



Legislation Details (With Text)

File #: CB 120775 **Version:** 2 **Name:** CB 120775
Type: Council Bill (CB) **Status:** Full Council Agenda Ready
In control: Governance, Accountability, and Economic Development Committee
On agenda: 6/18/2024
Final Action: **Ord. No.**
Title: 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, 8.37.120, 8.37.125, 8.37.165, and 8.37.170 of the Seattle Municipal Code.
Sponsors: Sara Nelson, Maritza Rivera
Indexes:
Attachments: 1. Summary and Fiscal Note v2, 2. Summary - Att 1 – Ordinance 126595 – App-Based Worker Minimum Payment Ordinance, 3. Summary and Fiscal Note v1, 4. Central Staff Memo, 5. Central Staff Memo (added 4/26/24), 6. Presentation 4/25/2024 (added 4/26/24), 7. ABWMP Revisions Ordinance Amendments Packet 5/9/2024, 8. Amendment 2 version 2 (added 5/10/24), 9. Committee Amendment Vote Tally (5/9/2024), 10. Amendment A, 11. Amendment B

Date	Ver.	Action By	Action	Result
5/9/2024	1	Governance, Accountability, and Economic Development Committee	pass as amended	Pass
4/25/2024	1	Governance, Accountability, and Economic Development Committee	discussed	
4/23/2024	1	City Council	referred	
4/19/2024	1	Council President's Office	sent for review	
4/19/2024	1	City Clerk	sent for review	

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

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, 8.37.120, 8.37.125, 8.37.165, and 8.37.170 of the Seattle Municipal Code.

WHEREAS, Chapter 8.37 of the Seattle Municipal Code, also known as the App-Based Worker Minimum Payment Ordinance, requires network companies to provide app-based workers with minimum payment, transparent job information and receipts, and flexible terms of work; and

WHEREAS, amending labor standards for app-based workers requires appropriate action by the City Council;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 8.37.020 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended as follows:

8.37.020 Definitions

For purposes of this Chapter 8.37:

* * *

~~((“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 unfair immigration-related practices; filing a false report with a government agency; or otherwise discriminating against any person for any reason prohibited by Section 8.37.120. “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 8.37.))~~

* * *

~~((“Associated cost factor” means the additional percentage of the minimum wage equivalent rate that reasonably compensates app-based workers for the non-mileage expenses that are necessary to conduct app-based work, which include but are not limited to the following:~~

- ~~1. Employer-side payroll taxes that app-based workers must pay;~~
- ~~2. Cost of paid family and medical leave insurance;~~

- ~~3. Cost of state-provided unemployment insurance;~~
- ~~4. Cost of workers' compensation insurance;~~
- ~~5. Business taxes that app-based workers must pay;~~
- ~~6. Business licensing fees that app-based workers must pay; and~~
- ~~7. Cost of miscellaneous expenses such as purchase of cellular phones, data plans, and other equipment required for work.~~

“Associated mileage factor” means the additional percentage of the mileage rate that reasonably compensates app-based workers for miles traveled without compensation that are necessary to conduct app-based work, which may include but is not limited to the following:

- ~~1. Miles traveled after completing performance of an offer, to relocate to locations where additional offers are likely to be available or to return to the starting location; and/or~~
- ~~2. Miles traveled to locations for rest breaks, meal breaks, restroom access, and administrative needs.~~

“Associated time factor” means the additional percentage of the minimum wage equivalent rate that reasonably compensates app-based workers for the time that app-based workers spend working or engaged to wait for work without compensation to perform app-based work, including but not limited to the following:

- ~~1. Reviewing offers;~~
- ~~2. Communicating with network companies and customers;~~
- ~~3. Relocating in anticipation of future offers;~~
- ~~4. Conducting administrative tasks; and~~
- ~~5. Taking rest breaks.))~~

* * *

“Eating and drinking establishment” means “eating and drinking establishment” as defined in Section 23.84A.010.

“En route” means traveling to the location or locations where work in furtherance of an accepted offer will occur.

“Engaged miles” means miles traveled during engaged time in a vehicle that the network company does not own and maintain, or miles traveled during engaged time in a vehicle leased by the network company or its agent to the app-based worker.

