



Legislation Text

File #: CB 119841, Version: 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to gig workers in Seattle; establishing labor standards requirements for premium pay for gig workers in Seattle; amending Sections 100.015, 100.027, and 100.200 of Ordinance 126094 to make technical corrections; declaring an emergency; and establishing an immediate effective date; all by a 3/4 vote of the City Council.

WHEREAS, in June 2020, the City Council (Council) passed emergency legislation, Ordinance 126094

(Premium Pay for Gig Workers Ordinance), requiring food delivery network companies to provide gig workers with premium pay for work performed in Seattle during the new coronavirus 19 emergency; and

WHEREAS, the Premium Pay for Gig Workers Ordinance went into effect upon the Mayor's signature on June 26, 2020; and

WHEREAS, The City of Seattle 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, amending the Premium Pay for Gig Workers Ordinance to make technical corrections will support implementation and enforcement of the ordinance's requirements; and

WHEREAS, amending the Premium Pay for Gig Workers Ordinance requires appropriate action by the Council; 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. This ordinance protects and promotes public health, safety, and welfare during the new coronavirus 19 (COVID-19) emergency by making technical amendments to the Premium Pay for Gig Workers Ordinance that are consistent with the Council’s intention and that will support implementation and enforcement of ordinance requirements.

C. The World Health Organization (WHO) has declared that COVID-19 is a global pandemic, which is particularly severe in high risk populations such as people with underlying medical conditions and the elderly, and the WHO has raised the health emergency to the highest level, requiring dramatic interventions to disrupt the spread of this disease.

D. On February 29, 2020, Washington Governor Jay Inslee proclaimed a state of emergency in response to new cases of COVID-19, directing state agencies to use all resources necessary to prepare for and respond to the outbreak.

E. On March 3, Mayor Jenny Durkan proclaimed a civil emergency in response to new cases of COVID -19, authorizing the Mayor to exercise the emergency powers necessary to take extraordinary measures to prevent death or injury of persons and to protect the public peace, safety and welfare, and alleviate damage, loss, hardship or suffering.

F. On March 16, 2020, Washington Governor Jay Inslee and the Public Health - Seattle & King County Local Health Officer issued parallel orders temporarily shutting down restaurants, bars, and other entertainment and food establishments, except for take-out food.

G. On March 23, 2020, Washington Governor Jay Inslee issued a “Stay Home - Stay Healthy” proclamation closing all non-essential workplaces, requiring people to stay home except to participate in essential activities or to provide essential business services, and banning all gatherings for social, spiritual, and recreational purposes through April 6, 2020. In addition to healthcare, public health and emergency services, the “Stay Home - Stay Healthy” proclamation identified delivery network companies and establishments selling

groceries and prepared food and beverages as essential business sectors critical to protecting the health and well-being of all Washingtonians and designated their workers as essential critical infrastructure workers.

H. On April 2, 2020, Washington Governor Jay Inslee extended the “Stay Home - Stay Healthy” proclamation through May 4, 2020.

I. On May 1, 2020, Washington Governor Jay Inslee extended the “Stay Home - Stay Healthy” proclamation through May 31, 2020 in recognition that the worldwide COVID-19 pandemic and its progression in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace.

J. On May 4, 2020, Washington Governor Jay Inslee announced a “Safe Start” plan that reopens Washington’s economy in phases and has restrictions on the seating capacity of restaurants during three of the four phases and physical distancing for high-risk populations and worksites during all four phases.

K. On June 19, 2020, Washington State Secretary of Health John Wiesman approved King County to move to Phase 2 of the “Safe Start” plan. Under Phase 2, restaurants must comply with health and safety requirements that include limiting guest occupancy to 50 percent or less of the maximum building occupancy, limiting table size to five guests or fewer, and prohibiting bar seating.

L. On July 23, Governor Jay Inslee and Washington State Secretary of Health John Wiesman announced changes to the “Safe Start” plan to slow COVID-19 exposure, including a new requirement that restaurants limit indoor parties to members of the same household. The announcement also confirmed that takeaway remains available for small parties from different households.

M. As of July 28, 2020, the WHO Situation Report reported a global total of 16,341,920 cases of COVID-19, including 650,805 deaths; the Washington State Department of Health and Johns Hopkins University reported 53,321 cases of COVID-19, including 1,518 deaths in Washington State; and Public Health - Seattle & King County reported 14,579 cases of COVID-19, including 645 deaths, in King County.

N. In June 2020, the Council passed Ordinance 126094 (Premium Pay for Gig Workers Ordinance),

emergency legislation to support gig workers for the risks of working for food delivery network companies during the COVID-19 emergency and for the costs of taking preventative safety measures to protect themselves and others from spreading the virus.

O. Effective June 26, 2020, the Premium Pay for Gig Workers Ordinance requires covered food delivery network companies to provide premium pay to gig workers working in Seattle for the duration of the civil emergency proclaimed by the Mayor on March 3, 2020.

P. The Premium Pay for Gig Workers Ordinance also establishes gig worker and consumer protections. Food delivery service companies, as a result of the ordinance going into effect, are prohibited from reducing areas of service in Seattle; reducing a gig worker's compensation; limiting a gig worker's earning capacity; or adding customer charges for delivery of groceries.

Q. The City's Office of Labor Standards (OLS) implements and enforces the Premium Pay for Gig Workers Ordinance. If OLS finds that a food service delivery network company violated the ordinance, the Director can issue an order requiring payment of unpaid compensation to the gig worker(s) and penalties payable to the City and the gig worker(s).

R. Food delivery network companies are essential businesses operating in Seattle during the COVID-19 emergency and rely on business models that hire gig workers as independent contractors, thereby creating barriers for gig workers to access employee protections established by local, state, and federal law, and making gig workers highly vulnerable to economic insecurity and health or safety risks.

