

April 24, 2024

MEMORANDUM

To: Government, Accountability, and Economic Development Committee
From: Jasmine Marwaha and Karina Bull, Analysts; Ben Noble, Director
Subject: CB 120775: App-Based Worker Minimum Payment Revisions Ordinance

On April 25, 2024, the Government, Accountability, and Economic Development Committee (Committee) will discuss [Council Bill \(CB\) 120775](#), the App-Based Worker Minimum Payment (ABWMP) Revisions Ordinance. This memo provides an overview of CB 120775, describes potential impacts, and identifies issues for Councilmembers to consider in reviewing the bill.

Background

Network companies use online-enabled applications or platforms to connect customers with workers, present offers to workers, and/or facilitate the provision of services by app-based workers. App-based workers provide a variety of valued services for the community (e.g., on-demand food delivery, pre-scheduled tasks) in response to offers facilitated or presented by network companies.

Network companies operate on business models that treat app-based workers as independent contractors who are not classified as employees and therefore are not covered by labor standards established by federal, state, and local laws. Network companies also typically use algorithms to manage core aspects of work, such as pay rates, access to the platform, and access to individual offers.¹

In 2022, the Council passed the ABWMP Ordinance, [Ordinance 126595](#), which established minimum payment, transparency, and flexibility protections for app-based workers who work for network companies. The ABWMP Ordinance went into effect on January 13, 2024, and is implemented by the Office of Labor Standards (OLS). Ordinance 126595 is codified as [Chapter 8.37](#) in the Seattle Municipal Code (SMC).

In response to increased costs associated with the new labor standard, some network companies subsequently increased consumer fees. Council has heard from workers, customers, restaurants, and network companies (through public testimony, written correspondence, and other communications) on the immediate impacts of the new requirements, including but not limited to (1) the increased cost of food delivery, (2) fewer orders, (3) longer wait times for workers between orders, and (4) overall reduced earnings by both restaurants and workers. Some workers also reported steady earnings, but with fewer offers.

¹ FTC Policy Statement on Enforcement Related to Gig Work, September 2022, https://www.ftc.gov/system/files/ftc_gov/pdf/Matter%20No.%20P227600%20Gig%20Policy%20Statement.pdf.

CB 120775

CB 120775 would amend the ABWMP Ordinance, SMC 8.37, with the intention of providing a guaranteed minimum rate of compensation for app-based workers, while reducing labor and administrative costs for network companies, and incentivizing network companies to lower their consumer fees. The sponsor's expectation is that with lower fees the total volume of demand will increase, providing additional economic opportunities and benefits for all involved – app-based workers, restaurants and other comparable businesses, the network companies, and the consumers who use the delivery services. The legislation further amends the transparency, flexibility, and enforcement provisions of the ABWMP Ordinance, with the intent of further reducing costs by easing the regulatory burden on network companies.

Pay Standard

The current ABWMP Ordinance requires a minimum network company payment of \$0.44 per minute and \$0.74 per mile for time spent and miles traveled while performing an offer. These amounts incorporate the current Seattle minimum wage for employers and the Internal Revenue Service (IRS) standard mileage expense rate, as well as multipliers to account for additional expenses and time associated with app-based work, such as payroll taxes (i.e., Social Security, Medicare), on-call time, and rest breaks, among other factors.

CB 120775 would remove the associated cost, time, and mileage factors from the pay standard, and reduce the base mileage rate, resulting in a proposed minimum pay requirement of \$19.97 per hour (or \$0.33 per minute), and \$0.35 per mile for engaged time.² This gross pay requirement intentionally corresponds to Seattle's current minimum wage for employees. Although, as noted above, app-based workers pay tax obligations and face operational factors that impact their net compensation. The lower mileage rate is intended to reflect the fact that the standard IRS mileage rate may overstate the vehicle costs paid by app-based workers.