“Engaged time” means the period of time in which an app-based worker performs services in furtherance of an offer facilitated or presented by a network company (~~(or participates in any training program required by a network company)~~). Engaged time shall apply as described below:

1. If an offer is being facilitated or presented by an on-demand network company, or is an on-demand offer, “engaged time” begins upon the app-based worker’s acceptance of the offer or, if the app-based worker is not expected to begin performance of the offer upon acceptance, upon receipt of information by the network company that the app-based worker is en route to fulfill the offer. Engaged time (~~(and)~~) ends upon: the app-based worker’s completing performance of the offer, cancellation of the offer by the network company or customer, or cancellation with cause of the app-based worker’s acceptance of the offer (~~(pursuant to)~~) when the conditions required in subsection 8.37.080.C.1 are met.

2. In all other circumstances, “engaged time” begins when the app-based worker begins performance of the offer or when the app-based worker reports to a location designated in the offer. Engaged time ends upon: the app-based worker’s completing performance of the offer, cancellation of the offer by the network company or customer, or cancellation with cause of the app-based worker’s acceptance of the offer (~~(pursuant to)~~) when the conditions required in subsection 8.37.080.C.1 are met.

~~((4-))~~ 3. Offers ending in a cancellation (~~(without cause)~~) by an app-based worker shall not incur any engaged time, except for cancellation with cause of the app-based worker’s acceptance of the offer when the conditions required in subsection 8.37.080.C.1 are met.

~~((The Director may issue rules on “engaged time” for (a) offers with non-compensable time, such as~~

~~sleep time or other periods of off-duty time; or (b) offers with periods of time when the worker is not completely relieved of the duty to perform services and cannot use the time effectively for their own purposes.~~

~~“Eating and drinking establishment” means “eating and drinking establishment” as defined in Section 23.84A.010.)~~

* * *

“Hourly minimum wage” has the same meaning as established for Schedule 1 employers in Chapter 14.19. In 2024, the “hourly minimum wage” established for Schedule 1 employers in Chapter 14.19 is \$19.97.

“Incentive” means a sum of money paid to an app-based worker ~~((in addition to the guaranteed minimum network company payment for an offer,))~~ upon completion of specific tasks presented by the network companies, including but not limited to completing performance of a certain number of offers, completing performance of a certain number of consecutive offers, completing performance of an offer subject to a price multiplier or variable pricing policy, making oneself available to accept offers in a particular geographic location during a specified period of time, or recruiting new app-based workers.

* * *

~~(“Minimum wage equivalent rate” means the per-minute equivalent of the “hourly minimum wage” established for Schedule 1 employers in Chapter 14.19. In 2022, the “hourly minimum wage” established for Schedule 1 employers in Chapter 14.19 is \$17.27 and the resultant minimum wage equivalent rate is \$0.288.)~~

* * *

“Network company earnings period” means a pay period, set by the network company, not to exceed 14 consecutive calendar days.

“Network company payment” means the amount owed to an app-based worker by the network company by reason of performing services in furtherance of ~~((an offer))~~ offers facilitated or presented by the network company, including but not limited to payment for providing services and/or commissions ~~((, or participating in any training program required by a network company))~~. For the purposes of satisfying the minimum network

company payment requirements of Section 8.37.050, “network company payment” includes incentives and bonuses.

* * *

“Perform services in Seattle” means activities, conducted by an app-based worker in furtherance of an offer, that occur within the geographic boundaries of Seattle.

1. The term “perform services in Seattle” includes any time spent on a commercial stop in Seattle that is related to the provision of delivery or other services associated with an offer.

2. The term “perform services in Seattle” does not include stopping for refueling, stopping for a personal meal or errands, or time spent in Seattle solely for the purpose of travelling through Seattle from a point of origin outside Seattle to a destination outside Seattle with no commercial stops in Seattle.

3. The term “perform services in Seattle” does not include time spent or services performed that the app-based worker voluntarily elects to perform or complete at a location in Seattle where the app-based worker begins performance of the offer outside Seattle and no portion of the original offer presented to, and accepted by, the app-based worker requires time spent or services to take place in Seattle.

* * *

~~((“Standard mileage rate” means the current standard mileage rate established by the United States Internal Revenue Service (IRS) for calculation of the costs of operating an automobile. This mileage rate is adjusted annually by the IRS. For example, the 2022 mileage rate is \$0.585.))~~

* * *

~~“Unsealed” means loose items or items in packaging that have the potential, under normal conditions of handling, to open, spill, or otherwise expose an app-based worker to its contents((, including but not limited to delivery bags, boxes, or other containers designed to allow customers to transport hot food or groceries to their homes. The term “unsealed” does not include individual items pre-packaged into a bag, box, or other container that is then sealed in a manner designed to keep its contents securely contained, inaccessible, and out of view of~~

~~the app-based worker~~). An item is not unsealed if its packaging meets either of the following conditions:

1. The item's own packaging is designed to prevent leaks or spills under normal conditions of handling (e.g., items in factory-sealed packaging); or

2. The item is packed into a bag, box, or other container that is designed to prevent leakage or breakage and that is securely closed in order to contain items during storage and transport. If an app-based worker handles items that would otherwise be considered unsealed before they are packed, the items are considered unsealed until they are packed.

