

**CITY OF BALTIMORE
COUNCIL BILL 21-0037
(First Reader)**

Introduced by: Councilmembers Dorsey, Burnett, Cohen, Conway, Bullock

Introduced and read first time: February 8, 2021

Assigned to: Education, Workforce, and Youth Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Labor Commissioner, Department of Human Resources, Wage Commission, Department of Finance, Baltimore Development Corporation, Downtown Partnership

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Labor and Employment – Premium Pay for Gig Workers**

3 FOR the purpose of requiring certain businesses to provide premium pay to gig workers;
4 prohibiting certain businesses from taking certain adverse actions against gig workers;
5 requiring certain businesses to keep certain records of their compliance with the premium pay
6 requirements; requiring certain notices to be provided to gig workers; including the premium
7 pay provisions within the Baltimore City Wage Commission’s scope of enforcement;
8 applying certain fines and penalties for violations of premium pay provisions; defining
9 certain terms; and generally relating to guaranteeing a fair wage to gig workers in Baltimore
10 City.

11 BY adding
12 Article 11 - Labor and Employment
13 Section(s) 3A-1 through 3A-11, to be under the new subtitle,
14 “Premium Pay for Gig Workers”
15 Baltimore City Code
16 (Edition 2000)

17 **Recitals**

18 **Whereas**, the definitions of “employee” and “employer” in local, state, and federal laws are
19 broad, but food delivery network companies rely on business models that hire gig workers as
20 “independent contractors,” thereby creating barriers for gig workers to access employee
21 protections;

22 **Whereas**, the City of Baltimore (the “City”) intends to make it clear that provision of
23 premium pay should not result in food delivery network companies reducing or otherwise
24 modifying the areas in the City served by the companies, reducing a gig worker's compensation,
25 limiting a gig worker's earning capacity, or adding charges to customers;

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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1 (C) *COMMISSION.*

2 “COMMISSION” MEANS THE WAGE COMMISSION ESTABLISHED BY § 2-1 {“COMMISSION
3 ESTABLISHED”} OF THIS ARTICLE, OR THE COMMISSION’S DESIGNEE.

4 (D) *COMPENSATION.*

5 “COMPENSATION” MEANS THE TOTAL PAYMENT OWED TO A GIG WORKER BY REASON OF
6 WORKING FOR THE HIRING ENTITY, INCLUDING BUT NOT LIMITED TO HIRING ENTITY
7 PAYMENTS FOR PROVIDING SERVICES, BONUSES, AND COMMISSIONS, AS WELL AS TIPS
8 EARNED FROM CUSTOMERS.

9 (E) *DEACTIVATION.*

10 “DEACTIVATION” MEANS:

- 11 (1) THE BLOCKING OF A GIG WORKER’S ACCESS TO THE HIRING ENTITY’S PLATFORM;
12 (2) CHANGING A GIG WORKER’S STATUS FROM ELIGIBLE TO PROVIDE DELIVERY
13 SERVICES TO INELIGIBLE; OR
14 (3) ANY OTHER MATERIAL RESTRICTION IN ACCESS TO THE HIRING ENTITY’S
15 PLATFORM THAT IS EFFECTED BY A HIRING ENTITY.

16 (F) *DROP-OFF POINT.*

17 “DROP-OFF POINT” MEANS THE LOCATION OF ANY DELIVERY RESULTING FROM THE ONLINE
18 ORDER.

19 (G) *FOOD DELIVERY NETWORK COMPANY.*

20 (1) *IN GENERAL.*

21 “FOOD DELIVERY NETWORK COMPANY” MEANS A PERSON, OPERATING WITHIN
22 BALTIMORE CITY, THAT OFFERS PREARRANGED DELIVERY SERVICES FOR
23 COMPENSATION USING AN ONLINE-ENABLED APPLICATION OR PLATFORM, SUCH AS AN
24 APPLICATION DISPATCH SYSTEM, TO CONNECT CUSTOMERS WITH WORKERS FOR
25 DELIVERY FROM 1 OR MORE OF THE FOLLOWING:

- 26 (I) FOOD SERVICE FACILITIES;
27
28 (II) GROCERY STORES; OR
29 (III) ANY OTHER FACILITY SUPPLYING GROCERIES OR PREPARED FOOD AND
30 BEVERAGES FOR AN ONLINE ORDER.