Overall, CB 120775 includes the following proposed changes related to pay:

Current requirement	Proposed change
131% minimum wage plus \$0.74 per mile for each offer.	100% minimum wage plus \$0.35 per mile for each offer.
Pay is calculated on a <i>per offer basis</i> , at a minimum of \$5 per offer.	Pay would be calculated <i>over a network company earnings period</i> , and minimum pay per offer would be eliminated.
Any pay incentives and bonuses ³ must be offered on top of the minimum pay standard.	Incentives and bonuses would count toward achieving the minimum payment standard.

² "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.

³ Incentives and bonuses refer to additional sums of money paid to an app-based worker upon completion of specific tasks presented by the network companies, including but not limited to completing performance of a certain number of offers, completing performance of a certain number of consecutive offers, completing performance of an offer subject to a price multiplier or variable pricing policy, making oneself available to accept offers in a particular geographic location during a specified period of time, or recruiting new app-based workers.

Current requirement	Proposed change
Offers cancelled “with cause” ⁴ by the app-based worker are paid at the minimum network company payment standard.	No payment for offers cancelled with cause, unless a customer changes drop-off location after item is picked up, resulting in five or more minutes of additional engaged time
Engaged time (paid time) calculated for on-demand offers (where performance is expected within 2 hours of acceptance) begins upon offer acceptance.	Engaged time (paid time) for on-demand offers would be calculated when worker is “en route” ⁵ instead of upon acceptance, if performance is not expected immediately upon acceptance
A network company can make deductions from pay when the worker authorizes the deduction in writing, for a lawful purpose and for the benefit of the worker. Network company cannot derive financial profit from the deduction.	Retains deduction requirements and provides express permission for network company to deduct a fee of up to \$5 if an app-based worker elects to get paid in advance of the end of the earnings period.

Transparency

The law currently requires the network company to present offers to app-based workers with certain up-front information, intended to help workers better assess whether they want to accept or reject the offer. CB 120775 proposes the following changes to up-front disclosure requirements:

- Retain estimate of engaged time, estimated engaged miles, approximate geographic location of work, guaranteed minimum payment for offer, names of businesses for relevant offers; and
- Remove specific pickup and drop-off locations, amount of tip (if already indicated by customer), known information about physical labor requirements and unsealed contents.

In addition to up-front disclosures of the offer, the current law contains receipt and record transparency requirements. CB 120775 proposes the following changes to those requirements:

- Reduce time for app-based worker to review offers from two minutes to 45 seconds;
- Extend time for network companies to provide workers with a receipt from 24 hours to 48 hours after offer performance;
- Remove certain requirements from worker receipts, including the method used to calculate payment and pick-up/drop-off locations for deliveries;

⁴ The current APWMP Ordinance allows an app-based worker to cancel an offer with cause for the following reasons: (1) the offer was substantially inaccurate; (2) the offer cannot be completed because customer is not present or fails to communicate; (3) an unforeseen obstacle or occurrence; or (4) due to sexual harassment or discrimination during performance of the offer.

⁵ “En route” is defined in the legislation as “traveling to the location or locations where work in furtherance of an accepted offer will occur.”

- Permit removal of geographic location of order if information related to a user account that has been deleted at the request of the user;
- Remove requirement to provide customers with a receipt after an online order⁶; and
- Remove OLS's ability to require affirmative records production from companies for purposes of administration, evaluation, and enforcement of the ABWMP Ordinance.

Flexibility

The current law protects an app-based workers' flexibility in their terms of work, including choosing their availability, choosing which offers to accept or reject, and canceling offers with cause without being subjected to "adverse action" by the network company. Prohibited "adverse actions" include: limiting hours of availability, reducing compensation; garnishing tips or gratuities; temporarily or permanently denying or limiting access to work, incentives, or bonuses; offering less desirable work; terminating; deactivating; threatening; penalizing; retaliating; engaging in unfair immigration-related practices; or filing a false report with a government agency.

