

June 5, 2020

MEMORANDUM

To: Seattle City Council
From: Karina Bull, Analyst
Subject: CB 119799: Premium Pay for Gig Workers Ordinance

On June 8, 2020, the City Council will discuss and may act on [CB 119799](#), legislation sponsored by Councilmembers Herbold and Lewis and introduced on May 26, 2020. To comply with [Proclamation 20-28.4](#), the legislation includes findings to demonstrate it is necessary to respond to the new coronavirus 19 (COVID-19) public health emergency. The legislation also includes findings to establish a need for emergency legislation that would have an immediately effective date if authorized by a supermajority of the City Council and signed by the Mayor.

This memo (1) summarizes the legislation and (2) presents potential amendments in a substitute bill sponsored by Councilmembers Herbold and Lewis for Council's consideration on June 8. See "Amendments" section (pg. 3) for more details.

Background

During the COVID-19 emergency, gig workers have been providing essential services to Seattle consumers. Using an online-enabled application or platform, gig workers accept offers for prearranged services from hiring entities to perform tasks for consumers, such as delivery of groceries or prepared food and beverages. Since the nature of this work can involve close contact with the public, gig workers risk catching and/or spreading illness and bear the brunt of costs for disinfecting their equipment and buying protective gear. Gig workers working in these hazardous conditions do not have access to employee protections, such as minimum compensation or safety standards, because they are hired as "independent contractors."

Summary

This legislation would declare an emergency in response to COVID-19 and would require hiring entities to provide premium pay to gig workers working in Seattle for the duration of the civil emergency proclaimed by the Mayor on March 3, 2020. The premium pay would compensate gig workers for the risks of working during a pandemic and for the costs of taking preventive safety measures to protect themselves and others from spreading the virus.

The legislation would apply to gig workers working for hiring entities with 250 or more gig workers worldwide.

- In the introduced legislation, covered hiring entities would include "food delivery network companies" and "transportation network companies."
- In the substitute bill, covered hiring entities would be limited to "food delivery network companies" offering prearranged delivery services for compensation using an online-

enabled application or platform to connect customers with workers for delivery from (a) eating and drinking establishments, (b) food processing establishments, (c) grocery stores, or (d) any facility intended to fulfill customer orders from a business whose business model relies on the delivery of groceries or prepared food and beverages.

The legislation would define “premium pay” as compensation owed to a gig worker that is separate from hiring entity payments for providing services, bonuses, and commissions, as well as tips earned from customers.

In the introduced legislation, hiring entities would owe premium pay of \$5 for each online order with a work-related stop in Seattle. For online orders with more than one drop-off point, hiring entities would owe premium pay of \$5 for each additional drop-off point in Seattle. Hiring entities would notify gig workers of online orders that qualified for the premium pay and itemize premium pay separately from other compensation. In the substitute bill, a revised premium pay requirement would require compensation for additional pick-up points and would reduce the amount of premium pay owed for additional pick-up and drop-off points. See Table 1, Row D (pg. 4) for more details.

Hiring entities also would be required to provide gig workers with a notice of rights, retain records showing compliance for three years, and comply with anti-retaliation provisions.

In the introduced legislation, the anti-retaliation provisions would be broader than other labor standards. Hiring entities would be prohibited from (a) taking adverse actions against workers who assert their rights to premium pay; and (b) taking actions as a result of the ordinance going into effect. For the latter prohibition, hiring entities would be prohibited from offsetting the costs of complying with the ordinance by reducing or otherwise modifying their areas of service in Seattle. In the substitute bill, the latter prohibition would move to a new section, “Gig Worker and Consumer Protections.” The new section would also prohibit hiring entities from reducing a gig worker’s compensation, limiting a gig worker’s earning capacity, and adding customer charges. See Table 1, Row E (pg. 5) for more details.

The Office of Labor Standards (OLS) would implement and enforce premium pay requirements. As with the City’s other labor standards, OLS would be required to commence any investigation within three years of the alleged violation. Aggrieved parties would also have a private right of action.

The requirement to provide premium pay would be in effect until the termination of the COVID-19 civil emergency proclaimed by the Mayor on March 3, 2020. However, if the City passes a minimum compensation standard for covered gig workers, the legislation states the Council’s intention to consider eliminating the premium pay requirement before the termination of the civil emergency.

After premium pay requirements sunset, the remaining requirements would stay in effect for a limited period to retain provisions necessary for record-keeping, notice of rights, preventing

retaliation, and enforcement. Specifically, the legislation would stay in effect for three years after the termination of the civil emergency proclaimed by the Mayor on March 3, 2020 and then be automatically repealed without subsequent action by the Council.

Financial Impacts

This legislation would establish an implementation and enforcement role for OLS and an appeal role for the Hearing Examiner. The City could either:

1. Require these entities to reprioritize their existing portfolios of work; or
2. Add resources to support the newly created roles during the 2020 budget rebalancing process or the 2021 budget adoption process.