* * *

Section 2. Section 8.37.050 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended as follows:

8.37.050 Minimum network company payment

A. Requirement

1. For each ~~((offer))~~ network company earnings period where the app-based worker performs offers resulting in engaged time or engaged miles, a network company shall compensate app-based workers, and/or ensure app-based workers receive, at least the equivalent of a minimum network company payment that is ~~((the greater of either:~~

1. ~~The minimum per-minute amount for engaged time under subsection 8.37.050.B.1 plus the minimum per-mile amount for engaged miles under subsection 8.37.050.B.2; or 2. The minimum per-offer amount under subsection 8.37.050.B.4))~~ the minimum per-hour amount for engaged time under subsection 8.37.050.B.1 plus the minimum per-mile amount for engaged miles under subsection 8.37.050.B.2.

2. For each network company earnings period, a network company shall compare the total amount of network company payments, including incentive and bonus payments, earned by the app-based worker during the network company earnings period against the minimum network company payment calculation under subsection 8.37.050.B for all engaged time and engaged miles that occurred during that

network company earnings period. If the total amount of network company payments earned by that app-based worker is less than the total calculated under subsection 8.37.050.B for that network company earnings period, the network company shall include an additional sum accounting for the difference in the app-based worker's earnings when the network company processes payment for that earnings period.

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.

B. ~~((Minimum network company payment calculation))~~ Calculation

1. ~~((Per minute))~~ Per-hour amount. For each ~~((minute))~~ hour of engaged time, or portion thereof rounded to the nearest minute, a network company shall compensate app-based workers, and/or ensure that app-based workers receive, at least the equivalent of the total of the hourly minimum wage ~~((equivalent rate multiplied by the associated cost factor multiplied by the associated time factor))~~. In ~~((2022))~~ 2024, the ~~((per minute))~~ per-hour amount is ~~((\$.38))~~ \$19.97. On ~~((January 13, 2024, and on))~~ January 1 of each year thereafter, the ~~((per minute))~~ per-hour amount shall be increased to reflect any adjustment(s) to the hourly minimum wage ~~((equivalent rate, associated cost factor, or associated time factor.))~~ The Agency shall determine the ~~((per minute))~~ per-hour amount and file a schedule of such amount with the City Clerk.

~~((a. Associated cost factor. The associated cost factor is 1.12.~~

~~b. Associated time factor. The associated time factor is 1.17.))~~

2. Per-mile amount. For each engaged mile traveled, a network company shall compensate app-based workers, and/or ensure that app-based workers receive, at least the equivalent of the ~~((standard mileage rate multiplied by the associated mileage factor, which is 1.10))~~ per-mile amount, rounded to the nearest tenth of a mile. ~~((In 2022))~~ On the effective date of this ordinance, the per-mile amount is ~~((\$.64))~~ \$0.35. On ((

~~January 13, 2024, and on))~~ January 1 of each year thereafter, the per-mile amount shall be ~~((increased annually to reflect any adjustment(s) to the standard mileage rate or associated mileage factor))~~ adjusted annually to reflect the rate of inflation and calculated to the nearest cent. The Agency shall determine the per-mile amount and file a schedule of such amount with the City Clerk.

~~((3. The calculations described in this subsection 8.37.050.B are expressed in equation form as:~~

$$\begin{aligned} & \text{(Engaged minutes x minimum wage equivalent rate} \\ & \quad \text{x associated cost factor x associated time factor)} \\ & + \text{(engaged miles x standard mileage rate x associated mileage factor} \\ & \quad \text{= minimum network company payment per offer.} \end{aligned}$$

~~The established current rates and factors result in the following calculation for the required~~
minimum network company payment:

$$\begin{aligned} & \text{(Engaged minutes x \$0.288 x 1.12 x 1.17)} \\ & + \text{(Engaged miles x \$0.585 x 1.10)} \\ & = \text{\$0.38/minute + \$0.64/mile.} \end{aligned}$$