CB 120775 would remove the definition of adverse action and permit any action by a network company except for terminating a worker's contract from the network company in response to an app-based worker limiting hours of availability, rejecting offers, or cancelling offers with cause.

Additionally, CB 120775 would allow the network company to limit worker access to the app for any reason if the network company discloses the reason to the worker. Currently, a network company cannot limit an app-based worker's access to the company's platform except under certain instances of a worker's deactivation or to limit hours of consecutive work time to protect worker and public safety.

Enforcement Provisions

CB 120775 includes the following changes to the current law's enforcement provisions:

- Modify anti-retaliation protections, eliminating presumptions in [SMC 8.37.120.D and 8.37.120.E](#) that would otherwise establish retaliation;
- Modify OLS rulemaking authority, clarifying the scope of permissible rules;
- Eliminate private right of action, which allows workers additional options for redress if OLS cannot pursue enforcement due to capacity or other reasons; and
- Establish a cure period for certain "non-willful" violations, which would prevent OLS from assessing penalties, fines, or other costs for those violations.

⁶ Requirements for customer receipts currently include the date and time of the order's completion and the total amount paid to the network company, itemizing all charges, fees, and tips.

Issue Identification

For some of the issues identified below, there are multiple options presented to illustrate a range of approaches to a particular issue. Some of these options could be combined and some are mutually exclusive. If a councilmember is interested in bringing an amendment to address one or more of the issues identified below, Central Staff will work to ensure that any proposed amendment addresses the councilmember's policy intent.

1. Network Company Consumer Fees and Non-Economic Regulatory Changes

CB 120775 is intended to lead to reduced consumer fees instituted by network companies by reducing labor and administrative costs for those companies and subsequently address the impacts workers, customers, restaurants, and network companies have raised to the Council through public testimony, written correspondence, and other communications. Reduced fees could increase consumer demand for these services, potentially benefiting restaurants relying on app-based delivery to support their business and price sensitive customers who could have more access to app-based services.

However, even with the proposed amendments, CB 120775 may result in higher costs to operate in Seattle than the network companies faced before the ABWMP Ordinance went into effect. Network companies could still choose to offset the cost of regulation by raising costs and may retain consumer fees. Without additional analysis and access to data from the network companies, Central Staff does not have sufficient information to understand specifically how the current regulations impact labor and administrative costs, and correspondingly how the proposed legislation would result in changes to the costs, demand, and supply of network company services.⁷

Additionally, there is not a clear link between certain proposed changes in CB 120775 and network company costs that led to increased consumer fees. These proposed changes in CB 120775 include, but are not limited to:

- Removing up-front disclosure of tips to workers
- Removing requirements for customer receipt
- Removing affirmative records production for evaluation
- Changing anti-retaliation and enforcement provisions that are standard in other City labor standards. While they are not employees, the existing law purposefully extended these protections to app-based workers.

⁷ Central Staff has reviewed orders on various network company platforms that have incurred vastly different consumer fees that do not seem directly related to labor costs. For example, one order of \$133 worth of food incurred an additional \$52 in total fees. Another delivery order of \$63 with similar distance incurred \$18 in fees. The estimated minimum payment in both those cases would have been approximately \$18-\$19.

Options:

- a. Amend the proposed legislation to only revise economic provisions of the ordinance that can be directly attributed to reducing labor costs per offer;
- b. Delay enacting legislation to conduct a study to examine and model the potential impacts to inform regulations⁸;
- c. Delay enacting legislation to establish and hear recommendations from a stakeholder group comprised of network companies, workers, customers, and restaurants;
- d. Enact the legislation as proposed, and, in addition, conduct a study to monitor the impacts of the regulations with the intention of modifying regulations based on the study findings⁹;
- e. Retain affirmative records production requirement in the current law (see Issue #6) if fees are above a certain percentage of the online order cost, to evaluate the impact of labor standards on consumer fees; or
- f. No change.

