

New York City's New Pay Protections for App-Based Restaurant Delivery Workers Are Stayed

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New York City was on track to becoming the first major U.S. city to implement a minimum pay-rate for app-based restaurant delivery workers. However, the new law, which was scheduled to go into effect July 12, 2023, has been stayed by New York State Supreme Court Judge Nicholas Moyne.

On July 7, 2023, Judge Moyne issued a preliminary injunction to prevent the rule from going into effect after lawsuits against the law were filed by various industry participants.

Popularity of Food Delivery Apps

The rise in popularity of food delivery apps over recent years, driven in part by heightened demand for food delivery during the COVID-19 pandemic, has brought increased attention to food delivery workers and their working conditions.

While delivery workers have expressed concerns about many challenges affecting their livelihoods, including violence on the streets, bike theft, and extreme weather conditions, there is one issue that has remained at the forefront of worker advocacy: pay.

App-based delivery workers are classified as independent contractors, and not employees. They are not entitled to the minimum wage and must pay for their own health insurance and business expenses. Many delivery workers believe that pay below the minimum wage is inadequate, particularly in light of high out-of-pocket expenses for transportation and delivery gear, and they are thus pushing for higher pay.

Ongoing debates among elected officials, delivery app companies, and delivery workers over pay standards for app-based delivery workers led to Local Law 115, passed in 2021. Local Law 115 required the Department of Consumer and Worker Protection (DCWP) to evaluate the pay and working conditions of app-based delivery workers and to set a minimum pay-rate for their work by January 1, 2023. Delivery app companies lobbied against the measure, citing concerns over increased prices, the elimination of jobs, reduced tipping, less flexibility for workers to choose shifts, and a practice known as “multi-apping” (when workers deliver for more than one app at once).

Against the backdrop of corporate lobbying, two camps have emerged: those in support of a minimum pay-rate and those against it.

New Law

On June 11, 2023, New York City Mayor Eric Adams and the DCWP announced a new minimum pay-rate for app-based food delivery workers.

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If the new regulations become effective, apps that pay for all the time a worker is connected to the app (*i.e.*, time waiting for trip offers and trip time) must pay at least \$17.96 per hour (approximately \$0.30 per minute), not including tips. This rate will increase to \$19.96 per hour when it is fully phased in on April 1, 2025, with an annual adjustment for inflation. Apps that pay only for trip time (*i.e.*, time from accepting a delivery offer to dropping off the delivery) must pay at least approximately \$0.50 per minute of trip time, not including tips.

Apps will have some flexibility under the new rules. They can choose how to pay workers the minimum rate. They can pay delivery workers per trip, per hour worked, or, alternatively, develop their own formulas.

New Law is Enjoined

The announcement of the new law prompted delivery companies to take legal action to stop the new law from going into effect. Four companies, which account for 99 percent of app deliveries in the city based on estimates from the city, cited varying reasons for challenging the new law. Some believe the new law would create adverse consequences, such as increased prices and fewer jobs for gig economy workers. For example, lawyers for two of the companies argued in court papers that the new law “[would] mean — according to DCWP’s own analyses — a \$5.18-per-order average increase in charges across the industry, representing a 15% increase on current costs” and would result in “lo[st] access to valuable delivery services.” On the other hand, one company argued in court filings that the new law should not apply to its services given that it has a different business model from competitors.

Just one day after these four delivery companies filed suit, Judge Moyne issued an order that temporarily vacates the rule.

Reactions

Certainly, the reaction to news of the new law, and the temporary restraining order, has been mixed. If the new law becomes effective, it would mark a significant change for the city’s more than 60,000 app-based delivery workers, who currently earn \$7.90 per hour on average, according to the city’s news release. Some are holding out hope that the law will become effective and have been championing the law as a major win for delivery workers given that their status as independent contractors has previously excluded them from statutory minimum wage protections. They also say this move reflects an appreciation for the contributions of app-based delivery workers, who have braved the pandemic, extreme weather conditions, and other difficult circumstances to serve New Yorkers.

Meanwhile, other stakeholders, who believe the new scheme does not go far enough in protecting workers, will likely view the court’s order as a significant blow. They expressed skepticism about the city’s efforts to cater to delivery companies even before the law was blocked. In response to news of the new law, City Comptroller Brad Lander said, “City Hall acquiesced to the lobbying of multibillion-dollar app companies, delaying the raises owed to deliveristas six months ago and setting a sub-minimum-wage standards that pads corporate profits off the backs of some of the hardest workers in our city.” In his statement, Lander explained that delivery workers will continue to earn amounts below the minimum wage when their operating costs are factored in. Those in Lander’s camp refer to the rule as “watered-down.” Minimum

pay-rates as high as \$24 per hour were proposed in November 2022.

The minimum pay rate, if implemented, would provide one additional protection to delivery workers, who are already guaranteed the following protections in New York City:

- Apps must pay workers at least once a week;
- Apps must tell workers how much the customer tipped for each delivery and the worker's total pay and tips for the previous day;
- Apps must tell workers route details before they accept a delivery;
- Workers can set an app to limit which bridges or tunnels are used and to limit the distance between a restaurant and a customer;
- Apps must give workers a free insulated food delivery bag after six deliveries; and
- Workers must have access to restaurant bathrooms when picking up orders.

Despite differences in how the new wage rules are being perceived, there is no question the adoption of these regulations would protect workers who work near, at, or below minimum wage. The new law is in line with previous changes in the city, such as the Fair Workweek Law dictating schedule certainty for fast food and retail workers, just cause protections for fast food employees, and requirements for weekly pay and bathroom access for delivery workers. The city appears committed to additional rights for workers.

If you have any questions regarding compliance with the new law or any other issues involving worker classification or payment of wages to delivery workers, please contact a Jackson Lewis attorney.

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