4. ~~Per offer amount. For each offer resulting in engaged time or engaged miles, a network company shall compensate app-based workers a minimum per offer amount of at least \$5. The Director may issue rules excluding certain offers from payment of the minimum per offer amount under subsection 8.37.050.B.4, including but not limited to on-demand offers cancelled by the customer within a grace period of not more than five minutes after acceptance.~~

a. ~~Effective January 1, 2024, the minimum per offer amount paid to an app-based worker shall be increased on a percentage basis to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall determine the amount and file a schedule of such amount with the City Clerk.~~

5. ~~Application of minimum network company payment requirements.~~

a. ~~A minimum network company payment shall be provided for any offer resulting in engaged time and engaged miles by the app-based worker, offers cancelled by a customer or the network company, and offers for which acceptance was cancelled with cause by the app-based worker pursuant to~~

~~subsection 8.37.080.C.~~

b.)) 3. If an app-based worker accepts a new offer during performance of a previously accepted offer, and both offers are facilitated or presented by the same network company, engaged time and engaged miles accrued during any period of time in which performance of the offers overlaps shall be subject to the minimum ~~((compensation))~~ network company payment requirements as if for a single offer under this subsection 8.37.050.B.

~~((C. Adjustment of the associated cost factor, associated time factor, and associated mileage factor~~

~~1. Adjustment of the associated cost factor. Beginning January 13, 2027, the Director by rule may adjust the associated cost factor every three years; provided, that this adjustment shall not result in reduction of the associated cost factor below 1.12. In adjusting the associated cost factor, the Director shall consider relevant and available sources of data, which may include but are not limited to: app-based worker surveys; data provided by network companies; data provided by app-based workers; data provided by customers; data from other jurisdictions; data available through academic, policy, or community-based organizations; public testimony; and stakeholder interviews. The Director may consider the non-exhaustive list of factors that comprise the “associated cost factor” as defined in Section 8.37.020, as well as any other factor the Director determines is necessary to further the purposes of this Chapter 8.37. The Agency shall file a schedule of any adjustment(s) to the associated cost factor with the City Clerk.~~

~~2. Adjustment to the associated time factor. Beginning January 13, 2027, the Director by rule may adjust the associated time factor every three years; provided, that this adjustment shall not result in reduction of the associated time factor below 1.17. In adjusting the associated time factor, the Director shall consider relevant and available sources of data, which may include but are not limited to: app-based worker surveys; data provided by network companies; data provided by app-based workers; data provided by customers; data from other jurisdictions; data available through academic, policy, or community-based organizations; public testimony provided; and stakeholder interviews. The Director may consider the non-~~

~~exhaustive list of factors that comprise the “associated time factor” as defined in Section 8.37.020, as well as any other factor the Director determines is necessary to further the purposes of this Chapter 8.37. The Agency shall file a schedule of any adjustment(s) to the associated time factor with the City Clerk.~~

~~3. Adjustment to the associated mileage factor. Beginning January 13, 2027, the Director by rule may adjust the associated mileage factor every three years; provided, that this adjustment shall not result in reduction of the associated mileage factor below 1.10. In adjusting the associated mileage factor, the Director shall consider relevant and available sources of data, which may include but are not limited to: app-based worker surveys; data provided by network companies; data provided by app-based workers; data provided by customers; data from other jurisdictions; data available through academic, policy, or community-based organizations; public testimony provided; and stakeholder interviews. The Director may consider the non-exhaustive list of factors that comprise the “associated mileage factor” as defined in Section 8.37.020, as well as any other factor the Director determines is necessary to further the purposes of this Chapter 8.37. The Agency shall file a schedule of any adjustment(s) to the associated mileage factor with the City Clerk.~~

~~D.))~~ C. Deductions

1. A network company may only deduct compensation when the app-based worker expressly authorizes the deduction in writing and does so in advance for a lawful purpose for the benefit of the app-based worker. Any such authorization by an app-based worker must be voluntary and knowing.

2. Neither the network company nor any person acting in the interest of the network company may derive any financial profit or benefit from any of the deductions under this subsection ((8.37.050.D)) 8.37.050.C. For the purposes of this subsection ((8.37.050.D)) 8.37.050.C, reasonable interest charged by the network company, or any person acting in the interest of a network company, for a loan or credit extended to the app-based worker is not considered to be of financial benefit to the network company, or any person acting in the interest of a network company.

3. A fee charged to an app-based worker who elects to access or transfer their earnings prior to

the end of the network company earnings period shall be considered a permissible deduction under this subsection 8.37.050.C, provided that the fee does not exceed \$5, adjusted annually to the nearest cent to reflect the rate of inflation.

