CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to app-based workers in Seattle; establishing labor standards requirements for paid sick and paid safe time for app-based workers working in Seattle; adding a new Chapter 8.39 to the Seattle Municipal Code; and amending Section 3.02.125 of the Seattle Municipal Code.

WHEREAS, the Paid Sick and Safe Time Ordinance, Seattle Municipal Code (SMC) Chapter 14.16, has been in effect since September 1, 2012 and requires employers to provide employees with paid leave to care for their personal and family members' health conditions or safety needs; and

WHEREAS, the Paid Sick and Safe Time Ordinance entitles employees to use "paid sick time" for absences related to care of a personal or family member's medical diagnosis, care or treatment of a health condition, illness, injury, or need for preventive medical care; and

WHEREAS, the Paid Sick and Safe Time Ordinance entitles employees to use "paid safe time" for absences related to all workplace closures due to public health emergencies, large employer workplace closures or reduced operations due to any health- or safety- related reasons, closures of a family member's school or place of care, and the need to obtain necessary services for domestic violence, sexual assault and stalking; and

WHEREAS, The City of Seattle (City) is a leader on wage, labor, and workforce practices that improve workers' lives, support economic security, and contribute to a fair, healthy, and vibrant economy; and

WHEREAS, on July 13, 2020, the City enacted the Paid Sick and Safe Time Ordinance for Gig Workers, Ordinance 126091, establishing requirements for paid sick and paid safe time for food delivery network company workers during the COVID-19 emergency and these requirements will end on April 31, 2023;

and

WHEREAS, on May 31, 2022, the City Council (Council) passed the App-Based Worker Minimum Payment Ordinance, Ordinance 126595, establishing SMC Chapter 8.37 and requirements for minimum pay, flexibility, and transparency for food delivery network company workers and other app-based workers, and these requirements will go into effect on January 13, 2024; and

WHEREAS, establishing a permanent labor standard that requires food delivery network company workers and other app-based workers to have access to paid sick and paid safe time is a subject of vital and imminent concern to the people of this City and requires appropriate action by the Council to establish this labor standard for app-based workers; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

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

A. In the exercise of The City of Seattle's police powers, the City is granted authority to pass regulations designed to protect and promote public health, safety, and welfare.

B. Seattle Municipal Code Chapter 8.39, created by this ordinance, protects and promotes public health, safety, and welfare by requiring network companies to provide app-based workers working in Seattle with paid sick and paid safe time, which will: alleviate the economic pressures that compel app-based workers to work when conditions are not safe; reduce the risk of app-based workers working while sick and spreading illness; increase opportunities for app-based workers to stay home and take care of themselves and family members during periods of illness and other health or safety risks; and promote a healthier and more productive workforce with enhanced public health outcomes for app-based workers, their families, network companies, and the community as a whole.

C. Researchers Stefan Pichler and Nicolas Robert Ziebarth report in "The Pros and Cons of Sick Pay Schemes: Testing for Contagious Presenteeism and Noncontagious Absenteeism Behavior," that mandatory paid sick leave policies in U.S. cities, including Seattle, clearly and significantly reduced the rates of influenza-

like illness.

D. When app-based workers have access to paid leave to care for their personal or family member's health conditions, they are more likely to stay home to care for themselves, their children, or other family members who are sick or who have been exposed to an infectious disease, thereby reducing the risk of public exposure to infectious diseases.

E. When app-based workers have access to paid sick and paid safe time, they have less risk of economic insecurity because they will not lose earnings if they miss work because network companies are not operating due to a public health emergency or other health- or safety-related reasons, or because they need to care for family members when schools or places of care are closed, or to care for themselves, their children, or other family members who are ill or injured.

F. When app-based workers have access to paid leave for reasons related to domestic violence, sexual assault, or stalking, they are better able to receive medical treatment, participate in legal proceedings, and obtain other necessary services, and are more likely to maintain financial independence to leave abusive situations, achieve safety, and minimize physical and emotional injuries.

G. Paid sick and paid safe time will promote the safety, health, and welfare of the people of Seattle by reducing the chances that worker's illnesses will intensify or be prolonged, by reducing the exposure of co-workers and members of the public to infectious diseases, and by reducing the exposure of children at schools and day cares to infectious diseases; resulting in a healthier and more stable and productive workforce, better health for older family members and children, enhanced public health, and improved family economic security, thereby benefiting app-based workers, their families, network companies, and the community as a whole.

H. The need for paid leave is ongoing and continuing for the reasons stated in this ordinance, regardless of the existence of a declared civil emergency related to public health issues, such as COVID-19.

I. Network companies represent that their business models require that they treat app-based workers as independent contractors, thereby creating barriers for app-based workers to access paid sick and paid safe time

protections and other labor standards established by local, state, and federal law, and these barriers make app-based workers highly vulnerable to economic insecurity and health or safety risks.

J. In the pursuit of economic opportunity, many app-based workers are immigrants and people of color who have taken on debt or invested their savings to purchase and/or lease vehicles or other equipment to work for network companies. Therefore, they are highly susceptible to the economic pressures of continuing to work while sick and during periods of heightened public health concern and even if working is not safe for themselves or others.

M. Providing app-based workers with access to paid sick and paid safe time protects public health and supports stable incomes by ensuring that app-based workers can provide their services in a safe and reliable manner and will in turn protect public health.

Section 2. A new Chapter 8.39 is added to the Seattle Municipal Code as follows:

Chapter 8.39 APP-BASED WORKER PAID SICK AND SAFE TIME

8.39.010 Short title

This Chapter 8.39 shall constitute the "App-Based Worker Paid Sick and Safe Time Ordinance" and may be cited as such.

8.39.020 Definitions

For purposes of this Chapter 8.39:

"Adverse action" means reducing the compensation to the app-based worker, garnishing tips or gratuities, temporarily or permanently denying or limiting access to work, incentives, or bonuses, offering less desirable work, demoting, terminating, deactivating, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency, or otherwise discriminating against any person for any reason prohibited by Section 8.39.120. "Adverse action" for an app-based worker may involve any aspect of work, including compensation, work hours, volume and frequency of offers made available, desirability and compensation rates of offers made available, responsibilities, or other material

change in the terms and conditions of work or in the ability of an app-based worker to perform work. "Adverse action" also includes any action by the network company or a person acting on the network company's behalf that would dissuade a reasonable person from exercising any right afforded by this Chapter 8.39.

"Agency" means the Office of Labor Standards and any division therein.

"Aggrieved party" means an app-based worker or other person who suffers tangible or intangible harm due to a network company's or other person's violation of this Chapter 8.39.

"App-based worker" means a person who has entered into an agreement with a network company governing the terms and conditions of use of the network company's worker platform or a person affiliated with and accepting offers to perform services for compensation via a network company's worker platform. For purposes of this Chapter 8.39, at any time, including but not limited to, when an app-based worker is logged into the network company's worker platform, the worker is considered an app-based worker.

"Application dispatch" means technology that allows customers to directly request dispatch of app-based workers for provision of services and/or allows food delivery network company worker app-based workers or network companies to accept offers to perform services for compensation and payments for services via the internet using interfaces including but not limited to website, smartphone, and tablet applications.

"Average daily compensation" means the daily average of compensation owed to the app-based worker for each day worked for the network company during the 12 months immediately prior to the date the app-based worker's amount of accrued paid sick and paid safe time was last calculated. "Average daily compensation" shall be recalculated every calendar month. When calculating the average of daily compensation, the compensation considered for each covered calendar day includes work performed in Seattle and outside Seattle. Beginning January 13, 2024, "average daily compensation" shall not include tips earned from customers.

"Calendar day" means the 24-hour period that begins at 12:00 AM and ends at 11:59 PM.

"Calendar year" means the twelve-month period that begins on January 1 and ends on December 31.

"City" means The City of Seattle.

"Commences work" and "commencement of work" mean no later than the beginning of the first calendar day on which the app-based worker performs services in furtherance of an offer facilitated or presented by the network company.

"Compensation" means the total amount of payment owed to an app-based worker by reason of performing work facilitated or presented by the network company, including but not limited to network company payments, bonuses, incentives, commissions, and tips earned from customers.