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1 (2) *INCLUSIONS.*

2 “FOOD DELIVERY NETWORK COMPANY” INCLUDES ANY PERSON ACTING DIRECTLY OR
3 INDIRECTLY IN THE INTEREST OF A FOOD DELIVERY NETWORK COMPANY IN RELATION
4 TO THE FOOD DELIVERY NETWORK COMPANY WORKER.

5 (H) *FOOD DELIVERY NETWORK COMPANY WORKER.*

6 (1) *IN GENERAL.*

7 “FOOD DELIVERY NETWORK COMPANY WORKER” MEANS A PERSON AFFILIATED WITH
8 AND ACCEPTING AN OFFER OF PREARRANGED DELIVERY SERVICES FOR COMPENSATION
9 FROM A FOOD DELIVERY NETWORK COMPANY.

10 (2) *INCLUSION.*

11 AT ANY TIME A FOOD DELIVERY NETWORK COMPANY WORKER IS LOGGED INTO THE
12 WORKER PLATFORM, THE WORKER IS CONSIDERED A FOOD DELIVERY NETWORK
13 COMPANY WORKER.

14 (I) *FOOD SERVICE FACILITY.*

15 “FOOD SERVICE FACILITY” HAS THE MEANING STATED IN CITY CODE HEALTH ARTICLE,
16 § 6-101(D) {“DEFINITIONS: FOOD SERVICE FACILITY”}.

17 (J) *GIG WORKER.*

18 “GIG WORKER” MEANS A FOOD DELIVERY COMPANY WORKER.
19
20

21 (K) *HIRING ENTITY.*

22 “HIRING ENTITY” MEANS A FOOD DELIVERY NETWORK COMPANY.

23 (L) *HIRING ENTITY PAYMENT.*

24 (1) *IN GENERAL.*

25 “HIRING ENTITY PAYMENT” MEANS THE AMOUNT OWED TO A GIG WORKER BY A HIRING
26 ENTITY BY REASON OF WORKING FOR THAT HIRING ENTITY.
27

28 (2) *INCLUSIONS.*

29 “HIRING ENTITY PAYMENT” INCLUDES COMPENSATION PAYMENT FOR PROVIDING
30 SERVICES, BONUSSES, AND COMMISSIONS.

31 (M) *INCLUDES; INCLUDING.*

32 “INCLUDES” OR “INCLUDING” MEANS BY WAY OF ILLUSTRATION AND NOT BY WAY OF
33 LIMITATION.

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1 (N) *ONLINE ORDER.*

2 “ONLINE ORDER” MEANS AN ORDER PLACED THROUGH AN ONLINE-ENABLED APPLICATION
3 OR PLATFORM, SUCH AS AN APPLICATION DISPATCH SYSTEM, PROVIDED BY A HIRING
4 ENTITY FOR DELIVERY SERVICES WITHIN BALTIMORE CITY.

5 (O) *OPERATING WITHIN BALTIMORE CITY.*

6 “OPERATING WITHIN BALTIMORE CITY” MEANS, WITH RESPECT TO A HIRING ENTITY,
7 OFFERING PREARRANGED DELIVERY SERVICES FOR COMPENSATION USING AN
8 ONLINE-ENABLED APPLICATION OR PLATFORM, SUCH AS AN APPLICATION DISPATCH
9 SYSTEM, TO ANY AFFILIATED GIG WORKER, WHERE THE SERVICES TAKE PLACE IN WHOLE
10 OR PART WITHIN BALTIMORE CITY.

