

CB 120580 – App-Based Worker Deactivation Rights Ordinance Proposed Amendment Packet
 Public Safety & Human Services Committee – Tuesday, July 11, 2023

No.	Short title	Sponsor(s)	Pg.
6c	Revise pre-deactivation investigation requirement	Nelson	1
6e	Revise egregious misconduct investigation requirement	Nelson	2
7a	Revise notice of deactivation requirements	Nelson	3
7b	Revise notice of deactivation requirements	Pedersen	5
8a	Revise requirements for records substantiating deactivation when deactivation based on a complaint	Herbold & Lewis	7
8b	Revise records substantiating deactivation requirements	Nelson	12
10	Revise Affirmative Production of Records	Nelson	18
11	Revise Notice of Rights Requirement	Nelson	20
12	Revise Network Company Records Requirement	Nelson	23
13	Revise Private Right of Action	Pedersen	25
14	Remove certain instances of subjective language	Nelson	27

Note: Highlighted amendments are mutually exclusive/conflicting.

Discussed on June 27

No.	Short title	Sponsor(s)	Pg.
1	Allow for temporary deactivations unrelated to the worker's actions	Herbold & Lewis	--
2a	Broaden definition of egregious misconduct	Herbold and Lewis	--
2b	Broaden definition of egregious misconduct	Nelson	--
2c	Broaden definition of egregious misconduct	Pedersen	--
3	Clarify when moving violations can constitute egregious misconduct	Herbold & Lewis	--
4	Narrow threshold for app-based worker coverage	Nelson	--
5a	Exclude marketplace network companies and certain other companies from coverage	Nelson	--
5b	Exclude pet care service companies from coverage	Pedersen	--

Withdrawn

No.	Short title	Sponsor(s)	Pg.
6a	Revise fair notice deactivation requirement	Nelson	--
6b	Revise reasonable policy requirement	Nelson	--
6d	Remove proportionate penalty requirement	Nelson	--
9	Revise Internal Deactivation Challenge Procedure	Nelson	--

Amendment #6c Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Revise pre-deactivation requirements - investigation

Effect: This amendment would revise network company pre-deactivation requirements by permitting the network company to complete the investigation on reasonably available sources of information if the app-based worker does not participate or provide relevant information.

Amend Section 2 of CB 120580 as follows:

8.40.050 Deactivation requirements

A. A network company shall adopt the following measures prior to deactivating an app-based worker, except as provided in subsection 8.40.050.C:

* * *

3. Investigation. A network company must conduct a fair and objective investigation prior to deactivating an app-based worker. The investigation must be sufficiently thorough to justify the deactivation (~~((and demonstrate an unbiased and neutral view of facts collected))~~). If the app-based worker does not participate in the investigation or provide relevant information, the network company may complete the investigation based on available sources of information.

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Amendment #6e Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Revise pre-deactivation requirements.

Effect: This amendment would revise network company pre-deactivation requirements to allow for an investigation of egregious misconduct to take the later of 14 days or seven days after the network company receives all necessary information from the app-based worker, the customer, or third persons.

Amend Section 2 of CB 120580 as follows:

8.40.050 Deactivation requirements

C. Subject to the provisions of this Section 8.40.050 and rules issued by the Director, a network company may immediately deactivate an app-based worker if such action is required to comply with any applicable court order or local, state, or federal laws or regulations, or where an app-based worker has engaged in egregious misconduct.

1. In the case of allegations of egregious misconduct, the network company may deactivate the app-based worker before completing an investigation. Except in extraordinary circumstances, the ((The)) investigation shall not take longer than the later of ((ten)) 14 days or seven days after the network company receives all necessary information from the app-based worker, the customer, or third persons ((except in the case of extraordinary circumstances)). If the investigation is delayed due to extraordinary circumstances, the network company must provide the app-based worker with written notice that the investigation is delayed, the reason(s) for the delay, and the date on which the completion of the investigation is anticipated.

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Amendment 7a Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Revise requirements for notice of deactivation.

Effect: This amendment would revise network company requirements for notice of deactivation.