"Creative services or works" means labor that results in or contributes to the creation of original works, as well as the works resulting from such labor. The term "creative services or works" includes but is not limited to fiction and nonfiction writing, art, photography, graphic design, marketing, and related consulting services.

"Day of paid sick and paid safe time" means the average daily compensation amount owed to an app-based worker for one 24-hour period.

"Day worked" or "days worked" means any calendar day(s) that an app-based worker performs services in furtherance of an offer facilitated or presented by the network company, where the services are performed in whole or part in Seattle.

"Deactivation" means the blocking of an app-based worker's access to the network company's platform, changing an app-based worker's status from eligible to provide delivery services to ineligible, or other material restriction in access to the network company's platform that is effected by a network company.

"Director" means the Director of the Office of Labor Standards or the Director's designee.

"Eating and drinking establishment" means "eating and drinking establishment" as defined in Section 23.84A.010.

"Food processing" means "food processing" as defined in Section 23.84A.012.

"Franchise" has the same meaning as defined in RCW 19.100.010 as amended.

"Front pay" means the compensation the app-based worker would earn or would have earned if

reinstated by the network company.

"Grocery store" means "grocery store" as defined in Section 23.84A.014.

"Hearing Examiner" means the official appointed by the City Council and designated as the Hearing Examiner under Chapter 3.02 or that person's designee (e.g., Deputy Hearing Examiner or Hearing Examiner Pro Tem).

"Health-related reason" means a serious public health concern that could result in bodily injury or exposure to an infectious agent, biological toxin, or hazardous material. "Health-related reason" does not include inclement weather.

"Incentive" means a sum of money paid to an app-based worker in addition to the guaranteed minimum network company payment for an offer, 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.

"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.

When determining whether a network company is "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" the Agency may consider any number of factors, including but not limited to the following examples: number of pre-scheduled offers relative to the network company's overall offers; how app-based worker rates are set; what information regarding offer mileage or offer time a network company knows before, during, or after performance of an offer; 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.

"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" (TNC) 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.

"Network company payment" means the amount owed to an app-based worker by reason of performing services in furtherance of an offer facilitated or presented by the network company, including but not limited to payment for providing services and/or commissions, or participating in any training program required by a network company.

"Offer" means one or more online orders presented to an app-based worker as one opportunity to perform services for compensation that the app-based worker may accept or reject.

1. An opportunity to perform services for compensation includes but is not limited to an opportunity described via a worker platform as a shift, a period of time to be spent engaged in service provision, a continuous period of time in which the app-based worker must make themself available to perform services, or any other continuous period of time when the worker is not completely relieved of the duty to perform the service(s), and such a period of time shall be considered as one offer.

2. The term "offer" includes "pre-scheduled offers" and "on-demand offers."

"On-demand network company" means a network company that is primarily engaged in facilitating or presenting on-demand offers to app-based workers.

1. The term "on-demand network company" includes but is not limited to a network company operating in Seattle that is primarily engaged in facilitating or presenting on-demand offers to app-based workers for delivery services from one or more of the following: (a) eating and drinking establishments; (b) food processing establishments; (c) grocery stores; or (d) any facility supplying groceries or prepared food and beverages for an online order.

2. When determining whether a network company is "primarily engaged in facilitating or presenting on-demand offers to app-based workers," the Agency may consider any number of factors, including but not limited to the following examples: number of on-demand offers relative to the network company's overall offers; information from app-based workers; marketing or promotional materials from the network

company; or other public statements from representatives of the network company.

"On-demand offer" means an offer facilitated or presented by a network company to an app-based worker that requires performance to be initiated within two hours of acceptance (i.e., an offer that is not a prescheduled offer).

"Online order" means an order for services that is placed through an online-enabled application or platform, such as an application dispatch system, and that is facilitated or presented by a network company or presented by a network company for its own benefit. The Director may issue rules further defining the definition of "online order" and the types of transactions excluded from this definition. The term "online order" does not include the following transactions:

1. Sale or rental of products or real estate;

2. Payment in exchange for a service subject to professional licensure that has been listed by the Director pursuant to Section 8.37.020;

3. Payment in exchange for services wholly provided digitally;

4. Payment in exchange for creative services or works;

5. TNC dispatched trips. For purposes of this definition, "TNC dispatched trips" mean the provision of transportation by a driver for a passenger through the use of a transportation network company's application dispatch system; and

6. Transportation provided by taxicabs or for-hire vehicles, as defined in Chapter 6.310.

"Operating in Seattle" means, with respect to a network company, facilitating or presenting offers to provide services for compensation using an online-enabled application or platform, such as an application dispatch system, to any app-based worker, where such services are performed in whole or part in Seattle.

"Paid safe time" means accrued days of paid leave provided by a network company for use by an app-based worker for any of the reasons specified in subsection 8.39.060.A.2, for which time an app-based worker shall be compensated at the app-based worker's average daily compensation.

1. For purposes of determining eligibility for "paid safe time" under subsection 8.39.060.A.2.c, "family member" means a child, parent, spouse, registered domestic partner, grandparent, grandchild, or sibling.

a. "Child" means a biological child, adopted child, foster child, stepchild, or a child to whom an app-based worker stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status.

b. "Parent" means a biological parent, adoptive parent, de facto parent, foster parent, stepparent, or legal guardian of an app-based worker or the app-based worker's spouse or registered domestic partner, or a person who stood in loco parentis when the app-based worker was a minor child.

2. For purposes of determining eligibility for "paid safe time" under subsection 8.39.060.A.2.d:

a. "Family member" means, as defined in RCW 49.76.020 as amended (wherever that section uses the term "employee," that term shall be substituted with "app-based worker" as defined by this Section 8.39.020), any individual whose relationship to the app-based worker can be classified as a child, spouse, parent, parent-in-law, grandparent, or person with whom the app-based worker has a dating relationship.

b. "Household members" means, spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons 16 years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons 16 years of age or older with whom a person 16 years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

c. "Domestic violence" means:

1) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

2) Sexual assault of one family or household member by another; or

3) Stalking of one family or household member by another family or household member.

d. "Stalking" means stalking as defined in RCW 49.76.020 as amended.

e. "Dating relationship" means a social relationship of a romantic nature, as defined in RCW 49.76.020, as amended.

f. "Sexual assault" means sexual assault as defined in RCW 49.76.020 as amended.

"Paid sick time" means accrued days of paid leave provided by a network company for use by an app-based worker for any of the reasons authorized in subsection 8.39.060.A.1, for which time an app-based worker shall be compensated at the app-based worker's average daily compensation.

1. For purposes of determining eligibility for "paid sick time," "family member" means a child, parent, spouse, registered domestic partner, grandparent, grandchild, or sibling.

a. "Child" means a biological child, adopted child, foster child, stepchild, or a child to whom an app-based worker stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status.

b. "Parent" means a biological parent, adoptive parent, de facto parent, foster parent, stepparent, or legal guardian of an app-based worker or the app-based worker's spouse or registered domestic partner, or a person who stood in loco parentis when the app-based worker was a minor child.

"Pre-scheduled offer" means an offer that is facilitated or presented by a network company to an app-based worker at least two hours prior to when the app-based worker is required to initiate performance.

"Rate of inflation" means 100 percent of the annual average growth rate of the bi-monthly Seattle-Tacoma-Bellevue Area Consumer Price Index for Urban Wage Earners and Clerical Workers, termed CPI-W,

for the 12-month period ending in August, provided that the percentage increase shall not be less than zero.

"Respondent" means a network company or any person who is alleged or found to have committed a violation of this Chapter 8.39.

"Successor" means any person to whom a network company quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the network company's business, a major part of the property, whether real or personal, tangible or intangible, of the network company's business. For purposes of this definition, "person" means an individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, corporation, business trust, partnership, limited liability partnership, company, joint stock company, limited liability company, association, joint venture, or any other legal or commercial entity.

"Tips" means a verifiable sum to be presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the app-based worker receiving the tip.

"Verification" means evidence that establishes or confirms that an app-based worker's use of paid sick and paid safe time is for an authorized purpose under Section 8.39.060.

