CB 120775 – App-Based Worker Minimum Payment Revisions Proposed Amendment Packet
Government Affairs and Economic Development Committee – Thursday, May 9, 2024

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Karina Bull
Governance, Accountability, and Economic Development Committee
May 9, 2024
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Amendment #1 Version 1 to CB 120775 - App-Based Worker Minimum Payment Revisions Ordinance

Sponsor: Councilmember Nelson

Clarification of minimum network company payment

Effect: This amendment would prohibit a network company from reducing the total amount paid to an app-based worker for performing offers during a network company earnings period if the network company determines that the app-based worker earned *more* than the minimum payment standard.

The intent of this amendment is to clarify that while network companies can count incentive and bonus amounts in their calculation of whether an app-based worker's earnings meet the minimum payment standard at the end of an earnings period, network companies *cannot* use incentive and bonus amounts to reduce earnings that would otherwise exceed minimum pay requirements.

Under Council Bill (CB) 120775, the App-Based Worker Minimum Payment Revisions Ordinance, network companies can (1) count incentives and bonuses toward the minimum network company payment requirements and (2) provide notice of pay for individual offers (inclusive or exclusive of incentives and bonuses) that is less than the minimum per hour amounts or minimum per mile amounts. Before processing payment at the end of the earnings period, the network company must ensure that an app-based worker's total earnings, including incentives and bonuses, meet minimum payment standards, and if necessary, include an additional sum in the app-based worker's earnings to "true-up" any difference between the app-based worker's earnings and the minimum pay requirements.

Amend Section 2 of CB 120775 as follows:

8.37.050 Minimum network company payment

A. Requirement

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3. A network company shall not reduce the total amount of network company payments, including incentive and bonus payments, paid to an app-based worker for the network company earnings period if, upon completing the comparison in subsection 8.37.050.A.2, the

total amount of network company payments earned by the app-based worker is more than the total calculated under subsection 8.37.050.B for that network company earnings period.

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Jasmine Marwaha and Karina Bull
Governance, Accountability, and Economic Development Committee
May 9, 2024
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Amendment #2 Version 1 to CB 120775 - App-based Worker Minimum Payment Revisions Ordinance

Sponsor: Councilmember Kettle

Affirmative production of records and study

Effect: This amendment would restore some affirmative data production requirements, authorizing the OLS Director to require aggregated records deemed necessary to administer, enforce, or evaluate the impact of the provisions of this Chapter 8.37 on app-based worker earnings. The amendment also requests a study from the City Auditor's office to evaluate the impacts of Chapter 8.37 to app-based workers, network companies, restaurants, small businesses, and customers.

Council Bill (CB) 120775, the ABWMP Revisions Ordinance, proposes removal of any affirmative data transmittal to OLS, and repeals subsection 8.37.070.G.

Consistent with Washington State Constitution requirements, these amendments, including the amendment to the title, would not change the scope and object of the ordinance.

Note: a dashed underline indicates material that CB 120775 proposes to delete from SMC 8.37, but this amendment would leave in.

Amend the title of CB 120775 as follows:

AN ORDINANCE relating to app-based worker labor standards; establishing a new compensation scheme for app-based workers with minimum pay requirements and related standards for transparency and flexibility; amending Sections 8.37.020, 8.37.050, 8.37.060, 8.37.070, 8.37.080, 8.37.100, ~~8.37.110,~~ 8.37.120, 8.37.125, 8.37.165, and 8.37.170 of the Seattle Municipal Code; and repealing Section 8.37.230 of the Seattle Municipal Code.