Amendments

As of June 4, there is a substitute bill for the Council’s consideration. The substitute bill contains technical corrections and substantive amendments. See Table 1 for an overview of the amendments. Any additional amendments identified will be distributed as soon as they are available.

Table 1: Substitute Bill

Issue	Description
<p>A. Findings</p>	<p>The substitute bill would emphasize the gig worker’s expenses to protect themselves and the public from catching or spreading the virus.</p> <ul style="list-style-type: none"> • “Establishing an immediate requirement for food delivery network companies and transportation network companies to provide premium pay to gig workers protects public health, supports stable incomes, and promotes job retention by ensuring that gig workers are compensated now and for the duration of the public health emergency for the substantial risks, <u>efforts, and expenses</u> they are undertaking to provide essential services in a safe and reliable manner during the COVID-19 emergency.” • “This ordinance is necessary in response to the COVID-19 public health emergency because requiring food delivery network companies and transportation network companies to provide premium pay to gig workers compensates gig workers for the risks <u>of working during a pandemic and the safety measures</u> they are undertaking <u>to protect themselves, customers, and the public from catching or spreading illness.</u> <u>The provision of premium pay also better</u> ensures the retention of these essential workers who are on the frontlines of this pandemic to provide essential services, who are needed throughout the duration of the COVID-19 emergency, and who deserve fair and equitable compensation for their work.”

Issue	Description
<p>B. Definitions</p>	<p>The substitute bill would add or revise the following definitions:</p> <ul style="list-style-type: none"> • (Revised) “Food delivery network company” means an organization whether a corporation, partnership, sole proprietor, or other form, operating in Seattle, that offers prearranged delivery services for compensation using an online-enabled application or platform, such as an application dispatch system, to connect customers with workers for delivery from one or more of the following: (1) eating and drinking establishments, (2) food processing establishments, (3) grocery stores, or (4) any facility intended to fulfill customer orders from a business whose business model relies on the delivery of <u>supplying</u> groceries or prepared food and beverages <u>for an online order.</u> • (New) “Pick-up point” means the location of any establishment accessed by the gig worker to fulfill an online order, including but not limited to (1) eating and drinking establishments, (2) food processing establishments, (3) grocery stores, or (4) any facility supplying groceries or prepared food and beverages for an online order. • (New) “Worker platform” means the worker-facing application dispatch system software or any online-enabled application service, website, or system, used by a food delivery network worker, that enables the prearrangement of delivery services for compensation.
<p>C. Coverage</p>	<p>The substitute bill would remove coverage of “transportation network companies” and “transportation network company drivers.” Since the Executive has expressed an intention to transmit “Fare Share” legislation to Council this summer, the sponsors have removed transportation network companies from CB 119799. The Fare Share legislation would propose a minimum compensation standard for TNC drivers that would include at least the equivalent of the “hourly minimum wage” required for large employers in Seattle’s Minimum Wage Ordinance plus reasonable expenses.</p>
<p>D. Premium Pay Requirement</p>	<p>The substitute bill would change the premium pay requirement. Hiring entities would provide each gig worker with premium pay for each online order that results in the gig worker making a work-related stop in Seattle. For each online order, hiring entities would owe premium pay in the following amounts:</p> <ul style="list-style-type: none"> • \$5.00 for one pick-up point or one drop-off point in Seattle. • \$2.50 for each additional pick-up point in Seattle. • \$2.50 for each additional drop-off point in Seattle. <p>For example, a gig worker who visits one grocery store to pick-up items for an online order and delivers the items to two drop-off points would be owed premium pay of \$7.50.</p>

Issue	Description
E. Gig Worker and Consumer Protections	<p>The substitute bill would create a new section for “Gig Worker and Consumer Protections.” The section would prohibit hiring entities, as a result of the ordinance going into effect, from taking the following actions:</p> <ul style="list-style-type: none"> • Reducing or otherwise modifying areas of service in Seattle; • Reducing a gig worker’s compensation; • Limiting a gig worker’s earning capacity, including but not limited to restricting access to online orders; or • Adding customer charges.
F. Notice of Rights	<p>The substitute bill would clarify hiring entity requirements for providing notice of rights. Hiring entities would be required to provide the notice of rights in an electronic format via smartphone application or online web portal, in English and any language that the hiring entity knows or has reason to know is the primary language of the gig worker(s).</p>
G. Enforcement	<p>The substitute bill would add remedies for violations of “Gig Worker and Customer Protections.” The OLS Director would have authority to assess the following penalties:</p> <ul style="list-style-type: none"> • For violations of prohibitions on reducing or otherwise modifying areas of service in Seattle and adding customer charges, the Director could assess penalties and fines payable to OLS. • For violations of prohibitions on reducing a gig worker’s compensation or limiting a gig worker’s earning capacity, the Director could assess unpaid compensation due to the aggrieved worker, penalties, and fines. At least 50 percent of the penalty would be payable to the aggrieved party and the remaining penalty would be payable to OLS as a civil penalty. The fine(s) would be payable to OLS or to the aggrieved party.

Next Steps: Council action could occur at the Full Council meeting on June 8, 2020.

Please contact me if you have questions.

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