"Work-related stop in Seattle" means a commercial stop in Seattle that is related to an app-based worker's performance of services in furtherance of an offer facilitated or presented by a network company, and does not include stopping for refueling, stopping for a personal meal or errands, or time spent in Seattle solely for the purpose of travelling through Seattle from a point of origin outside Seattle to a destination outside Seattle with no commercial stops in Seattle.

"Worker platform" means the worker-facing application dispatch system software or any online-enabled application service, website, or system, used by an app-based worker, that enables the arrangement of services for compensation.

"Written" or "writing" means a printed or printable communication in physical or electronic format, including but not limited to a communication that is transmitted through email, text message, or a computer

system, or is otherwise sent or maintained electronically, including via the worker platform.

8.39.030 App-based worker coverage

A. For the purposes of this Chapter 8.39, covered app-based workers are limited to those who perform services in furtherance of an offer facilitated or presented by a covered network company, where those services are performed in whole or part in Seattle.

B. Services performed "in Seattle" shall include a work-related stop in Seattle.

C. App-based workers who are employees under Chapter 14.16 for covered network companies are not covered app-based workers under this Chapter 8.39. Network companies must provide such app-based workers with paid sick and paid safe time in accordance with their obligations in Chapter 14.16.

8.39.040 Network company coverage

A. For the purposes of this Chapter 8.39, covered network companies are limited to those that facilitate work performed by 250 or more app-based workers worldwide, regardless of where those workers perform work, including but not limited to chains, integrated enterprises, or franchises associated with a franchise or network of franchises that facilitate work performed by 250 or more app-based workers worldwide in aggregate.

1. From May 1, 2023 to January 12, 2024, only food delivery network companies as defined and covered by Ordinance 126091, last amended by Ordinance 126123, are covered by this Chapter 8.39.

2. Beginning January 13, 2024, covered network companies include any network company.

B. To determine the number of app-based workers performing work for the current calendar year:

1. The calculation is based upon the average number per calendar week of app-based workers who worked for compensation during the preceding calendar year for any and all weeks during which at least one app-based worker worked for compensation.

2. For network companies that did not have any app-based workers during the preceding calendar year, the number of app-based workers counted for the current calendar year is calculated based upon

the average number per calendar week of app-based workers who worked for compensation during the first 90 calendar days of the current year in which the network company engaged in business.

3. If a network company quits, sells out, exchanges, or disposes the network company's business, or the network company's business is otherwise acquired by a successor, the number of app-based workers hired for the current calendar year for the successor network company is calculated based upon the average number per calendar week of app-based workers who worked for compensation during the first 90 calendar days of the current year in which the successor network company engaged in business.

4. All app-based workers who worked for compensation shall be counted, including but not limited to:

a. App-based workers who are not covered by this Chapter 8.39;

b. App-based workers who worked in Seattle; and

c. App-based workers who worked outside Seattle.

C. Separate entities that form an integrated enterprise shall be considered a single network company under this Chapter 8.39. Separate entities will be considered an integrated enterprise and a single network company under this Chapter 8.39 where a separate entity controls the operation of another entity. The factors to consider in making this assessment include, but are not limited to:

1. Degree of interrelation between the operations of multiple entities;

2. Degree to which the entities share common management;

3. Centralized control of labor relations; and

4. Degree of common ownership or financial control over the entities.

5. Use of a common brand, trade, business, or operating name.

D. For the purposes of this Chapter 8.39, covered network companies do not include any company that meets the definition of a marketplace network company.

8.39.050 Accrual of paid sick and paid safe time

A. An app-based worker who accrued paid sick leave under Ordinance 126091 shall retain all accrued, unused paid sick and paid safe time and is entitled to use such paid sick and paid safe time as provided in this Chapter 8.39.

B. App-based workers shall accrue at least one day of paid sick and paid safe time for every 30 days worked.

1. Network companies may, but are not required to, frontload paid sick and paid safe time to an app-based worker in advance of the accrual required by this subsection 8.39.050.B.

a. Frontloaded paid sick and paid safe time shall meet requirements for accrual, use, and carry-over, and shall otherwise comply with the provisions of this Chapter 8.39.

b. Network companies shall correct any discrepancies, between the frontloaded paid sick and paid safe time and the amount of paid sick and paid safe time required by this subsection 8.39.050.B, as soon as practicable and no later than 30 days after the network company identifies the discrepancy or after an app-based worker provides notice to the network company of the discrepancy.

c. Network companies shall not request or require reimbursement from an app-based worker who uses frontloaded paid sick and paid safe time that exceeds the amount of paid sick and paid safe time the app-based worker would have accrued absent frontloading.

C. Network companies shall allow app-based workers to carry over at least nine days of accrued, unused paid sick and paid safe time to the following year.

1. For the purposes of this subsection 8.39.050.C, “year” means calendar year, unless otherwise established by the network company in the written policy and procedure required by subsection 8.39.100.B to mean fiscal year, service year, or any other fixed consecutive 12-month period established and used in the ordinary course of the network company’s business for the purpose of calculating compensation to app-based workers.

2. If the network company transitions from one type of year to another for the purpose of

carrying-over accrued, unused paid sick and paid safe time, the network company shall ensure that the transition process maintains the accrual, use, carry-over, and other requirements of this Chapter 8.39.

3. If an app-based worker carries over unused paid sick and paid safe time to the following year, accrual of paid sick and paid safe time in the subsequent year shall be in addition to the hours accrued in the previous year and carried over.

4. Network companies may allow for a more generous carry over of accrued, unused paid sick and paid safe time to the following year.

D. If a network company quits, sells out, exchanges, or disposes the network company's business, or the network company's business is otherwise acquired by a successor, an app-based worker shall retain all accrued, unused paid sick and paid safe time and is entitled to use such paid sick and paid safe time as provided in this Chapter 8.39 as an app-based worker for the successor network company.

8.39.060 Use of paid sick time and paid safe time

A. An app-based worker is entitled to use paid sick and paid safe time for an authorized purpose, as described in this Section 8.39.060.

1. An app-based worker is authorized to use paid sick time for the following reasons:

a. For a personal mental or physical illness, injury, or health condition; to accommodate the app-based worker's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an app-based worker's need for preventive medical care; and

b. For care of a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care of a family member who needs preventive medical care.

2. An app-based worker is authorized to use paid safe time for the following reasons:

a. When the network company has suspended or otherwise discontinued operations by order of a public official, for any health-related reason, to limit exposure to an infectious agent, biological

toxin, or hazardous material;

b. When the network company has reduced, suspended, or otherwise discontinued operations for any health- or safety-related reason;

c. When the app-based worker's family member's school or place of care has been closed; and

d. For any of the following reasons related to domestic violence, sexual assault, or stalking, as set out in RCW 49.76.030 as amended. For the purposes of this Chapter 8.39, wherever RCW 49.76.030 uses the term "employee," that term shall be substituted with "app-based worker" as defined by Section 8.39.020.

1) To enable the app-based worker to seek legal or law enforcement assistance or remedies to ensure the health and safety of the app-based worker or the app-based worker's family or household members, including but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking;

2) To enable the app-based worker to seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking, or to attend to health care treatment for a victim who is the app-based worker's family or household member;

3) To enable the app-based worker to obtain, or assist a family or household member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program for relief from domestic violence, sexual assault, or stalking;

4) To enable the app-based worker to obtain, or assist a family or household member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking, in which the app-based worker or the app-based worker's family or household member was a victim of domestic violence, sexual assault, or stalking; or

5) To enable the app-based worker to participate in safety planning, temporarily

or permanently relocate, or take other actions to increase the safety of the app-based worker or app-based worker's family or household members from future domestic violence, sexual assault, or stalking.

B. An app-based worker is entitled to use accrued paid sick and paid safe time if the app-based worker has performed services in whole or part in Seattle within 90 calendar days preceding the app-based worker's request to use paid sick and paid safe time. An app-based worker is entitled to use paid sick and paid safe time during a deactivation or other status that prevents work for the network company, unless such status is due to a verified allegation of sexual assault perpetrated by the app-based worker.