Amend Section 2 of CB 120580 as follows:

8.40.070 Notice of deactivation

A. Except as provided under subsection 8.40.070.C or 8.40.070.D, a network company shall provide an app-based worker with notice of deactivation ~~((14 days))~~ in advance of the deactivation, as well as upon the effective date of deactivation. The notice of deactivation shall include a written statement of the following:

1. The reasons for deactivation; including the network company's policy that was violated, pursuant to Section 8.40.050~~((, and the specific incident or pattern of incidents that violated the deactivation policy))~~;
2. The effective date of deactivation;
3. ~~((Any and all records relied upon to substantiate))~~ A summary description of the records substantiating deactivation, pursuant to Section 8.40.080, unless the network company reasonably believes that such information could compromise the safety of persons or animals or could interfere with pending law enforcement investigation or court proceeding;
4. The length of the deactivation;
5. A description of the steps an app-based worker can take, if any, to remedy the deactivation;

6. The app-based worker's right to challenge such deactivation under this Chapter 8.40; and

7. The network company's process for challenging a deactivation, pursuant to subsection 8.40.060.B, including the available methods of contact for an app-based worker to initiate a challenge; ~~((and~~

~~8. Any other items pursuant to Director's Rules.))~~

B. ~~((The network company shall provide notice of deactivation in a form and manner designated by the Agency.))~~ The Agency may create and distribute a model notice of deactivation in English and other languages as provided by rules issued by the Director. However, network companies are responsible for providing app-based workers with the notice of deactivation required by this subsection 8.40.070, regardless of whether the Agency has created and distributed a model notice of deactivation.

C. For deactivations involving egregious misconduct, pursuant to subsection 8.40.050.C, the network company shall provide an app-based worker with the notice of deactivation as soon as practicable and no later than two days after the effective date of deactivation.

D. If a network company notifies an app-based worker upon the occurrence of a violation of a company's deactivation policy, provides notice that future violations of the deactivation policy may result in deactivation, and provides a means for the worker to review information regarding past violations of the deactivation policy via smartphone application or online web portal were a subsequent violation of the deactivation policy to occur, the network company may provide the notice of deactivation no later than the effective date of the deactivation.

Amendment 7b Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Pedersen

Revise notice of deactivation.

Effect: This amendment would add subsection 8.40.070.D to revise network company requirements for providing the notice of deactivation.

The proposed addition would allow the network company to provide the notice no later than the effective date of the deactivation if the network company previously provided the app-based worker with a warning based on a past violation, as detailed in the proposed 8.40.070.D below.

Amend Section 2 of CB 120580 as follows:

8.40.070 Notice of deactivation

A. Except as provided under subsection 8.40.070.C or 8.40.070.D, a network company shall provide an app-based worker with notice of deactivation 14 days in advance of the deactivation, as well as upon the effective date of deactivation. The notice of deactivation shall include a written statement of the following:

1. The reasons for deactivation; including the network company's policy that was violated, pursuant to Section 8.40.050, and the specific incident or pattern of incidents that violated the deactivation policy;
2. The effective date of deactivation;
3. Any and all records relied upon to substantiate deactivation, pursuant to Section 8.40.080;
4. The length of the deactivation;
5. A description of the steps an app-based worker can take to remedy the deactivation;

6. The app-based worker's right to challenge such deactivation under this Chapter 8.40;

7. The network company's process for challenging a deactivation, pursuant to subsection 8.40.060.B, including the available methods of contact for an app-based worker to initiate a challenge; and

8. Any other items pursuant to Director's Rules.

B. The network company shall provide notice of deactivation in a form and manner designated by the Agency. The Agency may create and distribute a model notice of deactivation in English and other languages as provided by rules issued by the Director. However, network companies are responsible for providing app-based workers with the notice of deactivation required by this subsection 8.40.070, regardless of whether the Agency has created and distributed a model notice of deactivation.

C. For deactivations involving egregious misconduct, pursuant to subsection 8.40.050.C, the network company shall provide an app-based worker with the notice of deactivation no later than the effective date of deactivation.

D. If a network company notifies an app-based worker upon the occurrence of a violation of a company's deactivation policy, provides notice that future violations of the deactivation policy may result in deactivation, and provides a means for the worker to review information regarding past violations of the deactivation policy via smartphone application or online web portal, were a subsequent violation of the deactivation policy to occur, the network company may provide the notice of deactivation no later than the effective date of the deactivation.