11 (P) *PERSON.*

12 “PERSON” MEANS:

13 (1) AN INDIVIDUAL;

14 (2) A RECEIVER, TRUSTEE, GUARDIAN, PERSONAL REPRESENTATIVE, FIDUCIARY, OR
15 REPRESENTATIVE OF ANY KIND; OR

16 (3) A PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, OR OTHER ENTITY OF ANY
17 KIND.

18 (Q) *PICK-UP POINT.*

19 (1) *IN GENERAL.*

20 “PICK-UP POINT” MEANS THE LOCATION OF ANY ESTABLISHMENT ACCESSED BY THE
21 GIG WORKER TO FULFILL AN ONLINE ORDER.

22 (2) *INCLUSIONS.*

23 “PICK-UP POINT” INCLUDES ANY FOOD SERVICE FACILITIES, GROCERY STORES, OR
24 OTHER FACILITIES SUPPLYING GROCERIES OR PREPARED FOOD AND BEVERAGES FOR AN
25 ONLINE ORDER.

26 (R) *PREMIUM PAY.*

27 “PREMIUM PAY” MEANS ADDITIONAL COMPENSATION OWED TO A GIG WORKER BY HIRING
28 ENTITY THAT IS SEPARATE FROM HIRING ENTITY PAYMENTS FOR PROVIDING SERVICES,
29 BONUSES, AND COMMISSIONS, AS WELL AS TIPS EARNED FROM CUSTOMERS.

30 (S) *TIPS.*

31 “TIPS” MEANS A VERIFIABLE SUM TO BE PRESENTED BY A CUSTOMER AS A GIFT OR
32 GRATUITY IN RECOGNITION OF SOME SERVICE PERFORMED FOR THE CUSTOMER BY THE GIG
33 WORKER RECEIVING THE TIP.

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1 (T) *WORKER PLATFORM.*

2 “WORKER PLATFORM” MEANS THE WORKER-FACING APPLICATION DISPATCH SYSTEM
3 SOFTWARE OR ANY ONLINE-ENABLED APPLICATION SERVICE, WEBSITE, OR SYSTEM, USED
4 BY A FOOD DELIVERY NETWORK WORKER, THAT ENABLES THE PREARRANGEMENT OF
5 DELIVERY SERVICES FOR COMPENSATION.

6 (U) *WORK-RELATED STOP WITHIN BALTIMORE CITY.*

7 (1) *IN GENERAL.*

8 “WORK-RELATED STOP WITHIN BALTIMORE CITY” MEANS THE TIME SPENT BY A GIG
9 WORKER ON A COMMERCIAL STOP WITHIN BALTIMORE CITY THAT IS RELATED TO THE
10 PROVISION OF DELIVERY SERVICES ASSOCIATED WITH AN ONLINE ORDER.

11 (2) *EXCLUSIONS.*

12 “WORK-RELATED STOP WITHIN BALTIMORE CITY” DOES NOT INCLUDE:

13 (I) STOPPING FOR REFUELING;

14 (II) STOPPING FOR A PERSONAL MEAL OR ERRANDS: OR

15 (III) TIME SPENT IN BALTIMORE CITY SOLELY FOR THE PURPOSE OF TRAVELING
16 THROUGH BALTIMORE CITY FROM A POINT OF ORIGIN OUTSIDE BALTIMORE
17 CITY TO A DESTINATION OUTSIDE BALTIMORE CITY WITH NO COMMERCIAL
18 STOPS IN BALTIMORE CITY.

19 **§ 3A-2. SCOPE OF SUBTITLE.**

20 (A) *GIG WORKERS.*

21 THIS SUBTITLE ONLY APPLIES TO GIG WORKERS WHO ARE PERFORMING WORK FOR A
22 HIRING ENTITY WHERE THE WORK IS PERFORMED IN WHOLE OR IN PART WITHIN
23 BALTIMORE CITY.

24 (B) *HIRING ENTITIES.*

25 (1) *IN GENERAL.*

26 THIS SUBTITLE ONLY APPLIES TO HIRING ENTITIES WHO HIRE 250 OR MORE GIG
27 WORKERS WORLDWIDE IN A CALENDAR YEAR, AS DETERMINED IN PARAGRAPH (2) OF
28 THIS SUBSECTION.