C. Network companies shall establish an accessible system for app-based workers to understand, request, and use their paid sick and paid safe time. Network companies shall make this system available to the app-based worker via smartphone application or online web portal. The Director may issue rules defining reasonable criteria or requirements for this system to ensure that app-based workers have sufficient information to understand and readily access their paid sick and paid safe time, including but not limited to criteria or requirements for the system to include the written notice of rights required by Section 8.39.100, clear instructions and procedures, timely responses to app-based worker requests to use paid sick and paid safe time, ongoing access to paid sick and safe time information (e.g., accrued, used, and available PSST; rate of average daily compensation), and transparent information on days worked and earnings to show the basis for calculating paid sick and paid safe time information. Any rules issued by the Director pursuant to this subsection 8.39.060.C shall go into effect no earlier than January 13, 2024.

D. Network companies shall make accrued days of paid sick and paid safe time available for use as soon as practicable and no more than one week after the date of accrual. The network company shall provide accrued, available paid sick and paid safe time upon an app-based worker's request. An app-based worker is entitled to request one or more accrued days of paid sick and paid safe time for immediate use, including consecutive days of use. The app-based worker shall provide notice of the request to use paid sick time and paid safe time as soon as practicable.

1. Network companies shall compensate the app-based worker for the requested day(s) of paid sick time and paid safe time no later than 14 calendar days or the next regularly scheduled date of compensation following the requested day(s) of paid sick and paid safe time, whichever date is sooner.

2. Network companies shall not request or require reasonable verification except as provided under subsection 8.39.060.F or 8.39.060.G. If verification is required by the network company, the app-based worker must be compensated for the requested day(s) of paid sick and paid safe time no later than the app-based worker's next regularly scheduled date of compensation after the verification is provided.

E. Accrued days of paid sick and paid safe time shall be used in increments of 24 hours.

1. Network companies shall provide the app-based worker with notice, via smartphone application, online web portal or personal log-in, of the duration of their 24-hour increment for use of the paid sick and paid safe time.

2. If an app-based worker performs services in furtherance of an offer facilitated or presented by the network company during the 24-hour period(s) for which the app-based worker requested day(s) of paid sick and paid safe time, a network company may determine that the app-based worker did not use paid sick and paid safe time for an authorized purpose and may follow procedures under subsection 8.39.060.I to withhold compensation for the requested day(s) of paid sick and paid safe time.

F. When an app-based worker uses more than three consecutive days of paid sick and paid safe time, network companies may require reasonable verification that the app-based worker used paid sick time and paid safe time for an authorized purpose covered by subsection 8.39.060.A.1 or 8.39.060.A.2. Network companies are prohibited from requesting verification until an app-based worker uses more than three consecutive days of paid sick and paid safe time.

1. A network company shall provide the app-based worker with a reasonable time period to provide verification; a "reasonable time period" shall be defined by a network company's written policy and procedure required by subsection 8.39.100.B and shall not be less than ten calendar days following the first day

of the app-based worker's use of paid sick and paid safe time.

2. A network company's requirements for verification shall not result in an unreasonable burden or expense on the app-based worker and shall not intrude upon the app-based worker's privacy.

a. When requiring verification, a network company shall notify the app-based worker of the right to provide an oral or written explanation asserting that the app-based worker used paid sick and paid safe time for an authorized purpose and describing how the network company's verification requirement would create an unreasonable burden or expense.

b. If the app-based worker provides an explanation, a network company shall respond within ten calendar days and shall provide alternatives for the app-based worker to meet the verification requirement in a manner that does not result in an unreasonable burden or expense on the app-based worker. Examples of such alternatives include: (i) a network company's acceptance of an app-based worker's oral or written statement that the app-based worker used paid sick time for an authorized purpose; (ii) a network company's acceptance of documentation from a different source than identified in the initial verification requirement, such as documentation from a service provider indicating that the app-based worker used paid sick time or paid safe time for an authorized purpose; or (iii) a network company's payment for at least half the cost of the app-based worker's out-of-pocket expenses to obtain the verification.

G. For reasonable verification of paid sick time, a network company may require documentation signed by a health care provider indicating that the app-based worker's use of paid sick time was necessary; a network company shall not request or require that the documentation explain the nature of the illness, injury, health condition, or preventive care.

H. For reasonable verification of paid safe time:

1. A network company may require that requests under subsections 8.39.060.A.2.a through 8.39.060.A.2.c be supported by verification of a notice of reduced operations or closure and the app-based worker may satisfy this verification request by providing the notice, or a copy of the notice, in whatever format

the app-based worker received it.

2. A network company may require that requests under subsection 8.39.060.A.2.d be supported by verification that the app-based worker or app-based worker's family or household member is a victim of domestic violence, sexual assault, or stalking, and that the leave taken was for one of the purposes covered by subsection 8.39.060.A.2.d. An app-based worker may satisfy this verification requirement by one or more of the following methods:

a. An app-based worker's written statement that the app-based worker or the app-based worker's family or household member is a victim of domestic violence, sexual assault, or stalking and that the leave taken was for one of the purposes of subsection 8.39.060.A.2.d;

b. A police report indicating that the app-based worker or app-based worker's family or household member was a victim of domestic violence, sexual assault, or stalking;

c. A court order protecting or separating the app-based worker or app-based worker's family or household member from the perpetrator of the act of domestic violence, sexual assault, or stalking, or other evidence from the court or the prosecuting attorney that the app-based worker or app-based worker's family or household member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking; or

d. Documentation that the app-based worker or app-based worker's family or household member is a victim of domestic violence, sexual assault, or stalking, from any of the following persons from whom the app-based worker or app-based worker's family or household member sought assistance in addressing the domestic violence, sexual assault, or stalking: an advocate for victims of domestic violence, sexual assault, or stalking; an attorney; a member of the clergy; or a medical or other professional. The provision of documentation under subsection 8.39.060.H does not waive or diminish the confidential or privileged nature of communications between a victim of domestic violence, sexual assault, or stalking with one or more of the individuals named in subsection 8.39.060.H.

e. Any verification requirements for use of paid safe time under subsection 8.39.060.A.2.d shall comply with the provisions outlined in WAC 296-135-070 <https://app.leg.wa.gov/wac/default.aspx?cite=296-135-070> as amended. For the purposes of this Chapter 8.39, wherever WAC 296-135-070 uses the terms "employee" and "employer," those terms shall be substituted with "app-based worker" and "network company" respectively, as defined by Section 8.39.020.

I. If a network company can demonstrate that the app-based worker did not use paid sick and paid safe time for an authorized purpose covered by subsection 8.39.060.A.1 or 8.39.060.A.2, the network company may withhold compensation for the days paid sick and paid safe time, subject to the following conditions:

1. The network company shall provide the app-based worker with written notification, in a format that is readily accessible to the app-based worker, of the network company's decision to withhold compensation and shall provide a method of contact and accessible procedure for the app-based worker to contest the withholding of compensation and to assert that the app-based worker's use of paid sick and paid safe time was for an authorized purpose.

2. The network company shall not subsequently restrict the app-based worker's future use of such paid sick and safe time or deduct it from the app-based worker's days of paid sick and paid safe time available for use.

3. The network company shall not take adverse action against the app-based worker, other than withholding compensation for the applicable days of paid sick and paid safe time.

J. Network companies may not request or require, as a condition of an app-based worker taking paid sick and paid safe time, that the app-based worker search for or find a replacement app-based worker to cover the day(s) during which the app-based worker uses paid sick and paid safe time.

K. Nothing in this Chapter 8.39 shall be construed to prohibit a network company from establishing a policy whereby app-based workers may donate unused accrued paid sick and paid safe time to another app-based worker.

L. Network companies shall provide each app-based worker with written notification of their paid sick and paid safe time information.

1. The notification shall include the following:

a. The current rate of average daily compensation for use of paid sick and paid safe time;

b. An updated amount of accrued paid sick and paid safe time since the last notification, reduced by paid sick and paid safe time used since the last notification; and

c. Any unused paid sick and paid safe time available for use.

