ((F)) upon notice of deactivation, a network company shall provide an app-based worker with the records relied upon by the network company to substantiate deactivation, unless contrary to local, state, or federal law. These records shall include but not be limited to the date, time, and location of all incidents supporting the deactivation decision, a copy of the evidence the network company considered in the deactivation decision, and a certified statement from an individual at the network company with authority to reinstate the app-based worker, attesting that these are true and accurate records to the individual's knowledge.

B. If further records substantiating a deactivation come into the network company's possession after the app-based worker is deactivated, such records shall be provided to the app-based worker as soon as practicable and no later than 14 days from the date of the network company's receipt.

C. If an app-based worker challenges a deactivation pursuant to subsection 8.40.060.B, all records of that challenge and any responses must be provided to the worker within 14 days of each submittal or response.

D. If the records substantiating deactivation involve information related to a customer or a third party and the network company reasonably believes that information could compromise the customer or third party's safety, the network company may take measures to anonymize information related to that customer or third party. If a complaint from a customer or third party is the sole basis for a deactivation, the network company may provide a summary description of the records substantiating the deactivation. The Director may issue rules regarding the measures taken to summarize the records substantiating the deactivation or anonymize information related to a customer or third party.

E. Network companies shall establish an accessible system for app-based workers to access their receipts and/or payment disclosures for each offer performed or cancelled, pursuant to subsection 8.37.070.B and Section 14.34.060. Network companies shall make this system available to the app-based worker via smartphone application or online web portal. This accessible system shall be available to an app-based worker at least three years after deactivation.

F. Network companies shall retain the records required by this Section 8.40.080 for a period of three years.

G. If a network company fails to disclose adequate records to the app-based worker as required under this Section 8.40.080, there shall be a presumption, rebuttable by clear and convincing evidence, that the network company violated this Chapter 8.40 for the relevant periods and for each app-based worker for whom records were not disclosed in a timely manner.

This presumption is substantive and necessary to effectuate the other rights provided in this Chapter 8.40.

* * *

8.40.060 Right to challenge deactivation

* * *

B. An app-based worker shall have a right to challenge the worker's deactivation through an internal deactivation challenge procedure established by the network company.

1. A network company shall create an internal deactivation challenge procedure that shall be available to the app-based worker immediately upon notice of their deactivation and up to 90 days after the app-based worker's receipt of notice.

2. The internal deactivation challenge procedure must be available to the app-based worker in writing, in a format that is readily accessible to the app-based worker, and in English and any language that the network company knows or has reason to know is the primary language of the app-based worker. The written policy describing the deactivation challenge procedure shall be available to the app-based worker at least three years after deactivation. The Director may issue rules governing the form and content of the policy describing the deactivation challenge procedure, the manner of its distribution, and required languages for its translation.

3. A network company shall review and respond to an app-based worker's challenge to deactivation within 14 days of receiving a challenge.

4. A network company's response to a worker's challenge to deactivation must include a written statement certified by an individual at the network company with authority to reinstate the app-based worker. The written statement must include one of the following:

a. Evidentiary substantiation of the deactivation pursuant to Section 8.40.080, and substantive responses to questions or claims made by the app-based worker in challenging the deactivation;

b. Any extraordinary circumstances necessitating a delayed timeline for response, and an anticipated date for a response either substantiating the deactivation or reinstating the app-based worker; or

c. A determination that the worker did not violate the network company's deactivation policy and therefore must be reinstated on the platform.

* * *

8.40.100 Notice of rights

B. The notice of rights shall provide information on:

1. The right to challenge an unwarranted deactivation through a network company's internal deactivation challenge procedure and/or through other avenues pursuant to Section 8.40.060, subject to coverage eligibility under subsection 8.40.030.A;

2. The policy describing the deactivation challenge procedure pursuant to subsection 8.40.060.B;

3. The right to 14 days' notice of an impending deactivation, except in the case of egregious misconduct;

4. The right to access any and all records relied upon by the network company to substantiate deactivation, pursuant to Section 8.40.080;

5. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 8.40; and

Jasmine Marwaha
Public Safety and Human Services Committee
June 27, 2023
D3

6. The right to file a complaint with the Agency consistent with Section 8.40.130
or bring a civil action for violation of the requirements of this Chapter 8.40.

Amendment 9b Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Revise requirements for substantiating deactivation and related fines.

Effect: This amendment would revise network company requirements for substantiating deactivations.

Amend Section 2 of CB 120580 as follows:

8.40.080 (~~((Access to records-s))~~) Substantiating deactivation

A. (~~((Upon notice of deactivation,))~~) If an app-based worker challenges a deactivation pursuant to subsection 8.40.060.B, a network company shall provide (~~((an))~~) that app-based worker with (~~((the records))~~) a description of the basis relied upon by the network company to substantiate deactivation, unless contrary to local, state, or federal law. (~~((These records shall include but not be limited to the date, time, and location of all incidents supporting the deactivation decision, a copy of the evidence the network company considered in the deactivation decision, and a certified statement from an individual at the network company with authority to reinstate the app-based worker, attesting that these are true and accurate records to the individual's knowledge.))~~)

B. If further (~~((records))~~) evidence substantiating a deactivation come into the network company's possession after the app-based worker is deactivated, (~~((such records shall be provided))~~) the network company must provide an updated summary description reflecting the new evidence to the app-based worker as soon as practicable and no later than 14 days from the date of the network company's receipt.