Amendment #8a Version 1 to CB 120580 – App-Based Worker Deactivation Rights

Sponsors: Councilmembers Herbold and Lewis

Revise requirements for records substantiating deactivation when deactivation based on a complaint

Effect: This amendment would allow for summary information to be provided to the worker upon a notice of deactivation, if the reason for deactivation is based solely on complaints from a customer or third party.

Amend Section 2 of CB 120580 as follows:

8.40.080 Access to records substantiating deactivation

A. Pursuant to subsection 8.40.080.D, ((F)) upon notice of deactivation, a network company shall provide an app-based worker with the records relied upon by the network company to substantiate deactivation, unless contrary to local, state, or federal law. These records shall include but not be limited to the date, time, and location of all incidents supporting the deactivation decision, a copy of the evidence the network company considered in the deactivation decision, and a certified statement from an individual at the network company with authority to reinstate the app-based worker, attesting that these are true and accurate records to the individual's knowledge.

B. If further records substantiating a deactivation come into the network company's possession after the app-based worker is deactivated, such records shall be provided to the app-based worker as soon as practicable and no later than 14 days from the date of the network company's receipt.

C. If an app-based worker challenges a deactivation pursuant to subsection 8.40.060.B, all records of that challenge and any responses must be provided to the worker within 14 days of each submittal or response.

D. If the records substantiating deactivation involve information related to a customer or a third party and the network company reasonably believes that information could compromise the customer or third party's safety, the network company may take measures to anonymize information related to that customer or third party. If a complaint from a customer or third party is the sole basis for a deactivation, the network company may provide a summary description of the records substantiating the deactivation. The Director may issue rules regarding the measures taken to summarize the records substantiating the deactivation or anonymize information related to a customer or third party.

E. Network companies shall establish an accessible system for app-based workers to access their receipts and/or payment disclosures for each offer performed or cancelled, pursuant to subsection 8.37.070.B and Section 14.34.060. Network companies shall make this system available to the app-based worker via smartphone application or online web portal. This accessible system shall be available to an app-based worker at least three years after deactivation.

F. Network companies shall retain the records required by this Section 8.40.080 for a period of three years.

G. If a network company fails to disclose adequate records to the app-based worker as required under this Section 8.40.080, there shall be a presumption, rebuttable by clear and convincing evidence, that the network company violated this Chapter 8.40 for the relevant periods and for each app-based worker for whom records were not disclosed in a timely manner.

This presumption is substantive and necessary to effectuate the other rights provided in this Chapter 8.40.

* * *

8.40.060 Right to challenge deactivation

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B. An app-based worker shall have a right to challenge the worker's deactivation through an internal deactivation challenge procedure established by the network company.

1. A network company shall create an internal deactivation challenge procedure that shall be available to the app-based worker immediately upon notice of their deactivation and up to 90 days after the app-based worker's receipt of notice.

2. The internal deactivation challenge procedure must be available to the app-based worker in writing, in a format that is readily accessible to the app-based worker, and in English and any language that the network company knows or has reason to know is the primary language of the app-based worker. The written policy describing the deactivation challenge procedure shall be available to the app-based worker at least three years after deactivation. The Director may issue rules governing the form and content of the policy describing the deactivation challenge procedure, the manner of its distribution, and required languages for its translation.

3. A network company shall review and respond to an app-based worker's challenge to deactivation within 14 days of receiving a challenge.

4. A network company's response to a worker's challenge to deactivation must include a written statement certified by an individual at the network company with authority to reinstate the app-based worker. The written statement must include one of the following:

a. Evidentiary substantiation of the deactivation pursuant to Section 8.40.080, and substantive responses to questions or claims made by the app-based worker in challenging the deactivation;

b. Any extraordinary circumstances necessitating a delayed timeline for response, and an anticipated date for a response either substantiating the deactivation or reinstating the app-based worker; or

c. A determination that the worker did not violate the network company's deactivation policy and therefore must be reinstated on the platform.

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8.40.100 Notice of rights

B. The notice of rights shall provide information on:

1. The right to challenge an unwarranted deactivation through a network company's internal deactivation challenge procedure and/or through other avenues pursuant to Section 8.40.060, subject to coverage eligibility under subsection 8.40.030.A;

2. The policy describing the deactivation challenge procedure pursuant to subsection 8.40.060.B;

3. The right to 14 days' notice of an impending deactivation, except in the case of egregious misconduct;

4. The right to access any and all records relied upon by the network company to substantiate deactivation, pursuant to Section 8.40.080;

5. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 8.40; and

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Public Safety and Human Services Committee
June 27, 2023
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6. The right to file a complaint with the Agency consistent with Section 8.40.130
or bring a civil action for violation of the requirements of this Chapter 8.40.