2. Worker Earnings

CB 120775 would amend the ABWMP Ordinance with the intention of reducing overall labor and administrative costs for network companies, and incentivizing network companies to lower their consumer fees, while still ensuring a minimum level of compensation for app-based workers. If the legislation achieves its intended impact of reducing consumer fees and thereby increases consumer demand for online orders, the proposed pay standard, although lower than current requirements, has the potential to increase worker earnings as compared to the period before implementation of the ABWMP Ordinance.¹⁰

However, if the premise of the ABWMP Ordinance is that app-based workers should earn wages akin to the minimum wage for employees, then omitting much of the pay for expenses and on-call time could result in net compensation below minimum wage for app-based workers.

The associated cost factor, associated time factor, and associated mileage factor, which are all proposed to be eliminated, were intended to reflect the costs incurred and time spent performing app-based work outside of the time and costs spent actively responding to

⁸ A study could be facilitated by the affirmative production of records requirement in the current law (if it is retained, see Issue #6) and/or funded by separate legislation to amend the 2024 Adopted Budget (e.g., 2024 Mid-year Supplemental Ordinance will be considered in the Select Budget Committee in mid- to late-summer) or additional appropriations in the 2025 Budget funded by projected revenue from the network company fee ([Ordinance 126953](#)).

⁹ *Id.*

¹⁰ A [Working Washington survey](#) administered in 2021 and 2022 found that the average hourly pay for restaurant delivery was \$10.01 per hour for restaurant delivery and \$12.75 per hour for grocery without accounting for non-mileage expenses. Accessed online at [Seattle's App Gap - May 2022.pdf \(dropbox.com\)](#) on April 23, 2024. A [Drive Forward survey](#) administered in 2021 found that pre-tip earnings were around \$15-\$27 per hour and workers earned most of their profit on tips. Accessed online at <https://seattle.legistar.com/View.ashx?M=F&ID=12806686&GUID=7EC40CB5-2D16-48CB-BF90-745FBCA057E1> on April 23, 2024.

offers (e.g., on-call time waiting for offers, “employer-side” payroll taxes and contributions to the Washington state paid family medical leave program, equivalent costs for state unemployment and workers compensation coverage, equipment costs, mileage/time for travelling to rest breaks, and mileage/time for travelling back to hubs to accept offers).

Other jurisdictions compensate app-based workers for expenses and on-call time at rates that are lower than the current ABWMP standard, but significantly higher than CB 120775.

For example, in California, [Proposition 22](#) requires network companies to pay app-based delivery workers 120 percent of the local minimum wage¹¹ for active delivery time, \$0.35 per mile, healthcare subsidies for those working an average of at least 15 hours per week, occupational accident insurance, and automobile insurance.¹²

In New York City (NYC), [local law](#) requires restaurant delivery network companies to pay app-based delivery workers a minimum wage that covers specific expenses and on-call time. The [NYC minimum wage requirement is \\$19.56 per hour for all time a worker is logged into the app](#), an amount that incorporates \$2.33 per hour to account for employer-side payroll taxes, workers compensation, and e-bike costs. Alternatively, NYC allows food delivery apps to pay only for active delivery time, at a rate of \$29.93 per hour of time spent on a delivery.

Options:

- a. Retain the current associated cost factor, associated time factor, associated mileage factor, and/or the IRS standard mileage rate;
- b. Increase the proposed payment standard to cover more worker expenses and on-call time, but at a rate lower than the current law;
- c. Amend definition of “engaged time” to cover all time worked, including on-call time;
- d. Consistent with NYC’s law, provide a pay structure that allows network companies to choose a higher or lower pay standard based on whether they pay for on-call time;
- e. Delay enacting legislation to conduct a study¹³ examining current worker earnings, on-call time, and expenses, which would inform a minimum payment standard that could more assuredly approximate minimum wage accounting for expenses and on-call time;
- f. Enact the legislation as proposed, and, in addition, conduct a study¹⁴ to monitor the impacts of the regulations on worker earnings with the intention of modifying regulations based on the study findings; or
- g. No change.