2. Network companies shall provide this notification no less than monthly.

3. Network companies may choose a reasonable system for providing this notification, including but not limited to, an email, a pay stub, a weekly summary of compensation information, or the accessible system required by subsection 8.39.060.C where app-based workers can access their own paid sick and paid safe time information via smartphone application or online web portal. If the accessible system required by subsection 8.39.060.C is used to provide this notification, network companies shall affirmatively inform app-based workers where and how to access this information. The Director may issue rules clarifying network company requirements for affirmatively providing notification through the accessible system required by subsection 8.39.060.C.

4. Network companies are not required to provide this notification to an app-based worker if the app-based worker has not worked any days since the last notification.

8.39.070 Confidentiality and nondisclosure

A. Except as provided in subsection 8.39.070.B, a network company shall maintain the confidentiality of information provided by the app-based worker or others in support of an app-based worker's request for paid sick and paid safe time under this Section 8.39.070, including but not limited to health information of the app-based worker or the app-based worker's family member, the fact that the app-based worker or app-based worker's family member is a victim of domestic violence, sexual assault, or stalking, the fact that the app-based worker requested or obtained paid sick and paid safe time under this Chapter 8.39, and any written or oral statement, documentation, record, or corroborating evidence provided by the app-based worker.

B. Information protected by subsection 8.39.070.A may be disclosed by network companies only if it is:

1. Requested or consented to by the app-based worker;

2. Ordered by a court or administrative agency; or

3. Otherwise required by applicable federal or state law.

8.39.080 Separation from work

A. If an app-based worker separates from work due to inactivity, deactivation, or other reason, and commences working within 12 months of separation by the same network company:

1. Previous work shall be counted for purposes of determining the app-based worker's eligibility to use accrued paid sick time and paid safe time under subsection 8.39.060.B, except that if separation does occur, the total time of work used to determine eligibility under subsection 8.39.060.B shall occur within three years.

2. Previously accrued, unused paid sick and paid safe time shall be retained by the app-based worker and the app-based worker is entitled to use such paid sick and paid safe time, depending upon eligibility under subsection 8.39.060.B.

B. If an app-based worker separates from work and commences work after 12 months of separation by the same network company, the app-based worker is not entitled to retain previously accrued paid sick and paid safe time and for the purposes of this Chapter 8.39 the app-based worker shall be considered to have newly commenced work.

8.39.100 Notice of rights

A. Network companies shall affirmatively provide each app-based worker eligible to accrue paid sick and paid safe time with a written notice of rights established by this Chapter 8.39.

1. The Agency may create and distribute a model notice of rights in English and other languages. If the Agency creates a model notice of rights, network companies shall affirmatively provide such notice according to the schedule outlined in subsection 8.39.100.A.2. However, network companies are responsible for

providing app-based workers with the notice of rights required by this subsection 8.39.100.A, in a form and manner sufficient to inform app-based workers of their rights under this Chapter 8.39, regardless of whether the Agency has created and distributed a model notice of rights. The notice of rights shall provide information on:

a. The right to paid sick and paid safe time guaranteed by this Chapter 8.39;

b. The amount of paid sick and paid safe time accrual and the terms of its use guaranteed under this Chapter 8.39;

c. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 8.39; and

d. The right to file a complaint with the Agency or bring a civil action for violation of the requirements of this Chapter 8.39, including a network company's denial of paid sick time and paid safe time as required by this Chapter 8.39, and a network company or other person's retaliation against an app-based worker or other person for requesting or taking paid sick and paid safe time or otherwise engaging in an activity protected by this Chapter 8.39.

2. Network companies shall affirmatively provide each app-based worker eligible to accrue paid sick and paid safe time with the written notice of rights according to the following schedule:

a. For each app-based worker working for the network company as of May 1, 2023, network companies shall provide the notice of rights by May 30, 2023.

b. For each app-based worker hired by the network company after May 1, 2023, network companies shall provide the notice of rights prior to the app-based worker commencing work for the network company.

c. For each app-based worker, network companies shall provide the notice of rights no less than annually.

d. If the accessible system required by subsection 8.39.060.C is used to provide notice of rights, network companies shall affirmatively inform app-based workers where and how to access this information.

The Director may issue rules clarifying network company requirements for affirmatively providing notice of rights through the accessible system required by subsection 8.39.060.C.

B. Network companies shall affirmatively provide each app-based worker with written notice of the network company's policy and procedure for meeting the requirements of this Chapter 8.39.

1. The policy and procedure shall provide information on:

a. The app-based worker's right to paid sick and paid safe time under this Chapter 8.39;

b. Whether the network company is using a year other than the calendar year for carry-over of accrued, unused paid sick and paid safe time;

c. The authorized purposes under which paid sick and paid safe time may be used;

d. The manner of providing app-based workers with written notification of the current rate of average daily compensation for use of paid sick and paid safe time, and an updated amount of accrued, reduced, and available paid sick and paid safe time;

e. Prohibitions against retaliation for use of paid sick and paid safe time;

f. If applicable, explanation of:

1) Verification required by the network company for use of paid sick and paid safe time for more than three consecutive days;

2) Shared paid sick and paid safe time program in which an app-based worker may choose to donate paid sick and paid safe time to a co-worker;

3) Policy related to frontloaded paid sick and paid safe time; and

g. Other information that is material and necessary to effectuate the terms of this Chapter 8.39, pursuant to Director rules.

C. Network companies shall provide the notice of rights required by subsection 8.39.100.A and the policy and procedure required by subsection 8.39.100.B in an electronic format that is readily accessible to the app-based worker. The notices shall be made available to the app-based worker via smartphone application or

online web portal, in English and any language that the network company knows or has reason to know is the primary language of the app-based worker(s). The Director may issue rules governing the form and content of the notice of rights, the manner of its distribution, required languages for its translation, and requirements for network companies to file their notice of rights in a written format with the Agency.

8.39.110 Network company records

A. Network companies shall retain records that document compliance with this Chapter 8.39 for each app-based worker including:

1. Date of commencement of work;

2. Days worked in whole or part in Seattle;

3. Compensation for days worked in whole or part in Seattle;

4. Rates of average daily compensation as calculated every calendar month;

5. Paid sick and paid safe time accrued, and any unused paid sick and paid safe time available for use;

6. Paid sick and paid safe time reductions, including but not limited, to paid sick and paid safe time used, paid sick and paid safe time donated to a co-worker through a shared leave program, or paid sick and paid safe time not carried over to the following year; and

7. Other records that are material and necessary to effectuate the terms of this Chapter 8.39, pursuant to Director rules.

B. Network companies shall retain the records required by subsection 8.39.110.A for three years from the date of days worked or the date of use of paid sick and paid safe time.

C. If a network company fails to retain adequate records required under subsection 8.39.110.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the network company violated this Chapter 8.39 for the periods and for each app-based worker for whom records were not retained.

D. Records and documents relating to verification of paid sick and paid safe time for the app-based

worker or their family members, created for purposes of this Chapter 8.39, shall be kept as confidential medical records in separate files/records from the network company's app-based worker files.

8.39.120 Retaliation prohibited

A. No network company or any other person shall interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter 8.39. A network company may not adopt or enforce any policy that counts the use of paid sick and paid safe time as an event that may lead to or result in discipline or other adverse action against the app-based worker.

B. No network company or any other person shall take any adverse action against any person because the person has exercised in good faith the rights protected under this Chapter 8.39. Such rights include but are not limited to the right to use paid sick time and/or paid safe time pursuant to this Chapter 8.39; the right to make inquiries about the rights protected under this Chapter 8.39; the right to inform others about their rights under this Chapter 8.39; the right to inform the person's network company, the person's legal counsel, a union or similar organization, or any other person about an alleged violation of this Chapter 8.39; the right to file an oral or written complaint with the Agency or bring a civil action for an alleged violation of this Chapter 8.39; the right to cooperate with the Agency in its investigations of this Chapter 8.39; the right to testify in a proceeding under or related to this Chapter 8.39; the right to refuse to participate in an activity that would result in a violation of federal, state, or local law; and the right to oppose any policy, practice, or act that is unlawful under this Chapter 8.39.