Section 3. Section 8.37.060 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended as follows:

8.37.060 Tip and incentive compensation

A. ~~((Tips 1.))~~ A network company shall pay to its app-based workers all tips and gratuities.

~~((2.))~~ B. Tips paid to an app-based worker are in addition to, and may not count towards:

~~((a.))~~ 1. The app-based worker's minimum network company payment under Section 8.37.050;

~~((b.))~~ 2. A guaranteed minimum amount of network company payment for an offer, as described in Section 8.37.070, regardless of whether the guaranteed minimum amount exceeds the minimum network company payment owed to the app-based worker;

~~((c.))~~ 3. Any incentive presented to the app-based worker; or

~~((d.))~~ 4. Any amount of compensation presented to the app-based worker in exchange for the performance of services.

~~((B))~~ C. Incentives and bonuses paid to an app-based worker ~~((are in addition to, and may not))~~ may count towards ~~((;))~~ the app-based worker's minimum network company payment under Section 8.37.050.

Section 4. Section 8.37.070 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended as follows:

8.37.070 Network company transparency

A. Right to up-front information regarding offers

1. A network company shall provide, and/or ensure a customer provides, an app-based worker the following information when facilitating or presenting an offer:

a. A reasonable estimate of the engaged time required to complete performance of the

offer and, if applicable, the range of time in which the offer can be completed;

b. A reasonable estimate of the engaged miles required to complete performance of the offer and the approximate geographic location or locations where work in furtherance of the offer will occur(~~(; including pick-up and drop-off locations for offers involving deliveries)~~);

c. A guaranteed minimum amount of network company payment for the offer; (~~(provided, that it does not fall below the minimum network company payment requirements established in Section 8.37.050 for an offer requiring the amount of engaged time and engaged miles provided in the estimate;~~

~~d. The amount of any tip that each customer has indicated they will provide, if the network company's online-enabled application or platform enables customers to tip in advance of facilitating or presenting the offer to the app-based worker;)) ; and~~

~~((e-))~~ d. When performance of an offer requires ~~((a stop or stops))~~ at least one item to be picked up at business establishments, the names of such businesses~~((;))~~ .

~~((f. To the extent it is reasonably ascertainable, information regarding physical labor required to perform services in furtherance of the offer and accessibility at locations where work will be performed, including but not limited to weights of any goods to be handled; numbers of flights of stairs; and availability of elevators, ramps, and other conditions affecting accessibility. The Director shall issue rules regarding the types of information required to be disclosed, the format of provision of the information, and efforts to ascertain the information that would be considered reasonable; and~~

~~g. To the extent it is reasonably ascertainable, the network company shall make available to the app-based worker information that it has about the unsealed contents of each online order. The Director shall issue rules regarding the types of information required to be disclosed, the format of provision of the information, and efforts to ascertain the information that would be considered reasonable.))~~

2. A network company shall not be held responsible for a violation of subsection 8.37.070.A.1 that is attributable solely to incomplete or inaccurate information provided by another party, provided that the

network company made a reasonable effort to obtain complete and accurate information.

3. An on-demand offer shall be made available for at least ~~((two minutes))~~ 45 seconds after the app-based worker has been provided the information described in subsection 8.37.070.A.1.

4. If a network company presents a pre-scheduled offer, or an offer that entails fulfillment of multiple individual online orders, and the network company lacks advance notice of the information in subsection ~~((s))~~ 8.37.070.A.1.b ~~((s))~~ or 8.37.070.A.1.d ~~((, 8.37.070.A.1.e, 8.37.070.A.1.f and 8.37.070.A.1.g))~~ for that offer, the network company shall provide the app-based worker with such information ~~((prior to assigning them work in furtherance of each online order, to the extent))~~ as soon as it is reasonably ascertainable.

