



SEATTLE CITY COUNCIL
CENTRAL STAFF

App-Based Worker Deactivation Rights Ordinance – Issue Identification

JASMINE MARWAHA AND KARINA BULL, ANALYSTS

PUBLIC SAFETY AND HUMAN SERVICES COMMITTEE

MAY 23, 2023

Corrections made to Slide 7

Presentation Outline

- Brief Overview
- Policy Considerations
- Questions
- Next Steps

Policy Summary

The App-Based Workers Deactivations Rights Ordinance would require network companies to base deactivations on reasonable policies and provide app-based workers notice, records, and human review of all deactivations.

Notice	Records	Human Review
<ul style="list-style-type: none">• Policies• Deactivation	<ul style="list-style-type: none">• Substantiating deactivation	<ul style="list-style-type: none">• Records• Investigation• Challenge

Requirements for Deactivation: Policies

- **Fair notice of deactivation policy:** A network company must inform the app-based worker of the network company's policies for which a violation may result in deactivation.
- **Reasonable deactivation policy:** The policy that may lead to a deactivation must be reasonable and be reasonably related to the network company's safe and efficient operations.
 - Listed examples of unreasonable policies.

Unreasonable Deactivation Policy

A Network Company would **not** be able to deactivate an app-based worker based on:

Consistent
with
ABWMP

- Availability to work or number of hours worked
- Acceptance or rejection of any offer, any types of offers, or any number or proportion of offers
- Cancelling of an offer with cause
- Contacting the network company
- Quantitative metrics derived from aggregate customer ratings (*if sole basis*)
- Statements by a worker regarding compensation and/or working conditions
- Asserting legal rights, whether in court or via government processes/procedures
- A background check, consumer report, driver record, or record of traffic infractions, except in cases of egregious misconduct or where required by other applicable law

Requirements Upon Deactivation

- **Investigation:** A network company must conduct a fair and objective investigation prior to deactivating an app-based worker, except in the case of egregious misconduct.
- **Confirmation of violation:** The network company must demonstrate by a preponderance of the evidence that the alleged violation of the network company's policy or rule occurred.
- **Consistent application** of rule or policy and subsequent penalties
- **Proportionality:** Deactivation must be reasonably related to offense, consider mitigating circumstances.
- Cannot intend or result in discrimination or discriminatory act.

Implications of Egregious Misconduct

1. Don't need to complete investigation before deactivating a worker
 - Investigation must be completed within 10 days unless extraordinary circumstances beyond company's control
2. Can deactivate immediately without needing to provide 14 days' notice
3. Can deactivate based on the results of a background check that reveals egregious misconduct.
 - If the network company can prove by clear and convincing evidence that the conduct directly relates to the app-based worker's fitness to provide app-based services.

Egregious Misconduct Definition

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

Egregious Misconduct Examples

- Assault
- Sexual assault
- Sexual harassment
- Communicating with a minor for immoral purposes
- Sexual conduct as defined in state law
- Unlawful harassment as defined in state law
- Unlawful imprisonment as defined in state law
- Solicitation of any sexual act
- Theft
- Fraud
- Robbery
- Burglary
- Prostitution
- Reckless driving
- Driving under the influence of alcohol or drugs
- Failing to maintain a valid state driver's license

Notice of Deactivation

- App-based workers get 14-days' notice of their deactivation, except when egregious misconduct
- The notice of deactivation must include, at a minimum:
 - The reasons for deactivation
 - The effective date of deactivation
 - The [records](#) relied upon to substantiate deactivation
 - The length of the deactivation
 - The steps an app-based worker can take to remedy the deactivation
 - The app-based worker's right to challenge such deactivation
 - The network company's [process for challenging a deactivation](#), including contact information to initiate a challenge

Right to Challenge Deactivations

- An app-based worker shall have a right to challenge unwarranted deactivation through an internal deactivation challenge procedure
- A response to a challenge must be provided within 14 days, certified by an individual at the network company with authority to reinstate the app-based worker
- An app-based worker shall have a right to file a complaint with OLS or pursue their private right of action after receiving the network company's initial response, or 14 days after initiating a challenge, whichever comes earlier.

Access to Records

- Records relied upon by the network company to substantiate deactivation
- Certified statement from an individual with authority to reverse the deactivation, attesting that these are true and accurate records to the individual's knowledge
- If new evidence comes to the network company's possession, they must provide records to the app-based worker within 14 days
- Network companies must establish an accessible system for app-based workers to access their receipts and/or payment disclosures for each offer performed or cancelled

Enforcement

- Proposed effective date: June 1, 2024
- *Agency enforcement* date: January 1, 2025
- OLS will enforce:
 - Facial Policy Requirements
 - Fair notice of deactivation policy
 - Reasonable deactivation policy
 - Procedural Requirements
 - Notice of Deactivation
 - Right to Challenge Deactivation
 - Access to Records
- OLS will not enforce substantive review of investigations, such as whether an individual deactivation was substantiated by a preponderance of evidence.
- App-based worker may pursue private right of action outside of OLS enforcement

Policy Considerations

1. Network Company Coverage

All network companies with 250 or more app-based workers would be covered under this legislation. Exempting Marketplace Network Companies (MNCs) would align with coverage of minimum payment obligations and paid sick and safe time. However, stakeholders report that workers on MNC platforms face similar issues as app-based workers from other network companies and should not be left out of these protections.