C. No network company or any other person shall communicate to a person exercising rights protected in this Section 8.39.120, directly or indirectly, the willingness to inform a government employee or contracted organization that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an app-based worker or family member of the app-based worker to a federal, state, or local agency because the app-based worker has exercised a right under this Chapter 8.39.

D. It shall be a rebuttable presumption of retaliation if a network company or any other person takes an adverse action against a person within 90 days of the person's exercise of rights protected in this Section 8.39.120. However, in the case of seasonal work that ended before the close of the 90-day period, the presumption also applies if the network company fails to rehire a former app-based worker at the next opportunity for work in the same position. The network company may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

E. Proof of retaliation under this Section 8.39.120 shall be sufficient upon a showing that a network company or any other person has taken an adverse action against a person and the person's exercise of rights protected in this Section 8.39.120 was a motivating factor in the adverse action, unless the network company can prove that the action would have been taken in the absence of such protected activity.

F. The protections afforded under this Section 8.39.120 shall apply to any person who mistakenly but in good faith alleges violations of this Chapter 8.39.

G. A complaint or other communication by any person triggers the protections of this Section 8.39.120 regardless of whether the complaint or communication is in writing or makes explicit reference to this Chapter 8.39.

8.39.125 Rulemaking authority

The Director is authorized to administer and enforce this Chapter 8.39. The Director is authorized to promulgate, revise, or rescind rules and regulations deemed necessary, appropriate, or convenient to administer, evaluate and enforce the provisions of this Chapter 8.39 pursuant to Chapter 3.02, providing affected entities with due process of law and in conformity with the intent and purpose of this Chapter 8.39. Any rules promulgated by the Director shall have the force and effect of law and may be relied on by network companies, app-based workers, and other parties to determine their rights and responsibilities under this Chapter 8.39.

8.39.130 Enforcement power and duties

The Agency shall have the power to investigate violations of this Chapter 8.39 and shall have such powers and

duties in the performance of these functions as are defined in this Chapter 8.39 and otherwise necessary and proper in the performance of the same and provided for by law.

8.39.140 Violation

The failure of any respondent to comply with any requirement imposed on the respondent under this Chapter 8.39 is a violation.

8.39.150 Investigation

A. The Agency shall have the power to investigate any violations of this Chapter 8.39 by any respondent. The Agency may prioritize investigations of workforces that are vulnerable to violations of this Chapter 8.39. The Agency may initiate an investigation pursuant to Director rules, including but not limited to situations when the Director has reason to believe that a violation has occurred or will occur, or when circumstances show that violations are likely to occur within a class of network companies or businesses because the workforce contains significant numbers of app-based workers who are vulnerable to violations of this Chapter 8.39 or the workforce is unlikely to volunteer information regarding such violations. An investigation may also be initiated through the receipt by the Agency of a report or complaint filed by an app-based worker or other person.

B. An app-based worker or other person may report to the Agency any suspected violation of this Chapter 8.39. The Agency shall encourage reporting pursuant to this Section 8.39.150 by taking the following measures:

1. The Agency shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the app-based worker or person reporting the violation. However, with the authorization of such person, the Agency may disclose the app-based worker’s or person's name and identifying information as necessary to enforce this Chapter 8.39 or for other appropriate purposes.

2. The Agency may require the network company to post or otherwise notify app-based workers working for the network company that the Agency is conducting an investigation. If required, network

companies shall provide the notice to app-based workers in a form, place, and manner designated by the Agency. The Agency shall create the notice of investigation in English and other languages.

3. The Agency may certify the eligibility of eligible persons for "U" Visas under the provisions of 8 U.S.C. § 1184.p and 8 U.S.C. § 1101.a.15.U. This certification is subject to applicable federal law and regulations, and Director Rules.

C. The Agency's investigation shall commence within three years of the alleged violation. To the extent permitted by law, the applicable statute of limitations for civil actions is tolled during any investigation under this Chapter 8.39 and any administrative enforcement proceeding under this Chapter 8.39 based upon the same facts. For purposes of this Chapter 8.39:

1. The Agency's investigation begins on the earlier date of when the Agency receives a complaint from a person under this Chapter 8.39, or when the Agency provides notice to the respondent that an investigation has commenced under this Chapter 8.39.

2. The Agency's investigation ends when the Agency issues a final order concluding the matter and any appeals have been exhausted; the time to file any appeal has expired; or the Agency notifies the respondent in writing that the investigation has been otherwise resolved.

D. The Agency's investigation shall be conducted in an objective and impartial manner.

E. The Director may apply by affidavit or declaration in the form allowed under RCW 5.50.050 as amended to the Hearing Examiner for the issuance of subpoenas requiring a network company to produce the records required by Section 8.39.110, or for the attendance and testimony of witnesses, or for the production of documents required to be retained under Section 8.39.110, or any other document relevant to the issue of whether any app-based worker or group of app-based workers has been or is afforded proper amounts of paid sick and paid safe time under this Chapter 8.39 and/or to whether a network company has violated any provision of this Chapter 8.39. The Hearing Examiner shall conduct the review without hearing as soon as practicable and shall issue subpoenas upon a showing that there is reason to believe that: a violation has

occurred, a complaint has been filed with the Agency, or that circumstances show that violations are likely to occur within a class of businesses because the workforce contains significant numbers of app-based workers who are vulnerable to violations of this Chapter 8.39 or the workforce is unlikely to volunteer information regarding such violations, or the Agency has gathered preliminary information indicating that a violation may have occurred.

F. A network company that fails to comply with the terms of any subpoena issued under subsection 8.39.150.E in an investigation by the Agency under this Chapter 8.39 before the issuance of a Director's Order issued pursuant to subsection 8.39.160.C may not use such records in any appeal to challenge the correctness of any determination by the Agency of liability, damages owed, or penalties assessed.

G. In addition to other remedies, the Director may refer any subpoena issued under subsection 8.39.150.E to the City Attorney to seek a court order to enforce any subpoena.

H. Where the Director has reason to believe that a violation has occurred, the Director may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing, including but not limited to a deposit of funds or bond sufficient to satisfy a good-faith estimate of compensation, interest, damages, and penalties due. A respondent may appeal any such order in accordance with Section 8.39.180.

8.39.160 Findings of fact and determination

A. Except when there is an agreed upon settlement, the Director shall issue a written determination with findings of fact resulting from the investigation and statement of whether a violation of this Chapter 8.39 has or has not occurred based on a preponderance of the evidence before the Director.

B. If the Director determines that there is no violation of this Chapter 8.39, the Director shall issue a “Determination of No Violation” with notice of an app-based worker or other person's right to appeal the decision, pursuant to Director rules.

C. If the Director determines that a violation of this Chapter 8.39 has occurred, the Director shall issue a

"Director's Order" that shall include a notice of violation identifying the violation or violations.

1. The Director's Order shall state with specificity the amounts due under this Chapter 8.39 for each violation, including payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to Section 8.39.170.

2. The Director's Order may specify that civil penalties and fines due to the Agency can be mitigated for respondent's timely payment of remedy due to an aggrieved party pursuant to subsection 8.39.170.A.4.

3. The Director's Order may specify that civil penalties and fines are due to the aggrieved party rather than due to the Agency.

4. The Director's Order may direct the respondent to take such corrective action as is necessary to comply with the requirements of this Chapter 8.39, including but not limited to, monitored compliance for a reasonable time period.

5. The Director's Order shall include notice of the respondent's right to appeal the decision pursuant to Section 8.39.180.

8.39.170 Remedies

A. The payment of unpaid compensation, liquidated damages of up to twice the amount of unpaid compensation, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this Chapter 8.39 is cumulative and is not intended to be exclusive of any other available remedies, penalties, fines, and procedures.

1. The amounts of all civil penalties, penalties payable to aggrieved parties, and fines contained in this Section 8.39.170 shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall determine the amounts and file a schedule of such amounts with the City Clerk.

2. If a violation is ongoing when the Agency receives a complaint or opens an investigation, the

Director may order payment of unpaid compensation plus interest that accrues after receipt of the complaint or after the investigation opens and before the date of the Director's Order.

3. Interest shall accrue from the date the unpaid compensation was first due at 12 percent annum, or the maximum rate permitted under RCW 19.52.020 as amended.