S. Gig workers working for food delivery network companies are essential workers performing services that are fundamental to the economy and health of the community during the COVID-19 crisis. They can work in high risk conditions with inconsistent access to protective equipment and other safety measures; work in public situations with limited or no ability to engage in physical distancing; and continually expose themselves and the public to the spread of disease.

T. In the pursuit of economic opportunity, many gig 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 food delivery network companies.

U. Gig workers making deliveries for food delivery network companies are supporting community efforts to engage in physical distancing and mitigate the spread of COVID-19 while simultaneously exposing themselves to a higher risk of infection. Gig workers also bear the brunt of the time and expenses necessary for cleaning and disinfecting equipment and engaging in other efforts to protect themselves, customers, and the public from illness.

V. Premium pay, paid in addition to regular wages, is an established type of compensation for employees performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort and distress.

W. Gig workers working during the COVID-19 emergency merit additional compensation because they are performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort and distress due to the significant risk of exposure to the COVID-19 virus. Gig workers have been working under these hazardous conditions for months. They are working in these hazardous conditions now and will continue to face safety risks as the virus presents an ongoing threat for an uncertain period, potentially resulting in subsequent waves of infection.

X. The availability of food delivery services is fundamental to the health of the community and is made possible during the COVID-19 emergency because gig workers are on the frontlines of this devastating pandemic supporting public health, safety, and welfare by making deliveries while working in hazardous situations.

Y. Requiring food delivery network companies to provide premium pay to gig workers protects public health, supports stable incomes, and promotes job retention by ensuring that gig workers are compensated now and for the duration of the public health emergency for the substantial risks, efforts, and expenses they are undertaking to provide essential services in a safe and reliable manner during the COVID-19 emergency.

Z. This ordinance is immediately necessary in response to the COVID-19 public health emergency because making technical amendments to the Premium Pay for Gig Workers Ordinance will support implementation and enforcement of premium pay requirements that are vital to the financial well-being of gig workers and public safety during a global pandemic.

Section 2. Section 100.015 of Ordinance 126094 is amended as follows:

100.015 Gig worker coverage

For the purposes of this ordinance:

A. Covered gig workers are limited to those who perform work for a covered hiring entity, where the work is performed in whole or part in Seattle.

B. Work performed “in Seattle” means work that includes a work-related stop in Seattle.

C. Gig workers who are employees under Seattle Municipal Code Chapter 14.20 for covered hiring entities are not covered gig workers under this ordinance. Hiring entities must pay all compensation owed to such gig workers in accordance with their obligations under Seattle Municipal Code Chapter 14.20.

Section 3. Section 100.027 of Ordinance 126094 is amended as follows:

100.027 Gig worker and consumer protections

A. No hiring entity shall, as a result of this ordinance going into effect, take any of the following actions:

1. Reduce or otherwise modify the areas of the City that are served by the hiring entity;
2. Reduce a gig worker’s compensation; ((~~or~~))
3. Limit a gig worker’s earning capacity, including but not limited to restricting access to online orders(~~(-)~~) ; or
4. Add customer charges to online orders for delivery of groceries.

B. It shall be a violation of this Section 100.027 if this ordinance going into effect is a motivating factor in a hiring entity’s decision to take any of the actions in subsection 100.027.A unless the hiring entity can prove

that its decision to take the action(s) would have happened in the absence of this ordinance going into effect.

C. Hiring entities shall comply with the requirements in subsection 100.027.A for the duration of the civil emergency proclaimed by the Mayor on March 3, 2020.

Section 4. Section 100.200 of Ordinance 126094 is amended as follows:

100.200 Remedies

* * *

D. A respondent found to be in violation of gig worker and consumer protections under subsection 100.027.A.1 or 100.027.A.4 shall be subject to the penalties and fines established by this Section 100.200; such penalties and fines shall be payable only to the Agency. The Director is not authorized to assess unpaid compensation due under subsection 100.200.B or 100.200.C((-)) for violations of subsection 100.027.A.1 or 100.027.A.4. All remedies are available for violations of subsection 100.027.A.2 or 100.027.A.3.

E. The Director is authorized to assess penalties and shall specify that at least 50 percent of any penalty assessed pursuant to this subsection 100.200.E is payable to the aggrieved party and the remaining penalty is payable to the Agency as a civil penalty. The Director may also specify that the entire penalty is payable to the aggrieved party.

1. For a first violation of this ordinance, the Director may assess a penalty of up to \$546.07 per aggrieved party.
2. For a second violation of this ordinance, the Director shall assess a penalty of up to \$1,092.13 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 ordinance, the Director shall assess a penalty of up to \$5,462.70 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.

~~((4. The maximum penalty for a violation of this ordinance shall be \$21,849.79 per aggrieved~~

party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.))

((5-)) 4. For purposes of this Section 100.200, 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.

Section 5. Based on the findings of fact set forth in Section 1 of this ordinance, the Council finds and declares that this ordinance is a public emergency ordinance, which shall take effect immediately and is necessary for the protection of public health, safety, and welfare.

Section 6. By reason of the findings set forth in Section 1, and the emergency that is hereby declared to exist, this ordinance shall become effective immediately upon its passage by a 3/4 vote of the Council and its approval by the Mayor, as provided by Article 4, subsection 1.1 of the Charter of the City.

Passed by a 3/4 vote of all the members of the City Council the _____ day of _____, 2020, and signed by me in open session in authentication of its passage this _____ day of _____, 2020.

President _____ of the City Council

Approved by me this _____ day of _____, 2020.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2020.

Monica Martinez Simmons, City Clerk

(Seal)