Amend Section 4 of CB 120775 as follows:

8.37.070 Network company transparency

* * *

((~~G. A network company shall routinely and affirmatively transmit to the Agency such records as required by rules issued by the Director. 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 8.37. 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 companies. In issuing data production rules, the Director shall consider, among other factors, methods to provide workers with information to make informed choices about platforms on which they may seek work and to provide the public with information to assess the impact of network companies.~~

~~1. Records for production may include, but are not limited to:~~

~~a. Records regarding the availability of offers facilitated via the network company platform;~~

~~b. Records regarding the amount of engaged time and engaged miles;~~

~~c. The amount of time that app-based workers must spend working or engaged to wait for work without compensation to perform app-based work;~~

~~d. Records regarding the number of app-based workers who logged onto the worker platform, logged on for the first time in the reporting period, or accepted an offer;~~

~~e. Per-offer or aggregated app-based worker compensation, including but not limited to network company payments, bonuses, incentives, and tips earned from customers; and~~

~~f. Any other records that the Director determines are material and necessary to effectuate the purposes of this Chapter 8.37.~~))

G. A network company shall routinely and affirmatively transmit to the Agency such records as required by this subsection 8.37.070.G. The Director shall have the authority to require such aggregated records deemed necessary to administer, enforce, or evaluate the impact of the provisions of this Chapter 8.37 on app-based worker earnings. 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.

1. Records for production may only include those related to:

a. The number, type, and origin and destination cities of offers facilitated by a network company;

b. Amount of engaged time and engaged miles completed by app-based workers, and amount of time app-based workers are logged into the app as compared to amount of engaged time;

c. Net earnings of app-based workers, including but not limited to records related to app-based workers' network company payments, bonuses, incentives, tips, and deductions; and

d. The amount and description of network company fees charged to paying customers;

((2.)) A network company shall not transmit to the Agency any personally identifiable app-based worker information, including name, date of birth, home address, social security number, vehicle license plate number, driver's license number, or other similar records, except when related to an enforcement action. ((The Director shall issue rules governing the submission format, security, and privacy protocols relating to the submission of network company records, to the extent permitted by law.))

((H.)) ~~G.~~ A network company shall notify app-based workers at least 14 days prior to making a material change to how network company payment will be calculated.

* * *

Remove Section 7, which reads as follows, and renumber subsequent sections:

8.37.110 Network company records

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D. The Director may not require the production of any record other than through a lawful request relating to an enforcement action.

Amend Section 9 of CB 120775 as follows:

8.37.125 Rulemaking authority

The Director is authorized to administer and enforce this Chapter 8.37. The Director is authorized to promulgate, revise, or rescind rules and regulations deemed necessary((~~, appropriate, or convenient~~)) to administer((, evaluate)) and enforce the provisions of this Chapter 8.37 pursuant to Chapter 3.02, providing affected entities with due process of law and in conformity with the intent and purpose of this Chapter 8.37. Any rules promulgated by the Director shall have the force and effect of law and may be relied on by network companies, app-based workers, and other parties to determine their rights and responsibilities under this Chapter 8.37. No rule or regulation promulgated by the Director regarding this Chapter 8.37 shall:

A. Expand the requirements of this Chapter 8.37;

B. Impose additional requirements in excess of those expressly set forth in this Chapter 8.37; or

C. Outside of an enforcement action or the requirements of subsection 8.37.070.G, require the disclosure of confidential, sensitive, or proprietary business information or trade secrets, or personally identifiable information of a customer or worker.

* * *

Amend Section 11 of CB 120775 as follows:

8.37.170 Remedies

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E. The Director is authorized to assess fines for a violation of this Chapter 8.37 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 provide app-based worker with up-front information regarding offers under subsection 8.37.070.A	Up to $575.31 per aggrieved party
Failure to provide app-based worker with electronic receipts within ((~~24~~)) 48 hours of each offer's performance ((~~or cancellation with cause~~)) that incurs engaged time under subsection 8.37.070.B	Up to $575.31 per aggrieved party
Failure to provide app-based worker with weekly statements under subsection 8.37.070.C	Up to $575.31 per aggrieved party
((Failure to provide the Agency with records required under subsection 8.37.070.G	Up to $575.31 per missing record))
Failure to provide app-based worker with at least 14 days of notice of a material change to the network company payment calculation under subsection ~~8.37.070.G~~ ((8.37.070.H))	Up to $575.31 per aggrieved party
Failure to comply with requirements for app-based worker's right to decide when to work and which offers to accept or reject under subsection 8.37.080.A	Up to $575.31 per aggrieved party