Amendment 8b Version 2 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Revise requirements for substantiating deactivation and related fines.

Effect: This amendment would revise network company requirements for substantiating deactivations including but not limited to the following:

1. Require a summary description of evidence only if an app-based worker challenges a deactivation according to the network company's internal deactivation challenge procedure.
2. This amendment would also remove the requirement that an individual at the network company with authority to reinstate the app-based worker provide a certified statement attesting that these are true and accurate records.
3. Exclude marketplace network companies from this section's requirements.

Amend Section 2 of CB 120580 as follows:

8.40.080 ~~((Access to records))~~ Substantiating deactivation

A. ~~((Upon notice of deactivation,))~~ If an app-based worker challenges a deactivation pursuant to subsection 8.40.060.B, a network company shall provide ~~((an))~~ that app-based worker with ~~((the records))~~ a description of the basis relied upon by the network company to substantiate deactivation, unless contrary to local, state, or federal law. ~~((These records shall include but not be limited to the date, time, and location of all incidents supporting the deactivation decision, a copy of the evidence the network company considered in the deactivation decision, and a certified statement from an individual at the network company with authority to reinstate the app-based worker, attesting that these are true and accurate records to the individual's knowledge.))~~

B. If further ~~((records))~~ evidence substantiating a deactivation come into the network company's possession after the app-based worker is deactivated, ~~((such records shall be~~

~~provided~~) the network company must provide an updated summary description reflecting the new evidence to the app-based worker as soon as practicable and no later than 14 days from the date of the network company's receipt.

C. If an app-based worker challenges a deactivation pursuant to subsection 8.40.060.B, ~~((all records of that challenge and))~~ any responses must be provided to the worker within 14 days of each submittal or response.

D. If the ~~((records substantiating))~~ evidence supporting deactivation ~~((involve))~~ includes information related to a customer or a third party and the network company ~~((reasonably))~~ believes that information could compromise the customer or third party's safety or privacy rights, the network company may take measures to anonymize the summary description of the evidence or exclude information related to that customer or third party, including by omitting potentially identifying information from its summary description or to otherwise protect the safety or privacy rights of the customer or third party. The Director may issue rules regarding the measures taken to anonymize information related to a customer or third party.

E. Network companies shall establish an accessible system for app-based workers to access their receipts and/or payment disclosures for each offer performed or cancelled, pursuant to subsection 8.37.070.B and Section 14.34.060, provided that this requirement does not apply to marketplace network companies. Network companies shall make this system available to the app-based worker via smartphone application or online web portal. This accessible system shall be available to an app-based worker at least three years after deactivation.

F. Network companies shall retain the ~~((records))~~ summary descriptions required by this Section 8.40.080 for a period of three years.

~~G. ((If a network company fails to disclose adequate records to the app-based worker as required under this Section 8.40.080, there shall be a presumption, rebuttable by clear and convincing evidence, that the network company violated this Chapter 8.40 for the relevant periods and for each app-based worker for whom records were not disclosed in a timely manner. This presumption is substantive and necessary to effectuate the other rights provided in this Chapter 8.40.))~~ This Section 8.40.080 does not apply to marketplace network companies.

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8.40.060 Right to challenge deactivation

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B. An app-based worker shall have a right to challenge the worker's deactivation through an internal deactivation challenge procedure established by the network company.

1. A network company shall create an internal deactivation challenge procedure that shall be available to the app-based worker immediately upon notice of their deactivation and up to 90 days after the app-based worker's receipt of notice.

2. The internal deactivation challenge procedure must be available to the app-based worker in writing, in a format that is readily accessible to the app-based worker, and in English and any language that the network company knows or has reason to know is the primary language of the app-based worker. The written policy describing the deactivation challenge procedure shall be available to the app-based worker at least three years after deactivation. The Director may issue rules governing the form and content of the policy describing the deactivation challenge procedure, the manner of its distribution, and required languages for its translation.