¹¹ While California’s state minimum wage (\$16.00 per hour) is lower than Seattle, there are local jurisdictions with minimum wages approaching Seattle. For example, West Hollywood’s minimum wage is currently \$19.08 (and the resulting app-based driver minimum wage standard is \$22.90). See [UC Berkeley Labor Center California City and County Current Minimum Wages \(01/01/24\)](https://laborcenter.berkeley.edu/inventory-of-us-city-and-county-minimum-wage-ordinances/#s-2). Accessed online at <https://laborcenter.berkeley.edu/inventory-of-us-city-and-county-minimum-wage-ordinances/#s-2> on April 23, 2024.

¹² Payment for healthcare and insurance is noteworthy as the United States (US) Bureau of Labor Statistics reports that delivery drivers are among workers with the most dangerous occupations in the US (See [Civilian occupations with high fatal work injury rates](#), US Bureau of Labor Statistics, 2022; [Occupational Employment and Wages: 53-3031 Driver/Sales Workers](#), 2023).

¹³ See Footnote 8.

¹⁴ See Footnote 8.

3. Earnings Period and Incentives

CB 120775 would require the minimum payment standard to be met for all engaged time over the course of a network company “earnings period,” rather than for each offer, and allow incentives and bonuses to count toward the minimum pay requirement. These changes would allow network companies to pay workers lower rates for each offer and then true-up payment at the end of each pay period to ensure that they comply with the law. This change could result in reduced labor costs per online order and may lead network companies to reduce consumer fees per offer.

Because CB 120775 would allow, but not require, incentives and bonuses to be used to meet the minimum pay standard over the course of the pay period, workers may not have clarity about whether incentives and bonuses would count above the minimum pay requirement, potentially resulting in less transparency and predictability at the end of the earnings period, and a lower likelihood of incentives and bonuses adding to higher earnings than already required by law.

Options:

- a. Require network companies to meet the minimum payment standard per offer;
- b. Require network companies to pay incentives and bonuses on top of minimum payment; or
- c. No change.

4. Customer Receipts

The current law requires network companies to provide customers a receipt within 24 hours of the completion of the online order, which includes the date and time of the order’s completion and the total amount paid to the network company, itemizing all charges, fees, and tips. This requirement is intended to advance transparency goals regarding fees and charges for the consumer.

The proposed legislation would remove the requirement for customer receipts, which could undermine consumer transparency and make it difficult for a consumer to understand how consumer fees, charges, and tips comprise their total order amount. It is possible that network companies will still provide this information to consumers regardless of the requirement, but the Committee may want to consider retaining requirements for consumer receipts in CB 120775 to provide greater assurances of consumer transparency.

Options:

- a. Retain requirements for customer receipts that currently exist in the law; or
- b. No change

5. Flexibility

The current law prohibits network companies from taking any “adverse action”¹⁵ against app-based workers who limit hours of availability, reject individual offers, or cancel offers with cause. CB 120775 would allow network companies to take any action against workers, up to terminating a contract (i.e., permanently blocking access to the platform), in response to workers exercising flexibility options. This is a broad standard that could reduce app-based workers’ flexibility to set their own working conditions as independent contractors.

Moreover, the [App-Based Worker Deactivation Rights Ordinance](#) (SMC Chapter 8.40), which will go into effect January 1, 2025, prohibits network companies from instituting a policy that would deactivate a worker for exercising these flexibility options. Deactivation includes restricting access to the platform, but is not necessarily a permanent termination of the worker’s contract.¹⁶ The Committee may want to consider harmonizing CB 120775 with Chapter 8.40, to prohibit a network company from deactivating workers who limit their availability or their offer acceptances. Such harmonization would simplify outreach and enforcement of this provision.