* * *

Add a new Section 13 to CB 120775 as follows and renumber subsequent subsections:

Section 13. The Council requests the City Auditor, in collaboration with the Office of Labor Standards, to contract with academic researchers who have a proven track record of rigorous analysis of the impacts of network companies and/or labor standards regulations to conduct an evaluation of the impacts of this ordinance for the baseline, one-year, and two-year periods following implementation, to the extent reasonably ascertainable. Areas of evaluation shall include, but not be limited to, the impacts of the requirements of Chapter 8.37 of the Seattle

Municipal Code to app-based workers, network companies, restaurants, small businesses, and customers. The Council shall use the results of the evaluation to identify possible areas for revision to accomplish the goals of this ordinance.

Amendment #3 Version 1 to CB 120775 - App-Based Worker Minimum Payment Revisions Ordinance

Sponsor: Councilmember Kettle

Penalties for certain non-willful violations

Effect: This amendment would set a defined period for restricting the Office of Labor Standards (OLS) Director's assessment of civil penalties/fines for certain non-willful violations (i.e., non-economic violations that are not based on retaliation) of the App-Based Worker Minimum Payment Ordinance (ABWMP), Seattle Municipal Code (SMC) Chapter 8.37.

- From January 13, 2024 through January 13, 2025 (i.e., the first year of implementation), the OLS Director would not assess penalties against a network company for certain non-willful violations if the network company cures the violation within 30 days of receiving notice of the alleged violation, or longer if the network company requests additional time for good cause.
- After January 13, 2025, the Director would have authority to assess penalties for all violations, regardless of whether the violation is willful or non-willful. This authority would include options for waiving or reducing penalties on a case-by-case basis after considering the circumstances of the violation.

This amendment would provide network companies with the opportunity for a "grace period" from penalties for certain non-willful violations during initial implementation of the ABWMP Ordinance. After this period, the OLS Director would assess penalties consistent with enforcement provisions in other labor standards.

Council Bill (CB) 120775, the ABWMP Revisions Ordinance, would restrict the Director's assessment of penalties for certain non-willful violations on a permanent basis.

Amend Section 11 of CB 120775 as follows:

8.37.170 Remedies

* * *

I. For non-willful violations that do not result in unpaid compensation and are not based on retaliation, if the network company is in substantial compliance with this Chapter 8.37, the Director shall provide the network company notice of an alleged violation and a reasonable time period, not fewer than 30 calendar days, to cure the violation and shall not impose any civil

penalties, fines, or costs if the network company cures the violation in the reasonable time period. A network company may request additional time to cure for good cause. If the network company fails to cure within the time period allotted, the Director may impose civil penalties, fines, or costs against the network company up to the applicable limit as part of a settlement agreement, Director's Order, or other enforcement action. This subsection 8.37.170.I shall apply retroactively beginning January 13, 2024, and terminate on January 13, 2025, applying to violations during this time period regardless of when the investigation begins (subject to the applicable statute of limitations under subsection 8.37.150.C).

Karina Bull
Governance, Accountability, and Economic Development Committee
May 9, 2024
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Amendment #4 Version 1 to CB 120775 - App-Based Worker Minimum Payment Revisions Ordinance

Sponsor: Councilmember Saka

Private right of action

Effect: This amendment would restore a private right of action for violations of the App-Based Worker Minimum Payment (ABWMP) Ordinance, Seattle Municipal Code (SMC) Chapter 8.37; and restore references to the private right of action in relevant ordinance sections: the title, notice of rights, retaliation prohibitions, and complaint procedure. The private right of action would permit app-based workers to file individual or class civil actions to enforce the ordinance.

Council Bill (CB) 120775, the ABWMP Revisions Ordinance, proposes removal of the private right of action.