3. A network company shall review and respond to an app-based worker's challenge to deactivation within 14 days of receiving a challenge.

4. A network company's response to a worker's challenge to deactivation must include a written statement certified by an individual at the network company with authority to reinstate the app-based worker. The written statement must include one of the following:

a. Evidentiary substantiation of the deactivation pursuant to 8.40.080, and substantive responses to questions or claims made by the app-based worker in challenging the deactivation;

b. Any extraordinary circumstances necessitating a delayed timeline for response, and an anticipated date for a response either substantiating the deactivation or reinstating the app-based worker; or

c. A determination that the worker did not violate the network company's deactivation policy and therefore must be reinstated on the platform.

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8.40.100 Notice of rights

B. The notice of rights shall provide information on:

1. The right to challenge an unwarranted deactivation through a network company's internal deactivation challenge procedure and/or through other avenues pursuant to Section 8.40.060, subject to coverage eligibility under subsection 8.40.030.A;

2. The policy describing the deactivation challenge procedure pursuant to subsection 8.40.060.B;

3. The right to 14 days' notice of an impending deactivation, except in the case of egregious misconduct;

4. The right to access ~~((any and all records))~~ a summary description of the evidence relied upon by the network company to substantiate deactivation, pursuant to Section 8.40.080;

5. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 8.40; and

6. The right to file a complaint with the Agency consistent with Section 8.40.130 or bring a civil action for violation of the requirements of this Chapter 8.40.

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8.40.170 Remedies

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E. The Director is authorized to assess fines for a violation of this Chapter 8.40 and may specify that 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 comply with deactivation requirements under Section 8.40.050	\$622.85 per aggrieved party
Failure to provide app-based worker with an internal deactivation challenge procedure under Section 8.40.060	\$622.85 per aggrieved party
Failure to provide app-based worker with a notice of deactivation under Section 8.40.070	\$622.85 per aggrieved party
Failure to provide app-based worker with ((records)) <u>a summary description of the evidence</u> relied upon by the network company to substantiate the deactivation under Section 8.40.080	\$622.85 per aggrieved party
((Failure to provide certified statement attesting to records provided to substantiate deactivation under Section 8.40.080	\$622.85 per aggrieved party))

Karina Bull
Public Safety Human Services Committee
June 27, 2023
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Amendment 10 Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Revise requirements for affirmative production of records.

Effect: This amendment would revise network company requirements for affirmative production of records as follows:

1. Change the affirmative transmittal of records from a quarterly basis to yearly;
2. Remove the requirement for network companies to provide documents as they are updated; and
3. Remove from the list of records production the reference to any other records that the Director deems material and necessary to effectuate the purposes of this Chapter.

Amend Section 2 of CB 120580 as follows:

8.40.090 Affirmative production of records

A. A network company shall affirmatively transmit to the Agency such records as required by rules issued by the Director, on at least a ~~((quarterly))~~ yearly basis ~~((or as documents are updated by the network company))~~. The Director shall have the authority to require such aggregated or disaggregated records deemed necessary, appropriate, or convenient to administer, evaluate, and enforce the provisions of this Chapter 8.40. The Director may issue rules requiring that aggregated records be produced as a distribution at defined percentiles. The Director may issue data production rules of general applicability as well as rules specific to on-demand network companies, as defined in Section 8.37.020.

1. Records for production may include:

a. Records regarding the number of deactivations initiated by a network company;

b. Records regarding the reasons for deactivation most commonly referred to, such as the rule or policy violated by the app-based worker;

c. The number of app-based workers challenging their deactivation and the forum in which they are pursuing a challenge;

d. The number of app-based workers reinstated after deactivation, length of deactivation prior to reinstatement, and length of service prior to deactivation;

e. The network company's deactivation policy; and

f. The network company's internal deactivation challenge procedure, pursuant to Section 8.40.060, including the available methods of contact for an app-based worker to initiate a challenge; (~~and~~

~~g. Any other records that the Director determines are material and necessary to effectuate the purposes of this Chapter 8.40.))~~

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Amendment 11 Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Revise requirements for notice of rights.