29 (2) *CALCULATION OF WORKERS.*

30 (I) FOR THE PURPOSES OF THIS PARAGRAPH, ALL GIG WORKERS WHO WORKED FOR
31 COMPENSATION FOR A HIRING ENTITY SHALL BE COUNTED, INCLUDING:

32 (A) GIG WORKERS WHO ARE NOT COVERED BY THIS SUBTITLE;

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1 (B) GIG WORKERS WHO WORKED WITHIN BALTIMORE CITY; AND

2 (C) GIG WORKERS WHO WORKED OUTSIDE BALTIMORE CITY.

3 (II) THE CALCULATION IS BASED UPON THE AVERAGE NUMBER PER CALENDAR WEEK
4 OF GIG WORKERS WHO WORKED FOR COMPENSATION DURING THE PRECEDING
5 CALENDAR YEAR FOR ANY AND ALL WEEKS DURING WHICH AT LEAST ONE GIG
6 WORKER WORKED FOR COMPENSATION.

7 (III) IF A HIRING ENTITY DID NOT HAVE ANY GIG WORKERS DURING THE PRECEDING
8 CALENDAR YEAR, THE NUMBER OF GIG WORKERS HIRED FOR THE CURRENT
9 CALENDAR YEAR IS CALCULATED BASED ON THE AVERAGE NUMBER PER CALENDAR
10 WEEK OF GIG WORKERS WHO WORKED FOR COMPENSATION DURING THE FIRST 90
11 CALENDAR DAYS OF THE CURRENT YEAR IN WHICH THE HIRING ENTITY ENGAGED IN
12 BUSINESS.

13 (3) *SEPARATE HIRING ENTITIES AS AN INTEGRATED ENTERPRISE.*

14 (I) *IN GENERAL.*

15 (A) SEPARATE ENTITIES THAT FORM AN INTEGRATED ENTERPRISE SHALL BE
16 CONSIDERED A SINGLE HIRING ENTITY UNDER THIS SUBTITLE.

17 (B) SEPARATE ENTITIES WILL BE CONSIDERED AN INTEGRATED ENTERPRISE AND A
18 SINGLE HIRING ENTITY UNDER THIS SUBTITLE WHERE A SEPARATE ENTITY
19 CONTROLS THE OPERATION OF ANOTHER ENTITY.

20 (II) *FACTORS.*

21 IN MAKING A DETERMINATION AS TO WHETHER THIS PARAGRAPH APPLIES, THE
22 FACTORS TO CONSIDER IN MAKING THIS DETERMINATION INCLUDE:

23 (A) THE DEGREE OF INTERRELATION BETWEEN THE OPERATIONS OF MULTIPLE
24 ENTITIES;

25 (B) THE DEGREE TO WHICH THE ENTITIES SHARE COMMON MANAGEMENT;

26 (C) CENTRALIZED CONTROL OF LABOR RELATIONS; AND

27 (D) THE DEGREE OF COMMON OWNERSHIP OR FINANCIAL CONTROL OVER THE
28 ENTITIES.

29 **§ 3A-3. RULES AND REGULATIONS.**

30 SUBJECT TO TITLE 4 {"ADMINISTRATIVE PROCEDURE ACT - REGULATIONS"} OF THE
31 GENERAL PROVISIONS ARTICLE, THE COMMISSION MAY ADOPT RULES AND REGULATIONS TO
32 CARRY OUT THE PROVISIONS OF THIS SUBTITLE.

33 **§ 3A-4. {RESERVED}**

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§ 3A-5. PREMIUM PAY.

(A) *IN GENERAL.*

A HIRING ENTITY SHALL PROVIDE EACH GIG WORKER WITH PREMIUM PAY AS SPECIFIED IN THIS SECTION FOR EACH ONLINE ORDER THAT RESULTS IN THE GIG WORKER MAKING A WORK-RELATED STOP WITHIN BALTIMORE CITY.