Consistent with Washington State Constitution requirements, these amendments, including the amendment to the title, would not change the scope and object of the ordinance.

Note: a dashed underline indicates material that CB 120775 proposes to delete from SMC 8.37, but this amendment would leave in SMC 8.37.

Amend the title of CB 120775 as follows:

AN ORDINANCE relating to app-based worker labor standards; establishing a new compensation scheme for app-based workers with minimum pay requirements and related standards for transparency and flexibility; and amending Sections 8.37.020, 8.37.050, 8.37.060, 8.37.070, 8.37.080, 8.37.100, 8.37.110, 8.37.120, 8.37.125, 8.37.165, and 8.37.170 of the Seattle Municipal Code ((; and repealing Section 8.37.230 of the Seattle Municipal Code.))

Amend Section 6 of CB 120775 as follows:

8.37.100 Notice of rights

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B. The notice of rights shall provide information on:

* * *

6. The right to file a complaint with the Agency ((or bring a civil action)) for violation of the requirements of this Chapter 8.37, including but not limited to a network company's or any person's failure to pay the minimum ((~~per-minute~~)) per-hour amount ((~~, or per-offer amount and~~)) or per-mile amount, or a network company's or other person's retaliation against an app-based worker or other person for engaging in an activity protected by this Chapter 8.37.

* * *

Amend Section 8 of CB 120775 as follows:

8.37.120 Retaliation prohibited

* * *

B. No network company or any other person shall ((~~take any adverse action~~)) retaliate against any person because the person has exercised in good faith the rights protected under this Chapter 8.37. Such rights include, but are not limited to, the right to make inquiries about the rights protected under this Chapter 8.37; the right to inform others about their rights under this Chapter 8.37; the right to inform the person's network company, the person's legal counsel, a union or similar organization, or any other person about an alleged violation of this Chapter 8.37; the right to file an oral or written complaint with the Agency ((or bring a civil action)) for an alleged violation of this Chapter 8.37; the right to cooperate with the Agency in its investigations of this Chapter 8.37; the right to testify in a proceeding under or related to this Chapter 8.37; the right to refuse to participate in an activity that would result in a violation of city, state, or federal law; and the right to oppose any policy, practice, or act that is unlawful under this Chapter 8.37.

* * *

Amend Section 10 of CB 120775 as follows, relettering subsections of 8.37.165.D.3:

8.37.165 Complaint procedure

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D. The Agency may send notices to the network company and complainant, including but not limited to:

* * *

3. Notice to the complainant of the response from the network company. The Agency may send a notice to the complainant of the response from the network company. This notice to the complainant may include but not be limited to:

a. The response from the network company, including any enclosures;

((b. Information on the right to bring a civil action in a court of competent jurisdiction;))

* * *

Remove Section 12 (repeal of Section 8.37.230), which reads as follows, from CB 120775 and renumber Section 13 as Section 12:

((~~8.37.230 Private right of action~~

~~A. Any person or class of persons that suffers an injury as a result of a violation of this Chapter 8.37, or is the subject of prohibited retaliation under Section 8.37.120, may bring a civil action in a court of competent jurisdiction against the network company or other person violating this Chapter 8.37 and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation: the payment of any unpaid compensation plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid compensation; and a penalty payable to any aggrieved party of up to $5,755.31 if the aggrieved party was subject to~~

~~prohibited retaliation. Interest shall accrue from the date the unpaid compensation was first due at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.~~

~~B. For purposes of this Section 8.37.230, "person" includes any entity a member of which has suffered an injury or retaliation, or any other individual or entity acting on behalf of an aggrieved party that has suffered an injury or retaliation.~~

~~C. For purposes of determining membership within a class of persons entitled to bring an action under this Section 8.37.230, two or more app-based workers are similarly situated if they:~~

~~1. Performed 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. For purposes of subsection 8.37.230.C, 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. An order issued by the court may include a requirement for a network company to submit a compliance report to the court and to the Agency.~~))