Effect: This amendment would revise network company requirements for notice of rights as follows:

1. Remove the requirement for network companies to use the Agency’s model notice of rights and allow the network companies to use their own notice;
2. Revise the notice of rights components by referring to the “right to notice of deactivation” by citation and removing the “right to access records substantiating deactivation”;
3. Remove reference to the Director’s authority to issue rules governing the notice of rights requirements; and
4. Remove the requirement for network companies to establish an accessible system for app-based workers to understand their eligibility to challenge a deactivation.

Amend Section 2 of CB 120580 as follows:

8.40.100 Notice of rights

A. Network companies shall affirmatively provide each app-based worker with a written notice of rights established by this Chapter 8.40. 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 8.40.100.A.1.))~~ However, network companies are responsible for providing app-based workers with the notice of rights required by this Section 8.40.100, in a form and manner sufficient to inform app-based workers of their rights under this Chapter 8.40, regardless of whether the Agency has created and distributed a model notice of rights.

1. Network companies shall affirmatively provide each app-based worker with the written notice of rights within one month of the effective date of this Chapter 8.40. For each app-

based worker hired by the network company after this date, network companies shall provide the notice of rights within 24 hours of the first completed offer that involved performing services in Seattle, facilitated or presented by the network company.

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

B. The notice of rights shall provide information on:

1. The right to challenge an unwarranted deactivation through a network company's internal deactivation challenge procedure and/or through other avenues pursuant to Section 8.40.060, subject to coverage eligibility under subsection 8.40.030.A;

2. The policy describing the deactivation challenge procedure pursuant to subsection 8.40.060.B;

3. The right to a notice of deactivation, pursuant to Section 8.40.070.~~((The right to 14 days' notice of an impending deactivation, except in the case of egregious misconduct));~~

~~((4. The right to access any and all records relied upon by the network company to substantiate deactivation))~~

~~((5.))~~ 4. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 8.40; and

~~((6.))~~ 5. The right to file a complaint with the Agency consistent with Section 8.40.130 or bring a civil action for violation of the requirements of this Chapter 8.40.

C. Network companies shall provide the notice of rights required by subsection 8.40.100.B in an electronic format that is readily accessible to the app-based worker. The notice of rights shall be made available to the app-based worker via smartphone application, email, 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. ~~((The Director may issue rules governing the form and content of the notice of rights, the manner of its distribution, and required languages for its translation.~~

~~D. Network companies shall establish an accessible system for app-based workers to understand their eligibility to challenge a deactivation, pursuant to subsection 8.40.030.A. Network companies shall make this system available to the app-based worker via smartphone application or online web portal. This system shall be available to an app-based worker, at least three years after deactivation. The Director may issue rules defining reasonable criteria or requirements for this system to ensure that app-based workers have sufficient information to understand when they are covered by the entirety of Chapter 8.40, including but not limited to notice of coverage by this Chapter 8.40, the number of offers completed or cancellations in the previous 180 days, the number of completed offers or cancellations that involved performing services in Seattle in the previous 180 days, the overall percentage of completed offers that involved performing services in Seattle in the previous 180 days, and the app-based worker's receipts and/or payment disclosures for each offer performed or cancelled in the previous 180 days, pursuant to subsection 8.37.070.B and Section 14.34.060.))~~

Amendment 12 Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Revise network company recordkeeping requirements.

Effect: This amendment would revise recordkeeping requirements as follows:

1. Remove the requirement to retain a compliance file; and
2. Remove the rebuttable presumption that failure to retain records constitutes a violation.

Amend Section 2 of CB 120580 as follows:

8.40.110 Network company records

A. Network companies shall retain records that document compliance with this Chapter 8.40 for each deactivation of an app-based worker. ~~((, including, at a minimum, a compliance file for each deactivation. The Director may issue rules governing the format of the records needed to constitute compliance of this Section 8.40.110. The Director may also issue rules governing the form, format, and content of the compliance file for each deactivation. This compliance file may include:~~

- ~~1. The deactivation notice provided to the app-based worker, pursuant to Section 8.40.070;~~
- ~~2. Date of completion of investigation;~~
- ~~3. Whether the deactivation involved egregious misconduct and, if so, the egregious misconduct at issue;~~
- ~~4. Whether the deactivation investigation includes extraordinary circumstances, pursuant to subsection 8.40.050.B and, if so, the extraordinary circumstances at issue;~~
- ~~5. Number of offers completed in the 180 days prior to deactivation notice;~~