Additionally, CB 120775 proposes to allow network companies to block a worker’s access to the platform for any reason, provided they disclose the reason to the worker. This could allow network companies to increase the efficiency of app-based workers by reducing on-call time and increasing the number of offers completed by workers who are able to access the platform, thereby increasing overall earnings. However, when combined with the other proposed changes to the flexibility provisions, this could result in workers being penalized for limiting their availability or acceptance of offers. The Committee may wish to consider clarifying that a network company can restrict an app-based worker from accessing the app only for reasons unrelated to the actions of the app-based worker. This clarification would also provide consistency with the App-Based Worker Deactivation Rights Ordinance.

Options:

- a. Retain requirement in current law that prohibits network companies from taking an “adverse action” against an app-based worker for exercising flexibility options;
- b. Prohibit network companies from “deactivating” an app-based worker for exercising flexibility options, harmonizing requirements with SMC Chapter 8.40;
- c. Clarify that a network company may only restrict app-based workers from logging into the app for reasons unrelated to a worker’s acceptance rate or availability, consistent with the SMC 8.40; or
- d. No change.

¹⁵ As discussed earlier in this memo, currently prohibited “adverse actions” include: limiting hours of availability, reducing compensation; garnishing tips or gratuities; temporarily or permanently denying or limiting access to work, incentives, or bonuses; offering less desirable work; terminating; deactivating; threatening; penalizing; retaliating; engaging in unfair immigration-related practices; or filing a false report with a government agency.

¹⁶ “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 affected 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. [See SMC 8.40.020.](#)

6. Affirmative Production of Records

CB 120775 would remove the OLS Director's authority to collect aggregated or disaggregated records¹⁷ from network companies to administer, evaluate, and enforce the ordinance; OLS would retain authority to require records from individual network companies during enforcement actions. In the current law, OLS's regular collection of records on an industry-wide basis is intended to inform and assess policy and administration goals.

Other laws regulating app-based platforms include regular data reporting requirements. For example, the City requires Transportation Network Companies and short-term rental platforms to report on their operations in Seattle on a quarterly basis.¹⁸ NYC requires network companies to meet monthly reporting requirements to evaluate NYC's app-based delivery pay standard.¹⁹

On April 1, 2024, NYC issued a [press release](#) with preliminary analysis of network company data showing higher earnings for app-based delivery workers, more efficient use of app-based workers time, and no evidence of negative impacts on consumers and restaurants. Council may wish to consider retaining a requirement for network companies to affirmatively produce records in order for the City to be able to conduct similar analyses.

Options:

- a. Retain OLS Director's authority in current law to collect all identified records in the current ABWMP Ordinance to administer, evaluate, and enforce the ordinance;
- b. Authorize the OLS Director to collect a narrow set of records from network companies to administer, evaluate, and enforce the ordinance; or
- c. No change.

7. Penalties

CB 120775 would restrict the OLS Director from imposing civil penalties/fines on network companies for certain non-willful violations (i.e., violations that do not result in unpaid compensation or are the result of retaliation) if the network company cures the violation within 30 days of receiving notice of the alleged violation, or longer if the network company request additional time for good cause. This willful standard and good cause provision could apply to many investigations, including those involving long periods of non-compliance, potentially undermining incentives for compliance, creating additional work for OLS, and limiting remedies for workers.

¹⁷ Records may include but are not limited to: those related to availability of offers; the amount of engaged time and engaged miles; the amount of on-call time; the number of app-based workers; and the amount app-based worker compensation including network company payments, bonuses, incentives, and tips.

¹⁸ See [SMC 6.310.540](#) and [SMC 6.600.060](#).

¹⁹ See [NYC Requirements for Delivery Apps: Uniform Reporting Guide for Third-Party Delivery Services and Third Party Courier Services](#). Accessed online at <https://www.nyc.gov/site/dca/businesses/Delivery-Apps-Requirements.page> on April 23, 2024.