B. Within ~~((24))~~ 48 hours of each offer's performance ~~((or within 72 hours after a cancellation by an app-based worker,))~~ that incurs engaged time, a network company shall ~~((transmit))~~ provide an electronic receipt to the app-based worker that contains the following information for each unique offer covered by this Chapter 8.37:

1. The app-based worker's total amount of engaged time;
2. The app-based worker's total amount of engaged miles;
3. The app-based worker's compensation, itemized by:

a. Gross network company payment, ~~((as well as the method used to calculate payment, including but not limited to amount per minute or amount per mile;~~

~~b. Total incentive(s) and the basis for calculating the incentive(s), if applicable;))~~
including itemized incentive and bonus payments, if applicable;

~~((e))~~ b. Total amount of compensation from tips;

~~((d))~~ c. Total amount of any deductions, itemized by deduction type; and

~~((e))~~ d. Net compensation ~~((:))~~ ;

4. Itemized fees collected from the app-based worker to access the network company's online-enabled application or platform; and

5. The approximate geographic location or locations of the app-based worker's engaged time and engaged miles(~~(, including pick-up and drop-off locations for offers involving deliveries; and~~

6. Pursuant to rules that the Director may issue, ~~other information that is material and necessary to effectuate the terms of this Chapter 8.37).~~

C. ~~((On a weekly basis))~~ For each network company earnings period, the network company shall provide written notice to the app-based worker that contains the following information for offers covered by this Chapter 8.37 and that incurred engaged time, ~~((which were performed or cancelled with cause, as well as other engagement with the worker platform,))~~ during the prior week:

1. The app-based worker's total amount of engaged time;

2. The app-based worker's total amount of engaged miles;

3. The app-based worker's compensation, itemized by:

a. Gross network company payment, ~~((as well as the method used to calculate payment, including but not limited to amount per minute or amount per mile))~~ including:

~~((b. Total incentives and the basis for calculating the incentives, if applicable;))~~

i. Itemized incentive and bonus payments, if applicable; and

ii. Payment of an additional sum pursuant to subsection 8.37.050.A.2, if

applicable;

~~((e))~~ b. Total amount of compensation from tips;

~~((d))~~ c. Total amount of any deductions, itemized by deduction type; and

~~((e))~~ d. Net compensation; and

4. Total amount of itemized fees collected from the app-based worker to access the network company's online-enabled application or platform(~~(;~~

5. Pursuant to rules that the Director may issue, ~~other information that is material and necessary to effectuate the terms of this Chapter 8.37).~~

~~((D. Within 24 hours of an online order's performance or cancellation with cause, a network company shall transmit an electronic receipt to a paying customer that lists:~~

~~1. The date and time of completion of the online order;~~

~~2. The total amount paid to the network company, itemizing all charges, fees, and customer paid tips. The network company shall clearly designate the amount of tips paid directly to the app-based worker and the amount of charges and fees retained by the company; and~~

~~3. Pursuant to rules that the Director may issue, other information that is material and necessary to effectuate the terms of this Chapter 8.37.))~~

D. A network company may remove approximate geographic location information required under subsection 8.37.070.A and 8.37.070.B or other personally identifiable information from electronic receipts if that information is related to a user account that has been deleted at the request of the account owner. Nothing in this subsection 8.37.070.D shall be construed to prohibit production of the information pursuant to a court order or the Director's lawful request relating to an enforcement action.

E. A network company shall ensure that its customer-facing websites, applications, and platforms do not describe any fees or non-tip charges in a manner that might be reasonably misconstrued as a tip, gratuity, or other payment to the app-based worker. Any interface for accepting customer orders shall clearly reflect the amount of any tip paid to the app-based worker.

F. A network company shall ensure that all app-based workers have access to the company's tip policy, including but not limited to whether the network company's online-enabled application or platform allows customers to tip in advance of completion of an online order and whether the network company permits customers to modify or remove tips after performance.

~~((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 affirmatively transmit to the Agency such records as required by this subsection 8.37.070.G, no more than once per quarter. 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. 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.

Section 5. Section 8.37.080 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended as follows:

8.37.080 Flexibility

A. ~~((An app-based worker has the right to decide when to make themselves available to work and which offers to accept or reject.))~~ A network company shall not ~~((subject))~~ terminate the contract of an app-based worker ~~((to an adverse action, nor institute a policy subjecting an app-based worker to an adverse action,))~~ for ~~((engaging in the following activities))~~:

1. Limiting hours of availability, including but not limited to being logged into the worker platform for limited hours, only at certain hours of the day, or during certain days of the week~~((-))~~ ; or

2. Accepting or rejecting any individual offer, any types of offers, or any number or proportion

of offers. An app-based worker may indicate rejection of an offer by declining to respond to the offer. A network company shall ensure that its worker platform enables an app-based worker to communicate a rejection of each offer.