~~6. Number of completed offers that involved performing services in Seattle in the 180 days prior to deactivation notice;~~

~~7. Date of deactivation challenge according to the network company's internal deactivation challenge procedure;~~

~~8. All responses to an app-based worker regarding a deactivation challenge, pursuant to subsections 8.40.060.B and 8.40.080.C; and~~

~~9. Any other records pursuant to Director's Rules.))~~

B. Network companies shall retain the records required by subsection 8.40.110.A for a period of three years.

~~((C. If a network company fails to retain adequate records required under subsection 8.40.110.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the network company violated this Chapter 8.40 for the relevant periods and for each app-based worker for whom records were not retained. This presumption is substantive and necessary to effectuate the rights provided in this Chapter 8.40.))~~

Amendment 13 Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Pedersen

Revise private right of action.

Effect: This amendment would revise the private right of action section to remove the ability of “any person or class of persons” to bring a civil action for violation of this Chapter 8.40, and instead limit it to “any app-based worker or class of app-based workers.”

This amendment would prevent an entity from bringing an action if a member has suffered an injury or retaliation due to a violation of this Chapter, or from bringing an action on behalf of aggrieved workers.

Amend Section 2 of CB 120580 as follows:

8.40.230 Private right of action

A. Any ~~((person or class of persons))~~ app-based worker or class of app-based workers that suffers an injury as a result of a violation of this Chapter 8.40, or is the subject of prohibited retaliation under Section 8.40.120, may bring a civil action in a court of competent jurisdiction against the network company or other person violating this Chapter 8.40 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; liquidated damages in an additional amount of up to twice the unpaid compensation; a penalty payable to the aggrieved party of up to \$6,230.88 if the aggrieved party was subject to prohibited retaliation; and other civil penalties and fines payable to any aggrieved party, consistent with Section 8.40.170. 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 8.40.230, “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.~~

~~€))~~ B. For purposes of determining membership within a class of ~~((persons))~~ app-based workers entitled to bring an action under this Section 8.40.230, two or more app-based workers are similarly situated if they:

1. Performed similar services in Seattle 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.))~~ C. For purposes of subsection 8.40.230.~~((€))~~B, app-based workers shall not be considered dissimilar solely because:

1. The app-based workers’ claims seek damages that differ in amount; or
2. The job titles of or other means of classifying the app-based workers differ in ways that are unrelated to their claims.

~~((E.))~~ D. An order issued by a court may include a requirement for a network company to submit a compliance report to the court and/or to the Agency.

Amendment 14 Version 1 to CB 120580 App-Based Worker Deactivation Rights Ordinance

Sponsor: Councilmember Nelson

Remove certain references to fair, reasonable, reasonably, and objective in legislation.

Effect: This amendment would remove certain references to the following words throughout the legislation: fair, reasonable, reasonably, and objective.

Amend Section 1 of CB 120580 as follows:

* * *

I. App-based workers are subject to network company policies that unilaterally deactivate workers for a variety of reasons without consistent access to a ~~((fair))~~ process for such deactivations, nor do the workers have access to responsive network company personnel with the power to correct unwarranted deactivations by in-person meetings or telephone.

* * *

U. Establishing a ~~((reasonable))~~ standard for the deactivations of app-based workers as well as the ability to challenge unwarranted deactivations will help ensure that thousands of app-based workers who provide vital services in Seattle will be able to enjoy a measure of job security.

* * *

Amend Section 2 of CB 120580 as follows:

8.40.020 Definitions

* * *

“Adverse action” means reducing compensation; garnishing tips or gratuities; temporarily or permanently denying or limiting access to work, incentives, or bonuses; offering less desirable

work; terminating; deactivating; threatening; penalizing; retaliating; engaging in retaliatory ~~((unfair))~~ immigration-related practices; filing a false report with a government agency; or discriminating against any person for any reason prohibited by Section 8.40.120. “Adverse action” for an app-based worker may involve any aspect of the app-based worker’s 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 8.40.