The current law does not *require* the OLS Director to distinguish between willful and non-willful violations. However, there are provisions authorizing discretion to waive/mitigate penalties based on timely payment of the full remedy due to the aggrieved workers and/or after consideration of the factors leading to the violation (e.g., extent of the network company's culpability, substantive and technical nature of the violations, circumstances of each situation.)²⁰

This amendment would remove the OLS Director's authority to waive or mitigate penalties on a case-by-case basis and would impose a more uniform standard based on the type of violation and whether the network company actions meet a willful standard. Under a willful standard²¹, inadvertent technical errors would likely not be considered violations that incur penalties. As much of app-based work is based on algorithms, this amendment could have a notable impact:

- Reducing the scope and application of penalties could result in those consequences functioning as the cost of doing business rather than as deterrents;
- Requiring OLS to prove that a violation is willful as a condition for assessing penalties and determine whether a network company has adequately cured a violation would create additional work for staff and extend the time to achieve resolutions, thereby reducing the efficiency of the investigative process;
- Limiting penalties could reduce financial remedies paid to workers who are affected or harmed by violations regardless of the network company's intent. When enforcing labor standards, the OLS Director regularly uses the authority to assess penalties to workers (rather than the City) as a mechanism to provide workers with remedies for violations that do not require backpay (e.g., failure to provide up-front information on offers, receipts, and/or weekly pay statements).

Options:

- a. Retain OLS Director's authority in current law to assess civil penalties/fines for all violations;
- b. Require the OLS Director to assess no more than a certain percentage of civil penalties/fines (e.g., no more than 50 percent of the amount) for certain non-willful violations that are cured within a reasonable time; or
- c. No change.

²⁰ See [SMC 8.37.070.A.4](#) and [SMC 8.37.070.A.5](#).

²¹ Under state law, "willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute (see [RCW 49.48.082](#))

8. Retaliation

CB 120775 would modify anti-retaliation protections of the current law. SMC subsections [8.37.120.D](#) and [8.37.120.D E](#) establish a presumptions that a network company has retaliated against a worker for exercising their rights under the ordinance in certain circumstances, unless the network company shows otherwise. These presumptions are intended to address the information asymmetry that exists when hiring entities take actions against workers, and are considered strong measures to protect workers who come forward to assert or inquire into labor protections. These presumptions are reflected in the City's other labor standards, and statewide labor protections. The Committee may wish to consider adding back in these anti-retaliation protections.

Options:

- a. Retain retaliation presumptions in current law (i.e., SMC subsections 8.37.120.D and 8.37.120.D E); or
- b. No change.

9. Private Right of Action

CB 120775 would remove the right of app-based workers to file individual or class civil actions for violations of the ABWMP Ordinance. Eliminating this provision would reduce enforcement options for workers, diverge from most of the City's labor standards, and could result in additional enforcement work for OLS.

A private right of action is included in 17 of 19 of the City's worker protection laws (i.e., all labor standards except for the [Fair Chance Employment Ordinance](#) and the [Commuter Benefits Ordinance](#)). The private right of action allows OLS to prioritize its investigations while giving workers other options if OLS can't pursue enforcement due to capacity or other reasons.

For reference, NYC's app-based delivery worker pay standard establishes a private right of action. California's pay standard under Proposition 22 does not include enforcement provisions; enforcement is presumably restricted to state agencies.

Options:

- a. Authorize private right of action for violations; or
- b. No change.

10. Implementation Costs and Financial Considerations

Implementing CB 120775 would likely have financial impacts for OLS, as the office could incur additional costs to revise rules, outreach materials, and enforcement procedures. To a lesser extent, there could be impacts on the City Attorney's Office (LAW) for advising OLS on revised rules and enforcement procedures.

Central Staff is prepared to work with OLS and the City Budget Office (CBO) to develop estimates of these costs, including the impact of additional work on OLS's existing programs and priorities, whether the costs are short- or long-term, and whether the costs could be absorbed within OLS's existing operations.²²

Central Staff is unlikely to receive and analyze this information prior to Council voting on CB 120775.

