

May 19, 2023

## MEMORANDUM

**To:** Public Safety and Human Services Committee  
**From:** Jasmine Marwaha, Analyst  
**Subject:** Council Bill 120580 - App-Based Worker Deactivation Rights - Issue Identification

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On May 23, 2023, the Public Safety and Human Services Committee (Committee) will discuss Council Bill (CB) 120580, the proposed App-Based Worker Deactivation Rights Ordinance. The proposed ordinance would require network companies to provide certain protections against unwarranted deactivations from their platforms for app-based workers. These protections include establishing reasonable bases for deactivations, as well as providing notice, human review, and records substantiating deactivations to the app-based worker.

This memo provides a background and overview of the proposed legislation, identification of policy considerations for the Committee, and next steps.

### Background

App-based workers perform offers facilitated or presented by network companies to provide a variety of valued services for the community (e.g., on-demand food delivery, pre-scheduled tasks). A 2021 Pew Research Center study found that 16 percent of American adults earned money from app-based work, and the rates were higher for those who are Black, Indigenous, and people of color (BIPOC). More than half of American app-based workers report that the money they earn through app-based work is essential or important for meeting their basic needs.<sup>1</sup>

Network companies typically use algorithms to manage worker access to their platform, designed to maximize efficiency and customer satisfaction. There has been extensive documentation in social science literature and media reports about the negative impacts of algorithmic management on app-based workers, and what the Federal Trade Commission recently called “an invisible, inscrutable boss” that dictates core aspects of work.<sup>2</sup>

Workers report being deactivated from the app-based platform, and thereby cut off from their income source, for reasons such as: rejecting too many orders, delays outside of their control, and changing and unpredictable performance expectations. Often, the reasons are unknown. Many workers report a lack of substantive response from companies when they try to challenge their deactivation. Workers further report that they are unable to meaningfully challenge their

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<sup>1</sup> See Anderson et al., *The State of Gig Work in 2021*, at 31 (reporting that 58% of current or recent gig workers said that money earned via gig jobs has been “essential or important for meeting their basic needs”).

<sup>2</sup> FTC Policy Statement on Enforcement Related to Gig Work, September 2022, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Matter%20No.%20P227600%20Gig%20Policy%20Statement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Matter%20No.%20P227600%20Gig%20Policy%20Statement.pdf).

deactivation because the network company has control of the records and information related to the deactivation.

To address the issues raised by the network companies' practices, stakeholders have requested that the Council consider establishing protections against unwarranted deactivations for app-based workers. Last year, Council passed [CB 120294](#), establishing minimum payment standards, transparency requirements, and flexibility protections for these workers. More recently, Council passed [CB 120514](#), establishing permanent paid sick and safe time for app-based workers. Council Bill 120580 is a continuation of efforts intended to establish labor standards for app-based workers.

### **Council Bill 120580**

This proposed ordinance would aim to create more stability and job security for app-based workers by requiring network companies to base deactivations on reasonable policies and provide app-based workers with notice, records and human review of all deactivations.

#### Notice of reasonable deactivation policy

This legislation would require network companies to give workers fair notice of their deactivation policy and list the reasons that could get a worker deactivated. Those reasons must be reasonably related to the network company's safe and efficient operations. The legislation would prohibit a network company from deactivating a worker based on the following reasons:

- 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 an offer with cause;
- Contacting the network company;
- Quantitative metrics derived from aggregate customer ratings (if that is the sole basis);
- Statements by a worker regarding compensation and/or working conditions;
- Asserting legal rights, whether in court or via government processes or procedures; or
- The results of a background check, consumer report, driver record, or record of traffic infractions, except in cases of egregious misconduct or where required by other applicable law.

This legislation would also require deactivations to be based on an investigation, which demonstrates by a preponderance of evidence that the app-based worker violated the company's deactivation policy. The deactivation must also represent consistent application of the policy; be proportionate to the offense; and cannot intend to or result in discrimination.

### Notice of deactivation

The legislation would require all deactivated app-based workers to receive a notice of deactivation (NOD), which includes the records relied upon to substantiate the deactivation, and a description of the network company's internal process for a worker to challenge the deactivation, among other requirements. This NOD must be provided to the worker 14 days in advance of a deactivation, unless the network company alleges that the worker has engaged in egregious misconduct.

### Limited exceptions for egregious misconduct

Under this proposal, if there is an allegation of egregious misconduct, the worker is entitled to receive the NOD on the date of deactivation, and the network company would have up to 10 days after the NOD is issued to complete its investigation. This timeline for investigation may be extended if there are extraordinary circumstances beyond the network company's control delaying the investigation.

