



SEATTLE CITY COUNCIL
CENTRAL STAFF

Pay-Up Policy Proposal Labor Standards for App-based Workers

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Introduction

Suite of labor standards protections for app-based workers

1. Minimum compensation
2. Transparency
3. Flexibility
4. Deactivation
5. Background checks
6. Access to restrooms
7. Protections against discrimination and right to reasonable accommodations
8. App-based Workers Advisory Board



**Stakeholder
Meetings**

Date	Meeting Topic
Week of 7/12	Background Checks
Committee 7/13	Unintroduced Draft Bill(s)
Week of 7/19	Restroom Access
Week of 7/26	Anti-discrimination & Reasonable Accommodations
Committee 7/27	Unintroduced Draft Bill(s)
Week of 8/2	Enforcement
Week of 8/9	Standards Board
Committee 8/9	Unintroduced Draft or Introduced Draft Bill(s)
Week of 8/30	Other Issues
Week of 9/6	Other Issues
Week of 9/13	HOLD for Unresolved/Follow-up
Committee 9/14	Final Amendments
Full Council 12/13	Final Vote

App-based Workers

1. Covered

- Workers providing on-demand or pre-scheduled, physical services through a network company's worker platform.

2. Not covered

- Workers with significant bargaining power and influence over their pay and conditions of work.
- Licensed professional services (by rule), creative work, wholly digital services, sales or rental of goods or real estate, and TNC services.
- Online orders resulting in payment of \$1,000 or more.

Network Companies

1. Covered

- Online-enabled applications or platforms that facilitate the provision of services by app-based workers
- 250 or more app-based workers worldwide, regardless of where those workers perform work.

2. Not covered

- Platforms offering scheduling software, transmitting payment, or operating as digital advertising/messaging boards *that do not facilitate services, intermediate relationships, or govern the terms or oversight of work performance.*

Stakeholder Feedback

1. Coverage of project-based services (e.g., overnight pet sitting)

- How would the legislation cover situations where the worker sets flat rate prices rather than hourly prices for project-based services (e.g., overnight pet sitting)?
- What payment would be required for overnight services? Could FLSA rules offer guidance on these types of situations?

2. Exemption for online orders resulting in payment of \$1,000+

- Is there a full understanding of the types of work covered by this exemption? Is this exemption necessary?

Minimum Compensation



Policy Goal

- *Set single pay standard for all business models.*
- *Ensure payment of minimum wage plus expenses with a per-minute and per-mile floor for engaged time and engaged miles to complete each offer.*

Minimum Compensation – Pay standard

1. Minimum compensation per engaged minute

- Minimum wage equivalent x assoc. cost factor x assoc. time factor = “per minute amount” for engaged time to ensure minimum wage for all work time.

plus

2. Minimum compensation per engaged mile

- Standard mileage rate x assoc. mileage factor = “per mile amount” per engaged mile to account for all work miles including associated miles.

Minimum Compensation – 2021 example

1. Minimum compensation per engaged minute

- $\$0.28 \times 1.25 \times 1.13 = \0.40 per minute of engaged time.

plus

2. Minimum compensation per engaged mile

- $\$0.56$ per mile IRS rate $\times 1.25 = \$0.70$ per engaged mile.

Associated Cost Factor

- **Associated Cost Factor** for baseline expenses paid by app-based workers treated as independent contractors (vs. baseline expenses paid by companies).

Item	Amount	Notes
Pay roll tax	7.65%	Additional “employer share” of payroll taxes
State Paid Family Medical Leave	0.25%	Expense of contractor opt-in to PFML
Unemployment compensation	1.06%	Average cost to cover an employee in state unemployment insurance
Workers Compensation	2.84%	Average cost of state workers comp coverage
Miscellaneous expenses	1.2%	Cell phone, data plans, other equipment
Total associated cost factor	113%	

Associated Time Factor

- **Associated Time Factor** for additional working time to successfully perform work.

Item	Amount per engaged hour	Notes
Rest breaks	2.5 minutes	10 minutes of rest time per 4 hours of work
Time to review offers	5 minutes	Minimal estimate of time to review offers
Time to availability	5 minutes	Minimal estimate of time from completion of offer to availability for next offer
Time for administrative tasks	2.5 minutes	Minimal estimate of time managing account, recordkeeping, engaging customer support
Total associated time factor	125%	

Associated Mileage Factor

- **Associated Mileage Factor** for miles driven while a worker is not engaged on a specific offer, but when those miles are required to successfully perform work.

Amount	Notes
For every 10 engaged miles:	
• 1.25 miles	Miles to travel to locations where offers are available or return to starting location when dispatched from hub
• 1.25 miles	Miles to travel to locations for rest breaks, meal breaks, restroom access, and administrative needs.
Total associated mileage factor 125%	

Minimum Compensation – Per offer

3. Minimum compensation per offer

- For each offer, company would provide a minimum per offer amount of at least \$5.