Options:

- a. Request that Central Staff works with CBO, OLS, and LAW to determine if additional resources are needed, and if such resources will be requested in the 2024 Mid-year Supplemental Budget ORD or proposed for the 2025 budget.
- b. No change.

11. Racial Equity Considerations

Black, Indigenous, and People of Color (BIPOC) workers face unique barriers to economic insecurity and disproportionately work in low-wage jobs with insecure working conditions.²³ In this context, the City established the ABWMP Ordinance to change the underlying systems creating race-based disparities in our community by strengthening job security, increasing income, and improving terms and conditions of work for app-based workers.

According to the most recently available data from the Bureau of Labor Statistics, Black and Latinx workers are overrepresented among app-based workers, comprising almost 42 percent of app-based workers but less than 29 percent of the overall labor force.²⁴ Thus, the impacts of the current law or the proposed changes disproportionately affect BIPOC workers.

A 2021 Pew Research Center study found that 16 percent of American adults earned money from app-based work, with rates higher for those who are BIPOC.²⁵ More than half of American app-based workers reported that the money they earn through app-based work was essential or important for meeting their basic needs.

In addition, many restaurants using app-based delivery services are small businesses owned by individuals or families in low-income and historically disenfranchised communities. Customers, including those with disabilities, may depend on app-based workers to provide

²² See [CB 120775 Summary and Fiscal Note](#) for background information on financial implications.

²³ Jessica Shakesprere, Jessica; Katz, Batia; Loprest, Pamela, [Racial Equity and Job Quality: Causes Behind Racial Disparities and Possibilities to Address Them](#). *Urban Institute*, September 2021. Accessed online at <https://www.urban.org/sites/default/files/publication/104761/racial-equity-and-job-quality.pdf> on April 23, 2024.

²⁴ [Labor Force Statistics from the Current Population Survey: Electronically Mediated Employment](#). *U.S. Bureau of Labor Statistics*, May 2017. Accessed online at <https://www.bls.gov/cps/electronically-mediated-employment.htm> on April 23, 2024.

²⁵ Pew Research Center, December 2021, "[The State of Gig Work in 2021](#)". Accessed online at https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2021/12/PI_2021.12.08_Gig-Work_FINAL.pdf on April 22, 2024.

essential services, such as delivery of prepared food and groceries. Although there is less research available to inform the extent of the impacts on BIPOC-owned businesses and customers who depend on app-based delivery services, the legislation is likely to have an impact on these populations.

As discussed in Issue #2 (Worker Earnings), the intent of the proposed changes is to reduce labor and administrative costs for network companies, and incentivize network companies to lower their consumer fees, while still guaranteeing a minimum earnings standard for app-based workers at a lower rate but could result in a sub-minimum wage for app-based workers. This could have significant racial equity implications and may underscore the urgency to consider changes to the current law. At the same time, the Committee may wish to take additional time to understand the impacts of the current law on app-based workers, small businesses, and customers, and be informed by their input.

Options:

- a. Delay enacting legislation to establish a diverse stakeholder workgroup (e.g., workers, customers, and restaurants, inclusive of BIPOC participants) to inform proposed amendments to the current law;
- b. Enact the legislation as proposed, and, in addition, establish a diverse stakeholder workgroup (e.g., workers, customers, and restaurants, inclusive of BIPOC participants) to inform proposed amendments to this legislation; or
- c. No change.

Next Steps

The Committee will discuss any proposed amendments to the legislation at the next Committee meeting on May 9. Please contact Central Staff with amendment proposals by Monday, April 29th, at noon.

If the Committee votes to recommend approval of CB 120775 on May 9, the Council could consider the legislation on May 21. If passed by the Council, the legislation would likely go into effect between June 22 and June 30, 2024.

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