### Internal challenge procedure

Under the proposed ordinance, workers would have a right to challenge their deactivation through an internal procedure, and could do so at any point up to 90 days after receiving the NOD. The network company would have 14 days to respond to the worker's challenge, with a written statement certified by an individual at the network company with authority to reinstate the app-based worker. The worker would then be able to file a complaint with the Office of Labor Standards (OLS) or pursue their private right of action after that initial response, or after 14 days, whichever is earlier.

### Records

The network company would be required to provide app-based workers with the records relied upon to substantiate a deactivation. Those records must be certified from an individual at the network company that they are true and accurate records. If new evidence comes to the network company's possession after the NOD, they must provide those records to the worker.

### OLS enforcement

The ordinance would also restrict the role of OLS to enforcing the deactivation policy and procedural requirements, and would not require OLS to review individual deactivations to determine whether they were substantiated. These procedural provisions are meant to address the information asymmetry and power imbalance that would otherwise exist if a worker were to challenge their deactivation in arbitration proceedings.

## Issue Identification

### 1. Network Company Coverage

All network companies with 250 or more app-based workers would be covered under the proposed ordinance. This would include “marketplace network companies” (MNCs) that primarily facilitate pre-scheduled offers but exert less control over the worker or performance of services than other types of network companies (e.g., workers can interface with prospective customers to determine the scope of services before the customer places an online order, workers can set their own rates, the company does not monitor offers by mileage or time).

These MNCs are currently exempt from the App-Based Worker Minimum Payment Ordinance and the App-Based Worker Paid Sick and Safe Time Ordinance. Exempting MNCs from CB 120580 would align with coverage of these other labor standards. 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, namely when they meet that 10 percent threshold in the previous 180 days.

This 10 percent threshold is modeled after the eligibility requirements to challenge deactivations that were in place for the Transportation Network Company (TNC) Deactivation Rights Ordinance, and is intended to make sure there is an ongoing nexus to Seattle that is not burdensome for workers to track. App-based workers who perform services in Seattle are not typically limited to work in the geographic boundaries of Seattle, and often accept offers to perform services in other jurisdictions.

Some stakeholders have asserted that the coverage threshold should be increased to include workers who have had at least 50 percent of their offers in the past 180 days involve performing services in Seattle to create a stronger nexus to Seattle-based work. Other stakeholders propose having all app-based workers in Seattle covered no matter what percentage of their work takes place in Seattle, as the coverage threshold may be confusing for workers.

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

“Deactivation” as defined in the legislation would encompass any blocking of an app-based worker’s access to the worker platform. Under this proposal, companies must give fair notice of the reasons that could get a worker deactivated, and those reasons must be reasonably related to the network company’s safe and efficient operations.

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. The Committee may want to consider allowing for such temporary deactivations.

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. Prohibited Reasons for Deactivation – Results of a Background Check

The proposed ordinance would prohibit a network company from deactivating a worker based on the results of a background check, consumer report, driver record, or record of traffic infractions, except in cases of egregious misconduct or where required by other applicable law.

This issue has significant racial equity implications, as the criminal legal system disproportionately impacts those who are BIPOC. Some studies estimate that over half of background checks conducted are inaccurate.<sup>3</sup> Law enforcement agencies commonly fail to update arrest or charge records with information about the outcome of a case. Workers have also reported being deactivated for minor traffic infractions cited years ago, and due to background checks that are based on mistaken identity.

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<sup>3</sup> Wells, Martin; Cornwell, Erin York; Barrington, Linda; Bigler, Esta; Enayati, Hassan; and Vilhuber, Lars. “Criminal Record Inaccuracies and the Impact of a Record Education Intervention on Employment-Related Outcomes.” U.S. Department of Labor, January 2, 2020, [https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/LRE\\_WellsFinalProjectReport\\_December2020.pdf](https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/LRE_WellsFinalProjectReport_December2020.pdf).

The proposed ordinance 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

The definition of egregious misconduct has significant implications in the proposed ordinance. The proposed ordinance would define "egregious misconduct" as an action or behavior by an individual app-based worker that: (1) endangers the physical safety of the customer or a third party or (2) intentionally causes economic harm to the customer, a third person, or the network company. "Egregious misconduct" would include conduct that occurs outside of an app-based worker's provision of app-based services if the network company could prove by clear and convincing evidence that the conduct directly relates to the app-based worker's fitness to provide app-based services. The proposed ordinance also lists examples of egregious misconduct, including sexual assault, theft, fraud, and reckless driving.