(B) *AMOUNT OF PAY.*

(1) *BASE AMOUNT.*

FOR EACH ONLINE ORDER, THE HIRING ENTITY SHALL PROVIDE THE GIG WORKER WITH BASE PREMIUM PAY IN THE FOLLOWING AMOUNTS:

(I) \$2.50 FOR 1 PICK-UP POINT OR 1 DROP-OFF POINT WITHIN BALTIMORE CITY;

(II) \$1.25 FOR EACH ADDITIONAL PICK-UP POINT WITHIN BALTIMORE CITY; AND

(III) \$1.25 FOR EACH ADDITIONAL DROP-OFF POINT WITHIN BALTIMORE CITY.

(2) *MILEAGE PAY.*

FOR EACH ONLINE ORDER REQUIRING BASE PREMIUM PAY UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE HIRING ENTITY SHALL COMPENSATE THE GIG WORKER PER MILE TRAVELED WITHIN BALTIMORE CITY WITH THE STANDARD MILEAGE RATE ISSUED BY THE UNITED STATES INTERNAL REVENUE SERVICE FOR THAT CALENDAR YEAR.

(C) *TIME OF COMPENSATION.*

HIRING ENTITIES SHALL PROVIDE THE PREMIUM PAY DESCRIBED IN THIS SECTION AT THE SAME TIME COMPENSATION IS PROVIDED FOR EACH ASSOCIATED ONLINE ORDER OR ORDERS.

(D) *NOTICE.*

WHEN PROVIDING PREMIUM PAY, A HIRING ENTITY SHALL INCLUDE NOTIFICATION OF ONLINE ORDERS THAT QUALIFIED FOR PREMIUM PAY AND ITEMIZE THE PREMIUM PAY SEPARATELY FROM OTHER COMPENSATION.

§ 3A-6. RETALIATION PROHIBITED.

(A) *“ADVERSE ACTION” DEFINED.*

FOR THE PURPOSES OF THIS SECTION, “ADVERSE ACTION” INCLUDES THREATENING, INTIMIDATING, DISCIPLINING, DISCHARGING, DEMOTING, SUSPENDING, OR HARASSING A GIG WORKER, REDUCING THE HOURS OR PAY OF A GIG WORKER, INFORMING ANOTHER HIRING ENTITY, OR ANY OTHER PERSON OR ENTITY THAT EMPLOYS OR PERMITS INDIVIDUALS TO WORK AT OR FOR THAT PERSON OR ENTITY, THAT A GIG WORKER HAS ENGAGED IN ACTIVITIES PROTECTED BY THIS SUBTITLE, AND DISCRIMINATING AGAINST

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1 THE GIG WORKER, INCLUDING ACTIONS RELATED TO PERCEIVED IMMIGRATION STATUS OR
2 WORK AUTHORIZATION.

3 (B) *IN GENERAL.*

4 (1) A PERSON MAY NOT TAKE ANY ADVERSE ACTION AGAINST AN GIG WORKER THAT
5 PENALIZES THAT EMPLOYEE FOR, OR IS REASONABLY LIKELY TO DETER THAT
6 EMPLOYEE FROM, EXERCISING OR ATTEMPTING TO EXERCISE ANY RIGHT PROTECTED
7 UNDER THIS SUBTITLE.

8 (2) AN GIG WORKER NEED NOT EXPLICITLY REFER TO THIS SUBTITLE OR THE RIGHTS
9 ENUMERATED UNDER THIS SUBTITLE TO BE PROTECTED FROM RETALIATION.

10 **§ 3A-7. NOTICE AND POSTING.**

11 (A) *IN GENERAL.*

12 (1) HIRING ENTITIES SHALL PROVIDE EACH GIG WORKER WITH A WRITTEN NOTICE OF
13 RIGHTS ESTABLISHED BY THIS SUBTITLE.