Options:

- a. Amend the legislation to exempt marketplace network companies from coverage; or
- b. No change.

2. App-Based Worker Coverage

App-based worker coverage would be limited to workers who have had at least 10 percent of their offers in the past 180 days involve performing services in Seattle, with the exception of the notice of rights requirement. After an app-based worker performs one offer in Seattle, they would have the right to receive a notice of rights from the company that includes a system for workers to understand their eligibility to challenge a deactivation under this ordinance.

Options:

- a. Create further limitations on coverage, such as by increasing the threshold percentage of offers needing to be performed in Seattle over the past 180 days;
- b. Broaden coverage to all app-based workers in Seattle who have performed app-based services in Seattle in the past 180 days; or
- c. No change.

3. Temporary Deactivations

The legislation would allow a network company to temporarily deactivate a worker for safety or efficiency reasons with 14 days' notice, but would not allow such deactivations without notice. In practice, this means that a company would be prohibited from temporarily deactivating an app-based worker for reasons related to inclement weather, account security, etc.

Options:

- a. Amend the legislation to allow for immediate temporary deactivations in certain circumstances, such as to protect worker safety; or
- b. No change.

4. Unreasonable Deactivation Policy – Background Checks

The legislation would permit a network company to deactivate a worker if a background check or other screening shows that an app-based worker engaged in egregious misconduct, relating to the app-based worker's fitness to provide app-based services. Some companies have expressed concern that this provision would nevertheless inhibit their ability to remove workers from the app that endanger a customer or third party's safety.

Options:

- a. Eliminate the prohibition on deactivating a worker based on the results of a background check or other screenings;
- b. Modify the prohibition to restrict network companies from deactivating app-based workers *solely* on the basis of a background check or other screenings; or
- c. No change.

5. Egregious Misconduct Definition

The definition of “egregious misconduct” would not encompass conduct such as harassing comments, insults, or racial slurs. As such, network companies could not immediately deactivate workers accused of engaging in this type of conduct. The legislation would, however, allow for the worker to be deactivated with 14 days’ notice, and for other disciplinary action to be taken against the app-based worker.

Options:

- a. Broaden the definition of egregious misconduct to include conduct that encompasses verbal aggression; or
- b. No change.

6. Access to Records: Privacy

The legislation would allow for companies to anonymize information that they reasonably believe could compromise a customer or third party's safety, but does not clarify the types of measures a company may take to protect privacy and safety. Some stakeholders wish to remove the requirement to provide records substantiating a deactivation entirely, citing privacy concerns. Removing a worker's access to records would significantly impede a worker's ability to challenge an unwarranted deactivation.

Options:

- a. Clarify the measures that companies may take to anonymize an individual's information;
- b. Remove the requirement to provide records to an app-based worker substantiating their deactivation; or
- c. No change.

7. Agency Enforcement

In response to OLS's concerns about the fact-intensive nature of investigating individual deactivations, the legislation proposes a bifurcated enforcement model – where OLS would enforce the facial deactivation policy and procedural requirements of the proposed ordinance, and a worker could pursue other ordinance violations through private right of action. The concept could present significant outreach challenges for OLS and community partners, and is not necessary for OLS to determine its enforcement priorities. Nevertheless, OLS may benefit from more explicit direction from Council as to the expectations of its enforcement priorities.

Options:

- a. Remove the limitations on OLS's enforcement authority, and allow OLS to determine enforcement priorities;
- b. Remove the limitations on OLS's enforcement authority, but require OLS to prioritize enforcement of procedural and facial policy requirements;
- c. Remove the limitations on OLS's enforcement authority, but clarify that OLS has the discretion to prioritize enforcement of procedural and facial policy requirements; or
- d. No change.

8. Implementation Considerations

OLS reports that they do not have the resources to perform this work. Central Staff is not aware of any General Fund (GF) resources available to support this appropriation absent an offsetting reduction in GF appropriations.

Options:

- a. Increase funding for OLS to perform these responsibilities through separate budget legislation or during the fall budget process for 2024;
- b. Delay action on this legislation until sufficient resources are identified for implementation; or
- c. No change (do not allocate additional funding and allow OLS to determine its work priorities).

Next Steps

- Introduction of Legislation
- Committee Meeting with Issue ID

Questions?