4. If there is a remedy due to an aggrieved party, the Director may waive part or all of the amount of civil penalties and fines due to the Agency based on timely payment of the full remedy due to the aggrieved party.

a. The Director may waive the total amount of civil penalties and fines due to the Agency if the Director determines that the respondent paid the full remedy due to the aggrieved party within ten days of service of the Director's Order.

b. The Director may waive half the amount of civil penalties and fines due to the Agency if the Director determines that the respondent paid the full remedy due to the aggrieved party within 15 days of service of the Director's Order.

c. The Director shall not waive any amount of civil penalties and fines due to the Agency if the Director determines that the respondent has not paid the full remedy due to the aggrieved party after 15 days of service of the Director's Order.

5. When determining the amount of liquidated damages, civil penalties, penalties payable to aggrieved parties, and fines due under this Section 8.39.170 for a settlement agreement or Director's Order, including but not limited to the mitigation of civil penalties and fines due to the Agency for timely payment of remedy due to an aggrieved party under subsection 8.39.170.A.4, the Director may consider:

a. The total amount of unpaid compensation, liquidated damages, penalties, fines, and interest due;

b. The nature and persistence of the violations;

c. The extent of the respondent's culpability;

d. The substantive or technical nature of the violations;

e. The size, revenue, and human resources capacity of the respondent;

f. The circumstances of each situation;

g. The amount of penalties in similar situations; and

h. Pursuant to rules that the Director may issue, other factors that are material and necessary to effectuate the terms of this Chapter 8.39.

B. A respondent found to be in violation of this Chapter 8.39 shall be liable for full payment of unpaid compensation due plus interest in favor of the aggrieved party under the terms of this Chapter 8.39 and other equitable relief.

1. If the precise amount of unpaid compensation cannot be determined due to a respondent's failure to produce records, or if a respondent produces records in a manner or form which makes timely determination of the amount of unpaid compensation impracticable, the Director may:

a. Determine unpaid compensation as a matter of just and reasonable inference, including the use of representative evidence such as testimony or other evidence from representative app-based workers or other aggrieved parties establishing violations for a class of app-based workers or aggrieved parties; or

b. Assess a daily amount for unpaid compensation in a minimum amount of $150 per accrued day of paid sick and paid safe time owed to the aggrieved party, where a minimum amount of $150 may be assessed in place of the average daily compensation owed for each day. This amount shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall determine the amounts and file a schedule of such amounts with the City Clerk.

2. For a first violation of this Chapter 8.39, the Director may assess liquidated damages in an additional amount of up to twice the unpaid compensation.

3. For subsequent violations of this Chapter 8.39, the Director shall assess an amount of liquidated damages in an additional amount of twice the unpaid compensation.

4. For purposes of establishing a first and subsequent violation for this Section 8.39.170, the violation must have occurred within ten years of the settlement agreement or Director's Order.

C. A respondent found to be in violation of this Chapter 8.39 for retaliation under Section 8.39.120 shall be subject to any appropriate relief at law or equity including, but not limited to reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of this Chapter 8.39, and liquidated damages in an additional amount of up to twice the unpaid compensation. The Director also shall order the imposition of a penalty payable to the aggrieved party of up to $6,230.88.

D. The Director is authorized to assess civil penalties for a violation of this Chapter 8.39 and may specify that civil penalties are due to the aggrieved party rather than due to the Agency.

1. For a first violation of this Chapter 8.39, the Director may assess a civil penalty of up to $622.85 per aggrieved party.

2. For a second violation of this Chapter 8.39, the Director shall assess a penalty of up to $1,245.71 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.

3. For a third or any subsequent violation of this Chapter 8.39, the Director shall assess a penalty of up to $6,230.88 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.

4. For purposes of this Section 8.39.170, a violation is a second, third, or subsequent violation if the respondent has been a party to one, two, or more than two settlement agreements, respectively, stipulating that a violation has occurred; and/or one, two, or more than two Director's Orders, respectively, have issued against the respondent in the ten years preceding the date of the violation; otherwise, it is a first violation.

E. The Director is authorized to assess fines for a violation of this Chapter 8.39 and may specify that the 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 establish an accessible system for an app-based worker to request and use paid sick and paid safe time under subsection 8.39.060.C	$622.85 per aggrieved party
Failure to provide notification of the current rate of average daily compensation and an updated amount of paid time available for use as paid sick and paid safe time under subsection 8.39.060.L	$622.85 per aggrieved party
Failure to provide app-based workers with written notice of rights under subsection 8.39.100.A	$622.85 per aggrieved party
Failure to provide app-based workers with the network company's written policy and procedure for meeting paid sick and paid safe time requirements under subsection 8.39.100.B	$622.85 per aggrieved party
Failure to retain network company records for three years under subsections 8.39.110.A and 8.39.110.B	$622.85 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 8.39.120	$1,245.71 per aggrieved party
Failure to provide notice of investigation to app-based workers under subsection 8.39.150.B.2	$622.85
Failure to post or distribute public notice of failure to comply with final order under subsection 8.39.210.A.1	$622.85

The maximum amount that may be imposed in fines in a one-year period for each type of violation listed above is $6,230.88 per aggrieved party unless a fine for retaliation is issued, in which case the maximum amount that may be imposed is $24,922.26 per aggrieved party.

F. A respondent who willfully hinders, prevents, impedes, or interferes with the Director or Hearing Examiner in the performance of their duties under this Chapter 8.39 shall be subject to a civil penalty of not less than $1,245.71 and not more than $6,230.88.

G. In addition to the unpaid compensation, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City the reasonable costs incurred in enforcing this Chapter 8.39, including but not limited to reasonable attorney's fees.

H. A respondent that is the subject of a settlement agreement stipulating that a violation shall count for

debarment, or a final order for which all appeal rights have been exhausted, shall not be permitted to bid, or have a bid considered, on any City contract until such amounts due under the final order have been paid in full to the Director. If the network company is the subject of a final order two times or more within a five-year period, the network company shall not be allowed to bid on any City contract for two years. This subsection 8.39.170.H shall be construed to provide grounds for debarment separate from, and in addition to, those contained in Chapter 20.70 and shall not be governed by that chapter provided that nothing in this subsection 8.39.170.H shall be construed to limit the application of Chapter 20.70. The Director shall notify the Director of Finance and Administrative Services of all network companies subject to debarment under this subsection 8.39.170.H.

8.39.180 Appeal period and failure to respond

A. An app-based worker or other person who claims an injury as a result of an alleged violation of this Chapter 8.39 may appeal the Determination of No Violation, pursuant to Director rules.

B. A respondent may appeal the Director's Order, including all remedies issued pursuant to Section 8.39.170, by requesting a contested hearing before the Hearing Examiner in writing within 15 days of service of the Director's Order. If a respondent fails to appeal the Director's Order within 15 days of service, the Director's Order shall be final. If the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period shall run until 5 p.m. on the next business day.

8.39.190 Appeal procedure and failure to appear

A. Contested hearings shall be conducted pursuant to the procedures for hearing contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for hearing contested cases. The hearing shall be conducted de novo and the Director shall have the burden of proving by a preponderance of the evidence that the violation or violations occurred. Upon establishing such proof, the remedies and penalties imposed by the Director shall be upheld unless it is shown that the Director abused discretion. Failure to appear for a contested hearing shall result in an order being entered finding that the respondent committed the violation

stated in the Director's Order. For good cause shown and upon terms the Hearing Examiner deems just, the Hearing Examiner may set aside an order entered upon a failure to appear.

B. In all contested cases, the Hearing Examiner shall enter an order affirming, modifying or reversing the Director's Order.

8.39.200 Appeal from Hearing Examiner order

A. The respondent may obtain judicial review of the decision of the Hearing Examiner by applying for a Writ of Review in the King County Superior Court within 30 days from the date of the decision in accordance with the procedure set forth in chapter 7.16 RCW as amended, other applicable law, and court rules.

B. The decision of the Hearing Examiner shall be final and conclusive unless review is sought in compliance with this Section 8.39.200.