14 (2) THE COMMISSION MAY CREATE AND DISTRIBUTE A MODEL NOTICE OF RIGHTS,
15 HOWEVER, HIRING ENTITIES ARE RESPONSIBLE FOR PROVIDING GIG WORKERS WITH THE
16 NOTICE OF RIGHTS REQUIRED BY THIS SECTION, IN A FORM AND MANNER SUFFICIENT TO
17 INFORM GIG WORKERS OF THEIR RIGHTS UNDER THIS SUBTITLE, REGARDLESS OF
18 WHETHER THE COMMISSION HAS CREATED AND DISTRIBUTED A MODEL NOTICE OF
19 RIGHTS.

20 (B) *CONTENTS OF NOTICE.*

21 THE NOTICE OF RIGHTS REQUIRED BY THIS SECTION SHALL PROVIDE INFORMATION ON:

22 (1) THE RIGHT TO PREMIUM PAY GUARANTEED BY THIS SUBTITLE;

23 (2) THE RIGHT TO BE PROTECTED FROM RETALIATION FOR EXERCISING IN GOOD FAITH
24 THE RIGHTS PROTECTED BY THIS SUBTITLE; AND

25 (3) THE RIGHT TO FILE A COMPLAINT WITH THE COMMISSION FOR A VIOLATION OF THE
26 REQUIREMENTS OF THIS SUBTITLE.

27 (B) *LANGUAGES.*

28 THE NOTICE REQUIRED BY THIS SECTION SHALL BE IN ENGLISH AND IN ANY OTHER
29 LANGUAGE SPOKEN AS A PRIMARY LANGUAGE BY AT LEAST 5% OF THE GIG WORKERS OF
30 THE HIRING ENTITY.

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1 **§ 3A-8. RECORDKEEPING.**

2 (A) *IN GENERAL.*

3 A HIRING ENTITY SHALL:

4 (1) MAKE AND RETAIN, FOR AT LEAST 3 YEARS, RECORDS THAT DOCUMENT ITS
5 COMPLIANCE WITH THIS SUBTITLE; AND

6 (2) ALLOW THE COMMISSION TO ACCESS THE RECORDS AND OTHER INFORMATION, IN
7 ACCORDANCE WITH APPLICABLE LAW AND WITH APPROPRIATE NOTICE, IN
8 FURTHERANCE OF AN INVESTIGATION CONDUCTED UNDER THIS SUBTITLE.

9 (B) *FAILURE TO MAINTAIN, RETAIN, OR PRODUCE.*

10 A HIRING ENTITY’S FAILURE TO MAKE, RETAIN, OR PRODUCE A RECORD OR OTHER
11 INFORMATION REQUIRED TO BE MAINTAINED BY THIS SUBTITLE AND REQUESTED BY THE
12 COMMISSION IN FURTHERANCE OF AN INVESTIGATION CONDUCTED PURSUANT TO THIS
13 SUBTITLE THAT IS RELEVANT TO A MATERIAL FACT ALLEGED BY THE COMMISSION IN A
14 NOTICE OF VIOLATION ISSUED PURSUANT TO THIS SUBTITLE CREATES A REBUTTABLE
15 PRESUMPTION THAT THE ALLEGED FACT IS TRUE.

16 **§ 3A-9. {RESERVED}**

17 **§ 3A-10. ENFORCEMENT PROCEDURES.**

18 SUBTITLE 4 {“ENFORCEMENT PROCEDURES”} OF THIS DIVISION I SHALL GOVERN THE
19 ADMINISTRATION OF COMPLAINTS, INVESTIGATIONS, AND ENFORCEMENT OF THIS SUBTITLE.

20 **§ 3A-11. PENALTIES AND FINES.**

21 ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS SUBJECT TO THE PENALTIES
22 AND FINES SET FORTH IN SUBTITLE 6 {“PENALTIES AND FINES”} OF THIS DIVISION I.

23 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
24 are not law and may not be considered to have been enacted as a part of this or any prior
25 Ordinance.

26 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance shall only apply
27 prospectively and shall have no retroactive effect on any contract or agreement between a hiring
28 entity and a gig worker entered into prior to the effective date of this Ordinance.

29 **SECTION 4. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th day
30 after the date it is enacted.