This definition does 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 worker.

Options:

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

6. Access to Records Substantiating Deactivation

The proposed ordinance would require that each deactivated app-based worker receive the records relied upon by the network company to substantiate a deactivation, with a certified statement from an individual at the company attesting to the veracity of the records. The proposed ordinance would allow certain privacy measures to anonymize information that companies reasonably believe could compromise a customer or third party's safety, and would allow for OLS to issue rules to clarify what measures can be taken.

The Committee may wish to further specify in the proposed ordinance that companies may take privacy measures beyond redacting names and addresses if there is further information that may identify an individual and compromise their safety. Some stakeholders wish to remove the requirement to provide records substantiating a deactivation entirely, citing potential privacy and safety concerns. Removing a worker's access to records would significantly impede their ability to challenge an unwarranted deactivation, as the network company would have control of all the records and information related to the 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. Enforcement

The proposed ordinance would limit the role of OLS to enforcing the facial deactivation policy and procedural requirements of the proposed ordinance. OLS would not have the authority to determine whether individual deactivations were substantiated by a preponderance of evidence. This approach is in response to OLS's concerns about the fact-intensive nature of enforcing individual deactivations. These concerns are based in part on the volume of intakes handled by the Driver's Union when implementing the TNC Deactivation Rights Ordinance.<sup>4</sup> An app-based worker would still be able to seek a private right of action for violations that OLS would not have authority to enforce.

This bifurcated enforcement model – where workers could access procedural enforcement through OLS and substantive enforcement through private right of action – is a novel concept that has the potential to confuse and disappoint many workers coming to OLS. As such, it could present significant outreach challenges for OLS and community partners. This provision is not necessary, as OLS already has the ability to prioritize enforcement actions and discretion to decide which intakes rise to full, fact-intensive investigations. Nevertheless, OLS may benefit from more explicit direction from Council as to the expectations of its enforcement priorities.

Enforcing only the procedural and facial policy requirements could still have significant benefits for workers. These provisions are meant to address the information asymmetry and power imbalance that would otherwise exist if a worker were to challenge their deactivation in arbitration proceedings. Additionally, a violation of any of these provisions

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<sup>4</sup> OLS has communicated to Central Staff that in 2022, the Driver's Union responded to approximately 3,300 worker inquiries related to the TNC Driver Deactivations Ordinance. For that same time period, OLS responded to 900 worker inquiries across 18 labor standards.

that are enforceable by OLS would still incur potential remedies to the worker, and thereby provide some redress.

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 estimates that the proposed ordinance would require \$1,000,000 per year for ongoing implementation costs, including staffing, outreach and communication, community partnerships, and translations. This estimate assumes about 40,000 workers and 30 companies, with additional intake inquiries from workers covered by multiple ordinances. In addition, OLS estimates it would need \$200,000 in one-time funds to support initial implementation. This estimate is based on an effective date of January 1, 2025. However, the proposed ordinance would go into effect on June 1, 2024. Central Staff will continue to gather and analyze information from OLS to better understand financial implications, and the impact of a different effective date.

Table 1 itemizes the cost estimate provided by OLS, assuming an effective date of January 1, 2025.

*Table 1. OLS Estimated Implementation Costs*

<b>Item</b>	<b>On-going</b>	<b>One-time (2024)</b>
3 Investigators	\$ 406,380.00	
1 Paralegal	\$ 119,609.00	
1 Enforcement manager	\$ 163,407.00	
1 Engagement specialist	\$ 137,906.00	
Community partnerships	\$150,000.00	
Notice of rights design, translations	\$3,000.00	\$20,000.00
Communications	\$10,000.00	\$35,000.00
Navigation Guide, Translations	\$5,000.00	\$50,000.00
Outreach documents, events, webinars	\$5,000.00	\$60,000.00
Rulemaking		\$9,000.00
New employee set up		\$21,000.00
<b>Total</b>	<b>\$1,000,302.00</b>	<b>\$195,000.00</b>



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 during the fall budget process for 2024;
- b. Do not allocate additional funding and allow OLS to determine its work priorities;
- c. Delay action on this legislation until sufficient resources are identified for implementation; or
- d. No change.

**Next Steps**

The Committee will discuss proposed amendments to the legislation at the next Committee meeting on June 27th. Please contact me with amendment proposals by Wednesday, June 14th.

cc: Esther Handy, Director  
Aly Pennucci, Deputy Director  
Yolanda Ho, Supervising Analyst