~~((B. A network company shall allow an app-based worker to be logged into the network company's worker platform at any date, time of day, or for any amount of time, except in the following circumstances:~~

- ~~1. Certain instances of deactivation as defined in rules, or other applicable law.~~
- ~~2. Limitations on a maximum amount of consecutive work time to protect worker and public~~

~~safety.))~~

B. If applicable, a network company shall disclose the reasons that an app-based worker may not be able to log into the network company's worker platform on a particular date or time of day. Examples of reasons include, but are not limited to:

1. The network company uses a system to limit access to the worker platform in periods of low demand in a specified geographic area;
2. The network company provides app-based workers with the opportunity to identify periods of time to receive offers to perform services and no such periods are available; and
3. The network company imposes limitations on the maximum amount of consecutive work time to protect worker and public safety.

C. A network company shall not ~~((subject))~~ terminate the contract of an app-based worker ~~((to an adverse action, nor institute a policy subjecting an app-based worker to an adverse action,))~~ for cancelling their acceptance of an offer with cause. An app-based worker may cancel their acceptance of an offer with cause (i.e., "cancellation with cause") when ~~((any of the following conditions occur))~~:

~~((1. Information provided pursuant to subsection 8.37.070.A.1 was substantially inaccurate; provided, that a customer's alteration of a tip amount shall not constitute grounds for cancellation with cause;~~

- ~~2. The app-based worker cannot complete performance of the offer because the customer is not~~

~~present or fails to respond to communications from the app-based worker, the customer's presence or response is required for the app-based work to complete performance of the offer, and the app-based worker has made attempts to contact and/or wait for the customer in accordance with an applicable network company policy, provided that the no-contact or limited-contact deliveries are not considered to require the end customer's presence;~~

~~3. Timely completion of the offer has become impracticable due to an unforeseen obstacle or occurrence;))~~ 1. The app-based worker has picked up items from a pickup location, and the customer changes the dropoff location such that the estimated engaged time to complete performance of the offer, as disclosed to the app-based worker pursuant to subsection 8.37.070.A.1, increases by five minutes or more.

2. The app-based worker experiences a vehicle incident or malfunction that prevents the app-based worker from completing performance of the offer;

3. The app-based worker experiences a medical emergency that prevents the app-based worker from completing performance of the offer;

4. The app-based worker is providing delivery services and all of the items have already been picked up from the pickup location;

5. Completing the offer requires transporting an item weighing more than 50 pounds, unless the network company discloses that the offer contained an item weighing more than 50 pounds prior to the handling of said item;

6. Completing the offer requires transporting an item more than 63 linear inches in length, unless the network company discloses that the offer contained an item more than 63 linear inches in length prior to the handling of said item;

7. Completing the offer requires handling an unsealed container whose contents pose a health risk to the app-based worker, unless the network company discloses that the offer contained the item prior to the app-based worker's acceptance or handling the item should have been reasonably expected based on other

information provided about the offer; or

~~((4.))~~ 8. The app-based worker makes a good faith complaint regarding sexual harassment or discrimination that is alleged to have occurred during performance of the offer.

D. For all cancelled offers, network companies shall allow the app-based worker to communicate the reason for cancellation, including but not limited to reasons included in subsection 8.37.080.C, and any additional information or documentation to support or corroborate a reason for cancellation via the worker platform, email, phone, or other channel provided by the network company. ~~((The network company shall review the stated reason for cancellation for a reasonable time of no less than 72 hours before determining, based on clear and convincing evidence, whether an app-based worker cancelled an offer without cause.))~~

E. Nothing in this Section 8.37.080 shall prohibit a network company from taking action based on a pattern of behavior that a reasonable person would conclude constitutes abuse, including where an app-based worker repeatedly cancels offers without providing or submitting to the network company any additional information or documentation to verify or corroborate a reason listed under subsection 8.37.080.C.

Section 6. Section 8.37.100 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended as follows:

8.37.100 Notice of rights

* * *

B. The notice of rights shall provide information on:

1. The right to the applicable minimum ~~((per minute))~~ per-hour amount~~((;))~~ and per-mile amount for each network company earnings period~~((, and per offer amount))~~ guaranteed by this Chapter 8.37, including a clear statement of the current applicable amounts;

2. A clear statement as to whether the network company identifies as an on-demand network company, a marketplace network company, or neither, and the corresponding timeframe when engaged time and engaged miles apply for a typical offer from that network company (e.g. upon acceptance and/or upon

beginning en route by the app-based worker, a reasonable estimate of engaged time mutually agreed upon, or when the app-based worker begins performance), pursuant to Section 8.37.020;

3. The right to receive the information required to be disclosed by this Chapter 8.37 before accepting an offer and performing services in furtherance of an offer;

4. The right to flexibility in making themselves available for work and accepting, rejecting, or cancelling offers under this Chapter 8.37;

5. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 8.37; and

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.