C. If an app-based worker challenges a deactivation pursuant to subsection 8.40.060.B, ~~((all records of that challenge and))~~ any responses must be provided to the worker within 14 days of each submittal or response.

D. If the ~~((records substantiating))~~ evidence supporting deactivation ~~((involve))~~ includes information related to a customer or a third party and the network company ~~((reasonably))~~ believes that information could compromise the customer or third party's safety or privacy rights, the network company may take measures to anonymize the summary description of the evidence or exclude information related to that customer or third party, including by omitting potentially identifying information from its summary description or to otherwise protect the safety or privacy rights of the customer or third party. The Director may issue rules regarding the measures taken to anonymize information related to a customer or third party.

E. Network companies shall establish an accessible system for app-based workers to access their receipts and/or payment disclosures for each offer performed or cancelled, pursuant to subsection 8.37.070.B and Section 14.34.060, provided that this requirement does not apply to marketplace network companies. Network companies shall make this system available to the app-based worker via smartphone application or online web portal. This accessible system shall be available to an app-based worker at least three years after deactivation.

F. Network companies shall retain the ~~((records))~~ summary descriptions required by this Section 8.40.080 for a period of three years.

G. ~~((If a network company fails to disclose adequate records to the app-based worker as required under this Section 8.40.080, there shall be a presumption, rebuttable by clear and convincing evidence, that the network company violated this Chapter 8.40 for the relevant periods and for each app-based worker for whom records were not disclosed in a timely manner.~~

~~This presumption is substantive and necessary to effectuate the other rights provided in this Chapter 8.40-))~~ This Section 8.40.080 does not apply to marketplace network companies.

* * *

8.40.060 Right to challenge deactivation

* * *

B. An app-based worker shall have a right to challenge the worker's deactivation through an internal deactivation challenge procedure established by the network company.

1. A network company shall create an internal deactivation challenge procedure that shall be available to the app-based worker immediately upon notice of their deactivation and up to 90 days after the app-based worker's receipt of notice.

2. The internal deactivation challenge procedure must be available to the app-based worker in writing, in a format that is readily accessible to the app-based worker, and in English and any language that the network company knows or has reason to know is the primary language of the app-based worker. The written policy describing the deactivation challenge procedure shall be available to the app-based worker at least three years after deactivation. The Director may issue rules governing the form and content of the policy describing the deactivation challenge procedure, the manner of its distribution, and required languages for its translation.

3. A network company shall review and respond to an app-based worker's challenge to deactivation within 14 days of receiving a challenge.

4. A network company's response to a worker's challenge to deactivation must include a written statement certified by an individual at the network company with authority to reinstate the app-based worker. The written statement must include one of the following:

a. Evidentiary substantiation of the deactivation pursuant to 8.40.080, and substantive responses to questions or claims made by the app-based worker in challenging the deactivation;

b. Any extraordinary circumstances necessitating a delayed timeline for response, and an anticipated date for a response either substantiating the deactivation or reinstating the app-based worker; or

c. A determination that the worker did not violate the network company's deactivation policy and therefore must be reinstated on the platform.

* * *

8.40.100 Notice of rights

B. The notice of rights shall provide information on:

1. The right to challenge an unwarranted deactivation through a network company's internal deactivation challenge procedure and/or through other avenues pursuant to Section 8.40.060, subject to coverage eligibility under subsection 8.40.030.A;

2. The policy describing the deactivation challenge procedure pursuant to subsection 8.40.060.B;

3. The right to 14 days' notice of an impending deactivation, except in the case of egregious misconduct;

4. The right to access ~~((any and all records))~~ a summary description of the evidence relied upon by the network company to substantiate deactivation, pursuant to Section 8.40.080;

5. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 8.40; and

6. The right to file a complaint with the Agency consistent with Section 8.40.130 or bring a civil action for violation of the requirements of this Chapter 8.40.

* * *

8.40.170 Remedies

* * *

E. The Director is authorized to assess fines for a violation of this Chapter 8.40 and may specify that fines are due to the aggrieved party rather than due to the Agency. The Director is authorized to assess fines as follows:

Violation	Fine
Failure to comply with deactivation requirements under Section 8.40.050	\$622.85 per aggrieved party
Failure to provide app-based worker with an internal deactivation challenge procedure under Section 8.40.060	\$622.85 per aggrieved party
Failure to provide app-based worker with a notice of deactivation under Section 8.40.070	\$622.85 per aggrieved party
Failure to provide app-based worker with ((records)) <u>a summary description of the evidence</u> relied upon by the network company to substantiate the deactivation under Section 8.40.080	\$622.85 per aggrieved party
((Failure to provide certified statement attesting to records provided to substantiate deactivation under Section 8.40.080	\$622.85 per aggrieved party))

* * *