Stakeholder Feedback (1/3)

1. Basis for minimum compensation

- Pay standard “per job” or “per pay period”
- Per period (e.g., weekly standard) could be more difficult for workers to determine if they are getting paid the right amount. Workers would have to determine (1) how many hours they worked in Seattle, (2) amount paid for Seattle work, and (3) amount paid per hour.
- Per job would be more transparent – especially if some jobs are not entirely in Seattle. Companies could be incentivized to use algorithms to distribute jobs that pay less than the standard toward the end of the week, after drivers may already have met the minimum compensation threshold. If set on a weekly basis it becomes a ceiling instead of a floor.
- Independent business owners do not necessarily track their wages per job. There is a philosophical difference between the pay standards that might not get addressed in a per job pay standard.

Stakeholder Feedback (2/3)

2. Distinction for project-based services

- Questions on how this proposal would work for project-based services where workers set their own rates and where there are no engaged miles.
- This proposal is not a one-size fits all pay standard.

3. Associated time and cost factors

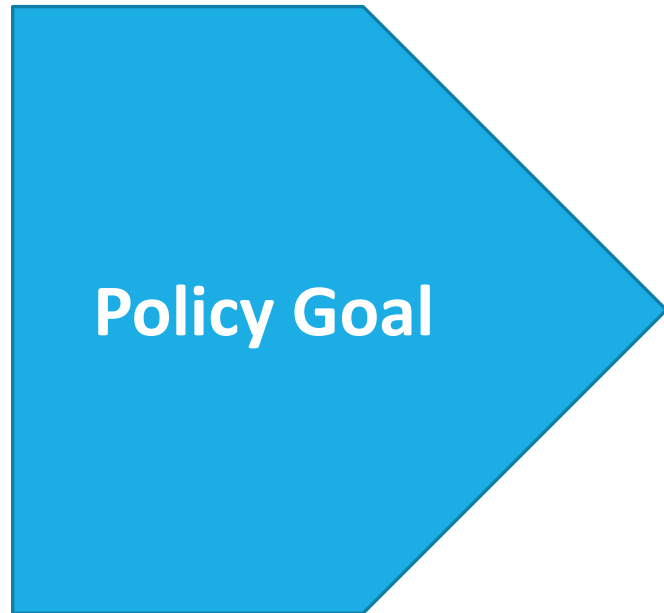
- Compensation rates are minimal estimates. Fare Share study notes more non-engaged time that's not compensated in this proposal. If workers complete 2 or 3 jobs per engaged hour, 2.5 minutes does not seem like enough time to review those offers
- Companies limit the review to roughly 30 seconds. Trying to merge in non-on demand services makes it more difficult to account for this number which is why Drive Forward proposes a shorter time.
- Support for state-level portable benefit programs to cover items in the associated cost factor.

Stakeholder Feedback (3/3)

3. Standard mileage rate

- \$0.56 IRS standard or \$0.32 Drive Forward survey standard
- IRS is the gold standard. The City of Seattle uses IRS rate for contractors. California Prop 22 uses less than IRS rate.
- Drivers can accurately track their costs. In the Drive Forward Survey, drivers reported that they did not buy vehicles to do app-based work. Depreciation isn't a major factor for app-based workers and may only bring up the standard mileage rate 5 to 7 cents.
- Depreciation is not an easy issue to survey. IRS estimates 26 cents a mile for fleet wide depreciation.
- IRS rate includes vehicles like panel trucks and does not reflect vehicles used by app-based workers.
- Seattle Public Schools reimburses at the IRS rate regardless of vehicle.
- IRS rate seems high. Drive Forward proposal of \$0.32 also seems high for drivers in Seattle.

Transparency



- *Ensure workers have information to make informed choices about which offers to accept, and to verify compliance with pay standard and other rights.*
- *Provide clarity to end customers and third-party businesses on the nature of charges, including which amounts are paid to workers and which are retained by the company.*

Transparency (1/2)

1. Offer information

- Information available for at least three minutes
- Best estimate of engaged time and mileage to complete online order
- Guaranteed minimum amount of payment
- Locations of work (e.g., geographic and business locations)
- Physical requirements of work (e.g., flights of stairs, weight of materials)
- Contents of unsealed products, when exposure or handling of such products may pose health risks or violate personal beliefs

Transparency (2/2)

2. Electronic receipts within 24 hours for each completed and/or cancelled offer*
3. Weekly information on completed and/or cancelled offers
4. Annual and quarterly tax information
5. 14-day notice before significant change to payment calculation
6. Public disclosure of aggregate data on worker earnings and work performed

**Electronic receipts would be required for workers, customers, and third-party businesses*

Stakeholder Feedback (1/2)

1. Offer information

- Offer information could help worker make an informed decision on which jobs are profitable.
- Not all jobs are practical for individuals with a disability (e.g., delivering shellfish if worker has shellfish allergies).
- Network companies might not know about physical requirements of job (e.g., flights of stairs for delivery site). Should companies be responsible for providing this type of information?
- How can companies facilitate open communications between customers and workers about physical requirements?

Stakeholder Feedback (2/2)

2. Electronic receipts & public disclosure

- Concerns about sharing sensitive business information (e.g., cost charged to customer).
- Concerns about customer privacy (e.g., cost of goods).
- Companies could provide total amount charged and redact cost of goods.
- Workers need to information to know information to help them determine if they are being paid the right amount.
- Third-party receipts could support consumer protections because there would be public information about company fees.