8.39.210 Failure to comply with final order

A. If a respondent fails to comply within 30 days of service of any settlement agreement with the Agency, or with any final order issued by the Director or the Hearing Examiner for which all appeal rights have been exhausted, the Agency may pursue, but is not limited to, the following measures to secure compliance:

1. The Director may require the respondent to post or distribute public notice of the respondent's failure to comply in a form and manner determined by the Agency.

2. The Director may refer the matter to a collection agency. The cost to the City for the collection services will be assessed as costs, at the rate agreed to between the City and the collection agency, and added to the amounts due.

3. The Director may refer the matter to the City Attorney for the filing of a civil action in King County Superior Court, the Seattle Municipal Court, or any other court of competent jurisdiction to enforce such order or to collect amounts due. In the alternative, the Director may seek to enforce a settlement agreement, a Director's Order or a final order of the Hearing Examiner under Section 8.39.220.

4. The Director may request that the City's Department of Finance and Administrative Services

deny, suspend, refuse to renew, or revoke any business license held or requested by the network company or person until such time as the network company complies with the remedy as defined in the settlement agreement or final order. The City's Department of Finance and Administrative Services shall have the authority to deny, refuse to renew, or revoke any business license in accordance with this subsection 8.39.210.A.4.

B. No respondent that is the subject of a settlement agreement or final order issued under this Chapter 8.39 shall quit business, sell out, exchange, convey, or otherwise dispose of the respondent's business or stock of goods without first notifying the Agency and without first notifying the respondent's successor of the amounts owed under settlement agreement or the final order at least three business days prior to such transaction. At the time the respondent quits business, or sells out, exchanges, or otherwise disposes of the respondent's business or stock of goods, the full amount of the remedy, as defined in the settlement agreement or the final order issued by the Director or the Hearing Examiner, shall become immediately due and payable. If the amount due under the settlement agreement or final order is not paid by respondent within ten days from the date of such sale, exchange, conveyance, or disposal, the successor shall become liable for the payment of the amount due, provided that the successor has actual knowledge of the order and the amounts due or has prompt, reasonable, and effective means of accessing and verifying the fact and amount of the order and the amounts due. The successor shall withhold from the purchase price a sum sufficient to pay the amount of the full remedy. When the successor makes such payment, that payment shall be deemed a payment upon the purchase price in the amount paid, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the network company.

8.39.220 Debt owed The City of Seattle

A. All monetary amounts due under a settlement agreement or Director's Order shall be a debt owed to the City and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies, provided that amounts collected by the City for unpaid compensation,

liquidated damages, penalties payable to aggrieved parties, or front pay shall be held in trust by the City for the aggrieved party and, once collected by the City, shall be paid by the City to the aggrieved party.

B. If a respondent fails to appeal a Director's Order to the Hearing Examiner within the time period set forth in subsection 8.39.180.B, the Director's Order shall be final, and the Director may petition the Seattle Municipal Court, or any court of competent jurisdiction, to enforce the Director's Order by entering judgment in favor of the City finding that the respondent has failed to exhaust its administrative remedies and that all amounts and relief contained in the order are due. The Director's Order shall constitute prima facie evidence that a violation occurred and shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 5.50.050 as amended, containing evidence that the respondent has failed to comply with the order or any parts thereof, and is therefore in default, or that the respondent has failed to appeal the Director's Order to the Hearing Examiner within the time period set forth in subsection 8.39.180.B, and therefore has failed to exhaust the respondent's administrative remedies, shall also be admissible without further evidentiary foundation.

C. If a respondent fails to obtain judicial review of an order of the Hearing Examiner within the time period set forth in subsection 8.39.200.A, the order of the Hearing Examiner shall be final, and the Director may petition the Seattle Municipal Court to enforce the Director's Order by entering judgment in favor of the City for all amounts and relief due under the order of the Hearing Examiner. The order of the Hearing Examiner shall constitute conclusive evidence that the violations contained therein occurred and shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 5.50.050 as amended, containing evidence that the respondent has failed to comply with the order or any parts thereof, and is therefore in default, or that the respondent has failed to avail itself of judicial review in accordance with subsection 8.39.200.A, shall also be admissible without further evidentiary foundation.

D. In considering matters brought under subsections 8.39.220.B and 8.39.220.C, the Seattle Municipal Court may include within its judgment all terms, conditions, and remedies contained in the Director’s Order or

the order of the Hearing Examiner, whichever is applicable, that are consistent with the provisions of this Chapter 8.39.

8.39.230 Private right of action

A. Any person or class of persons that suffers an injury as a result of a violation of this Chapter 8.39, or is the subject of prohibited retaliation under Section 8.39.120, may bring a civil action in a court of competent jurisdiction against the network company or other person violating this Chapter 8.39 and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation: the payment of any unpaid compensation plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid compensation; and a penalty payable to any aggrieved party of up to $6,230.88 if the aggrieved party was subject to prohibited retaliation. Interest shall accrue from the date the unpaid compensation was first due at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020 as amended.

B. For purposes of this Section 8.39.230, "person" includes any entity a member of which has suffered an injury or retaliation, or any other individual or entity acting on behalf of an aggrieved party that has suffered an injury or retaliation.

C. For purposes of determining membership within a class of persons entitled to bring an action under this Section 8.39.230, two or more app-based workers are similarly situated if they:

1. Are or were hired for the same network company or network companies, whether concurrently or otherwise, at some point during the applicable statute of limitations period,

2. Allege one or more violations that raise similar questions as to liability, and

3. Seek similar forms of relief.

D. For purposes of subsection 8.39.230.C, app-based workers shall not be considered dissimilar solely because the app-based workers':

1. Claims seek damages that differ in amount, or

2. Job titles or other means of classifying app-based workers differ in ways that are unrelated to their claims.

8.39.235 Encouragement of more generous policies

A. Nothing in this Chapter 8.39 shall be construed to discourage or prohibit a network company from the adoption or retention of a paid sick and paid safe time policy more generous than the one required herein.

B. Nothing in this Chapter 8.39 shall be construed as diminishing the obligation of a network company to comply with any contract or other agreement providing more generous protections to an app-based worker than required by this Chapter 8.39.

8.39.240 Other legal requirements-Effect on other laws

A. The provisions of this Chapter 8.39:

1. Supplement and do not diminish or replace any other basis of liability or requirement established by statute or common law;

2. Shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard for minimum labor and compensation requirements, or standard that provides for greater accrual or use by app-based workers of sick or safe time, whether paid or unpaid, or which extends other protections to app-based workers; and

3. Shall not be interpreted or applied so as to create any power or duty in conflict with federal or state law.

B. This Chapter 8.39 shall not be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this Chapter 8.39 affecting such person. Nothing in this Section 8.39.240 shall be construed as restricting an app-based worker's right to pursue any other remedies at law or equity for violation of their rights.

8.39.250 Severability

The provisions of this Chapter 8.39 are declared to be separate and severable. If any clause, sentence,

paragraph, subdivision, section, subsection, or portion of this Chapter 8.39, or the application thereof to any network company, app-based worker, person, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this Chapter 8.39, or the validity of its application to other persons or circumstances.

Section 3. Section 3.02.125 of the Seattle Municipal Code, last amended by Ordinance 126665, is amended as follows:

3.02.125 Hearing Examiner filing fees

A. The filing fee for a case before the City Hearing Examiner is $85, with the following exceptions:

Basis for Case	**Fee in dollars**
* * *	
App-Based Worker Minimum Payment Ordinance (Chapter 8.37)	No fee
App-Based Worker Paid Sick and Safe Time Ordinance (Chapter 8.39)	No fee
* * *	

* * *

Section 4. The City Council intends to consider separate legislation that would require marketplace network companies to provide paid sick and paid safe time for app-based workers if, as contemplated by Section 8 of Ordinance 126595, the Council establishes regulations for marketplace network companies to comply with minimum payment, transparency, or flexibility standards for app-based workers.

Section 5. Sections 2 and 3 of this ordinance shall take effect on May 1, 2023.

Section 6. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2023, and signed by me in open session in authentication of its passage this _____ day of _____, 2023.

_____

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2023.

_____

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2023.

_____

Elizabeth M. Adkisson, Interim City Clerk

(Seal)