

# New York City's Pay Protections for App-Based Workers Upheld, Allowed to Go into Effect

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New York City is the first major U.S. city to implement a minimum pay-rate for app-based restaurant delivery workers. Delivery platform companies should immediately pay delivery workers the minimum pay rate of at least \$17.96 per hour.

The new law was initially scheduled to go into effect July 12, 2023. New York State Supreme Court Judge Nicholas Moyne issued a temporary restraining order on July 7, 2023, to prevent it from going into effect due to litigation opposing the law filed by various industry participants. (For more, see our article, [New York City's New Pay Protections for App-Based Restaurant Delivery Workers Are Stayed](#).) On Sept. 28, 2023, Judge Moyne denied petitions from three delivery platform companies to block the law and ruled that the new law can become effective.

The three delivery platform companies then initiated an Article 78 proceeding challenging enforcement of the new law and requesting an interim stay of the rule while the appellate court considers their motion for an injunction. On Sept. 29, 2023, the Appellate Division, First Department granted the request for an interim stay. On Nov. 22, 2023, the Appellate Division, First Department issued an Order vacating the interim relief and denying the delivery platform companies' application for leave to appeal Judge Moyne's Sept. 28 Order.

## New Law

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. 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. Delivery workers' status as independent contractors has previously excluded them from statutory minimum wage protections.

Under the new regulations, 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. (For more, see our article, [New York City Announces New Pay Protections for App-Based Restaurant Delivery Workers](#).)

## Court Rulings

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On Sept. 28, 2023, Judge Moyne rejected the efforts of three delivery platform companies to prevent the minimum pay-rate from going into effect and decided that New York City can proceed with implementing the new law. The judge exempted one smaller delivery company from its decision on the grounds that this company “has no consumer-facing business and deals only with its restaurant customers to deliver the orders they receive.” In response to news of the ruling, Mayor Adams praised the decision, stating that the administration is “grateful to the court for ruling in our favor, and to the deliveristas who have raised their voices in support of better pay and working conditions.”

After Judge Moyne’s Sept. 28, 2023, decision, the three delivery platform companies brought an Article 78 proceeding challenging implementation of the new law and requesting an interim stay of the law pending the appellate court’s final determination of their preliminary injunction motion. On Sept. 29, 2023, the interim stay was granted.

On Nov. 22, 2023, the Appellate Division, First Department issued an Order vacating the interim relief and denying the delivery platform companies’ application for leave to appeal Judge Moyne’s Sept. 28 Order. In light of these rulings, delivery platform companies finally must pay delivery workers the minimum pay rate of at least \$17.96 per hour. Mayor Adams lauded the court decision, describing it as a “win for all working New Yorkers” and emphasizing that the decision “will guarantee our delivery workers and their families can earn a living and keep our city’s legendary restaurant industry going strong.”

### Other Additional Protections

The minimum pay rate will 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.

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 the city’s other additional rights for workers, 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.

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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