Flexibility



Policy Goal

Protect workers' flexibility, including the right to freely choose jobs and hours, while maintaining companies' ability to provide services to end customers and third-party businesses.

Flexibility

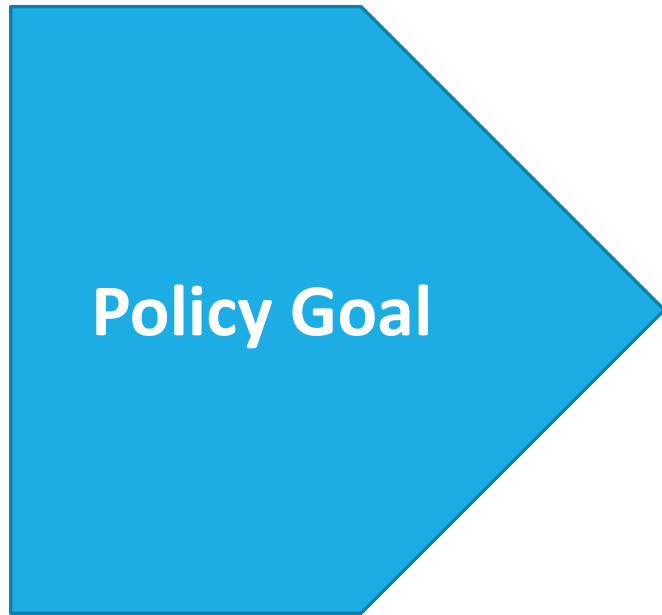
1. No requirements to be logged into platform on specific dates and times.
2. No limitations on amount of time to be logged onto platform except for health and safety restrictions.
3. No adverse action based on work availability.
4. Right to accept or reject any individual offer, any types of offers, and any number or proportion of offers.
5. Right to cancel offer with cause.
6. No restriction on working for other companies, including self-employment.
7. Limits on monitoring in the interest of the company.

Stakeholder Feedback

1. Right to accept or reject any individual offer

- Workers value flexibility on types of work and when they can work.
- Right to reject offers based on personal belief or geographic location could result in discriminatory impact.
- Equity is the responsibility of the company.
- Companies could incentivize workers to accept offers.
- Would companies shift cost of incentivizing workers to customers?
- Companies could separate the driver pay from customer charges.
- Companies could do more algorithmically.

Deactivation



- *Protect a worker's right to access jobs by prohibiting unwarranted deactivation.*
- *Establish rights to advance notice, timeline for worker challenges and company responses, and reinstatement if company does not provide satisfactory justification for a deactivation.*

Deactivations

1. Legislation would establish list of unwarranted reasons for deactivation.
2. Companies would publicly post an exhaustive list of their warranted reasons for deactivation.

Advance Notice

1. Company would provide 14-day advance notice of impending deactivation, including reason(s) for deactivation.
2. Company could immediately deactivate a worker for egregious misconduct.
3. Company would provide company records relevant to the deactivation within 7 days of a worker's request.

Timeline for Challenge & Response

1. Worker could challenge deactivation within 90 days of deactivation date or date that the worker last attempted to use platform (whichever date is later).
2. Within 14 days of the challenge, company would provide “satisfactory justification” for the deactivation.
 - Evidentiary substantiation of the allegations against the worker.
 - Responses to the worker’s questions or claims challenging the deactivation.
3. Company could provide statement of reasonable cause to extend timeline.

Reinstatement

1. Worker would have a right to reinstatement with backpay:
 - a. If the company does not comply with advance notice procedures.
 - b. If the company does not provide satisfactory justification for deactivation within 30 days of the challenge.

Enforcement of Unwarranted Deactivation

1. OLS would enforce:
 - Required procedures and timelines.
 - Company's provision of satisfactory justification for deactivation.
2. OLS would not adjudicate substance of worker claims.

Stakeholder Feedback (1/2)

1. Differing perspectives on the problem of unwarranted deactivations

- Most workers have been deactivated for a warranted reason.
- Hundreds of workers have shared stories of wrongful deactivation; companies often give vague answers.
- Customers may complain about a driver to get a credit on their account.
- Workers can be deactivated for years which can be devastating for a worker's livelihood, including those who invested in equipment (e.g., purchased a car).
- Deactivations can feel like a threat to the workers without specific justifications.

Stakeholder Feedback (2/2)

1. Safety is a shared concern

- What guidance does OLS need for rules on the types of egregious misconduct that could warrant immediate deactivation?
- Are there different types of safety concerns depending on the industry?

2. Support for a process

- Need to incentivize companies to refrain from frivolously deactivating workers.
- Need explanation of “satisfactory justification” of reasons for deactivation.
- Common understanding of “reasonable standard” could show satisfactory justification.

Future Stakeholder Meetings

1. Background checks
2. Access to restrooms
3. Protections against discrimination and right to reasonable accommodations
4. App-based Workers Advisory Board
5. Enforcement

Questions?