7. The right to a clear statement of the network company's tip policy, including but not limited to whether the network company's online-enabled application or platform allows customers to tip in advance of completion of an online order and whether the network company permits customers to modify or remove tips after performance.

8. The right to a clear statement of the network company's fraudulent use policy pursuant to Section 8.37.090, including where the app-based worker can locate that policy.

C. Network companies shall provide the notice of rights required by subsection 8.37.100.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)~~) in which the Director issues the model notice of rights required by subsection 8.37.100.A. 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.

* * *

Section 7. Section 8.37.120 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended 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.

* * *

~~((D. It shall be a rebuttable presumption of retaliation if a network company or any other person takes an adverse action against a person within 90 days of the person’s exercise of rights protected in this Section 8.37.120. The network company may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.~~

~~E. Proof of retaliation under this Section 8.37.120 shall be sufficient upon a showing that a network company or any other person has taken an adverse action against a person and the person’s exercise of rights~~

~~protected in this Section 8.37.120 was a motivating factor in the adverse action, unless the network company can prove that the action would have been taken in the absence of such protected activity.~~

F.)) D. The protections afforded under this Section 8.37.120 shall apply to any person who mistakenly but in good faith alleges violations of this Chapter 8.37.

((G.)) E. A complaint or other communication by any person triggers the protections of this Section 8.37.120 regardless of whether the complaint or communication is in writing or makes explicit reference to this Chapter 8.37.

Section 8. Section 8.37.125 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended 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.

Section 9. Section 8.37.165 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended as follows:

8.37.165 Complaint procedure

* * *

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

1. Notice of the alleged violation(s). The Agency may send notice to the network company of the alleged violation(s) of this Chapter 8.37. The Agency shall bear any cost of sending such notice by certified mail or by other means incurring a cost to the Agency. This notice may include but not be limited to:

- a. Statement of the alleged violation(s) of this Chapter 8.37; and
- b. Description of the remedies available to an app-based worker for violation(s) of this

Chapter 8.37;

2. Response from the network company. The Agency may request the network company to send the Agency relevant information to respond to the alleged violation(s) within an identified timeframe.

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;
- c. Any other information about the status of the complaint; and
- d. Information about the navigation program pursuant to Section 8.37.167.

4. Notice of no response. If the Agency receives no response from the network company within the identified timeframe pursuant to subsection 8.37.165.D.2, the Agency may send a notice of no response to the complainant and the network company and may include proof that the Agency previously sent notice of the alleged violation(s) to the network company.

5. Notice of closure. The Agency may send the complainant and network company notice of the Agency's completion of the complaint procedure and/or closure of the case.

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Section 10. Section 8.37.170 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended as follows:

8.37.170 Remedies

* * *

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)) <u>48</u> hours of each offer’s performance ((or cancellation with cause)) <u>that incurs engaged time</u> 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.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
((Failure to comply with requirements for app-based worker’s right to be logged into the network company’s worker platform under subsection 8.37.080.B	Up to \$575.31 per aggrieved party))
Failure to comply with requirements for app-based worker’s cancellation of acceptance of an offer with cause under subsection 8.37.080.C	Up to \$575.31 per aggrieved party
Failure to provide written notice of rights under Section 8.37.100	Up to \$575.31 per aggrieved party
Failure to retain network company records for three years under subsections 8.37.110.A and 8.37.110.B	Up to \$575.31 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 8.37.120	Up to \$1,150.63 per aggrieved party
Failure to provide notice of investigation to app-based workers under subsection 8.37.150.B.2	Up to \$575.31 per aggrieved party

Failure to post or distribute public notice of failure to comply with final order under subsection 8.37.210.A.1	Up to \$575.31 per aggrieved party
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For each app-based worker who performs services in Seattle for the network company and for each missing record, the maximum amount that may be imposed in fines in a one-year period for each type of violation for each app-based worker listed above is \$5,755.31. For each app-based worker who performs services in Seattle for the network company, if a fine for retaliation is issued, the maximum amount that may be imposed for each app-based worker in a one-year period is \$23,020.

* * *

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).

Section 11. 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.

Section 12. This ordinance shall take effect as provided by Seattle Municipal Code Sections 1.04.020 and 1.04.070.

Passed by the City Council the _____ day of _____, 2024, and signed by me in open session in authentication of its passage this _____ day of _____, 2024.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2024.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2024.

Scheereen Dedman, City Clerk

(Seal)