8.40.050 Deactivation requirements

A. A network company shall adopt the following measures prior to deactivating an app-based worker, except as provided in subsection 8.40.050.C:

1. ~~((Fair))~~ Notice of deactivation policy. A network company must inform the app-based worker in writing of the network company’s deactivation policy, defining what constitutes a violation that may result in deactivation. The network company’s written deactivation policy must be specific enough for an app-based worker to understand what constitutes a violation and how to avoid violating the policy. The deactivation policy must be available to the app-based worker in English and any language that the network company knows or has reason to know is the primary language of the app-based worker. The deactivation policy must be accessible to the app-based worker at least three years after deactivation. The Director may issue rules governing the form and description of the deactivation policy, the manner of its distribution, and required languages for its translation.

2. ~~((Reasonable p))~~ Deactivation Policy. The policy that may lead to a deactivation must be ~~((reasonably))~~ related to the network company's safe and efficient operations. Examples of policies that are not ~~((reasonably))~~ related to the network company's safe and efficient operations include, but are not limited to:

* * *

3. Investigation. A network company must conduct ~~((a fair and objective))~~ an investigation prior to deactivating an app-based worker. The investigation must be sufficiently thorough to justify the deactivation and demonstrate an unbiased and neutral view of facts collected.

* * *

6. Proportionate penalty. The penalty of deactivation must be ~~((reasonably))~~ related to the offense, and account for mitigating circumstances, such as the app-based worker's past work history with the network company.

* * *

8.40.080 Access to records substantiating deactivation

* * *

D. If the records substantiating deactivation involve information related to a customer or a third party and the network company ~~((reasonably))~~ believes that information could compromise the customer or third party's safety, the network company may take measures to anonymize information related to that customer or third party. The Director may issue rules regarding the measures taken to anonymize information related to a customer or third party.

* * *

8.40.100 Notice of rights

* * *

D. Network companies shall establish an accessible system for app-based workers to understand their eligibility to challenge a deactivation, pursuant to subsection 8.40.030.A. Network companies shall make this system available to the app-based worker via smartphone application or online web portal. This system shall be available to an app-based worker, at least three years after deactivation. The Director may issue rules defining ((reasonable)) criteria or requirements for this system to ensure that app-based workers have sufficient information to understand when they are covered by the entirety of Chapter 8.40, including but not limited to notice of coverage by this Chapter 8.40, the number of offers completed or cancellations in the previous 180 days, the number of completed offers or cancellations that involved performing services in Seattle in the previous 180 days, the overall percentage of completed offers that involved performing services in Seattle in the previous 180 days, and the app-based worker's receipts and/or payment disclosures for each offer performed or cancelled in the previous 180 days, pursuant to subsection 8.37.070.B and Section 14.34.060.

8.40.160 Findings of fact and determination

* * *

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 8.40, including but not limited to monitored compliance for a ((reasonable)) time period.

* * *

8.40.170 Remedies

* * *

B. A respondent found to be in violation of this Chapter 8.40 shall be liable for full payment of unpaid compensation due plus interest in favor of the aggrieved party for the period of deactivation under the terms of this Chapter 8.40, 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 employees or other aggrieved parties establishing violations for a class of employees or aggrieved parties; or

b. Assess a daily amount for unpaid compensation plus interest in favor of the aggrieved party in a minimum amount of at least the equivalent of payment for eight hours of work at the "hourly minimum wage" rate for Schedule 1 employers under Chapter 14.19.

* * *

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 8.40, including but not limited to ~~((reasonable))~~ investigation costs and attorneys' fees. The Director may issue rules on the amounts and contributing factors for assessing ~~((reasonable))~~ investigation costs and is strongly encouraged to

assess such costs in favor of the City to support the Agency's implementation of this Chapter 8.40.

* * *

8.40.210 Failure to comply with final order

* * *

B. No respondent that is the subject of a final order issued under this Chapter 8.40 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 the final order at least three business days before 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 a final order issued by the Director or the Hearing Examiner, shall become immediately due and payable. If the amount due under the 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.

8.40.230 Private right of action

A. Any person or class of persons that suffers an injury as a result of a violation of this Chapter 8.40, or is the subject of prohibited retaliation under Section 8.40.120, may bring a civil action in a court of competent jurisdiction against the network company or other person violating this Chapter 8.40 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; liquidated damages in an additional amount of up to twice the unpaid compensation; a penalty payable to the aggrieved party of up to \$6,230.88 if the aggrieved party was subject to prohibited retaliation; and other civil penalties and fines payable to any aggrieved party, consistent with Section 8.40.170. 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.