



Legislation Text

File #: 21-0037, Version: 0

Explanation: Capitals indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

* **Warning:** This is an unofficial, introductory copy of the bill.
The official copy considered by the City Council is the first reader copy.

Introductory*

City of Baltimore Council Bill

Introduced by: Councilmembers Dorsey, Burnett, Cohen

A Bill Entitled

An Ordinance concerning

Labor and Employment - Premium Pay for Gig Workers

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

By adding

Article 11 - Labor and Employment

Section(s) 3A-1 through 3A-11, to be under the new subtitle,

"Premium Pay for Gig Workers"

Baltimore City Code

(Edition 2000)

Recitals

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

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

Whereas, the City is a leader on wage, labor, and workforce practices that improve workers' lives, support economic security, and contribute to a fair, healthy, and vibrant economy;

Whereas, establishing a labor standard that requires premium pay for gig workers working for food

delivery network companies is a subject of vital and imminent concern to the people of this City and requires appropriate action by the City Council to establish this labor standard for gig workers;

Whereas, in the pursuit of economic opportunity, many gig workers are immigrants and people of color who have taken on debt or invested their savings to purchase or lease vehicles or other equipment to work for food delivery network companies;

Whereas, gig workers working for food delivery network companies bear the brunt of the time and expenses necessary for cleaning and disinfecting equipment and engaging in other efforts to protect themselves, customers, and the public from illness; and

Whereas, the above principles hold true in general and give purpose in perpetuity to the substance of the following ordinance, yet it is also the case that establishing an immediate requirement for food delivery network companies to provide premium pay to gig workers protects public health, supports stable incomes, and promotes job retention by ensuring that gig workers are compensated now and for the duration of the public health emergency for the substantial risks, efforts, and expenses they are undertaking to provide essential services in a safe and reliable manner during the COVID-19 emergency.

Section 1. Be it ordained by the Mayor and City Council of Baltimore, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 11. Labor and Employment

Subtitle 3A. Premium Pay for Gig Workers

§ 3A-1. Definitions.

(a) *In general.*

In this subtitle, the following terms have the meanings specified.

(b) *Application dispatch.*

“Application dispatch” means technology that allows customers to directly request dispatch of gig workers for provision of delivery services or allows gig workers or hiring entities to accept requests for services and payments for services via the internet using mobile interfaces such as smartphone and tablet applications.

(c) *Commission.*

“Commission” means the Wage Commission established by § 2-1 {“Commission established”} of this article, or the Commission’s designee.

(d) *Compensation.*

“Compensation” means the total payment owed to a gig worker by reason of working for the hiring entity, including but not limited to hiring entity payments for providing services, bonuses, and commissions, as well as tips earned from customers.

(e) *Deactivation.*

“Deactivation” means:

- (1) the blocking of a gig worker’s access to the hiring entity’s platform;
- (2) changing a gig worker’s status from eligible to provide delivery services to ineligible; or
- (3) any other material restriction in access to the hiring entity’s platform that is effected by a hiring entity.

(f) *Drop-off point.*

“Drop-off point” means the location of any delivery resulting from the online order.

(g) *Food delivery network company.*

(1) *In general.*

“Food delivery network company” means a person, operating within Baltimore City, that offers prearranged delivery services for compensation using an online-enabled application or platform, such as an application dispatch system, to connect customers with workers for delivery from 1 or more of the following:

- (i) food service facilities;
- (ii) grocery stores; or
- (iii) any other facility supplying groceries or prepared food and beverages for an online order.

(2) *Inclusions.*

“Food delivery network company” includes any person acting directly or indirectly in the interest of a food delivery network company in relation to the food delivery network company worker.

(h) *Food delivery network company worker.*

(1) *In general.*

“Food delivery network company worker” means a person affiliated with and accepting an offer of prearranged delivery services for compensation from a food delivery network company.

(2) *Inclusion.*

At any time a food delivery network company worker is logged into the worker platform, the worker is considered a food delivery network company worker.

(i) *Food service facility.*

“Food service facility” has the meaning stated in City Code Health Article, § 6-101(d) {“Definitions: Food Service Facility”}.

(j) *Gig worker.*

“Gig worker” means a food delivery company worker.

(k) *Hiring entity.*

“Hiring entity” means a food delivery network company.

(l) *Hiring entity payment.*

(1) *In general.*

“Hiring entity payment” means the amount owed to a gig worker by a hiring entity by reason of working for that hiring entity.

(2) *Inclusions.*

“Hiring entity payment” includes compensation payment for providing services, bonuses, and commissions.

(m) *Includes; Including.*

“Includes” or “including” means by way of illustration and not by way of limitation.

(n) *Online order.*

“Online order” means an order placed through an online-enabled application or platform, such as an application dispatch system, provided by a hiring entity for delivery services within Baltimore City.

(o) *Operating within Baltimore City.*

“Operating within Baltimore City” means, with respect to a hiring entity, offering prearranged delivery services for compensation using an online-enabled application or platform, such as an application dispatch system, to any affiliated gig worker, where the services take place in whole or part within Baltimore City.

(p) *Person.*

“Person” means:

- (1) an individual;
- (2) a receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind; or
- (3) a partnership, firm, association, corporation, or other entity of any kind.

(q) *Pick-up point.*

(1) *In general.*

“Pick-up point” means the location of any establishment accessed by the gig worker to fulfill an online order.

(2) *Inclusions.*

“Pick-up point” includes any food service facilities, grocery stores, or other facilities supplying groceries or prepared food and beverages for an online order.

(r) *Premium pay.*

“Premium pay” means additional compensation owed to a gig worker by hiring entity that is separate from hiring entity payments for providing services, bonuses, and commissions, as well as tips earned from customers.

(s) *Tips.*

“Tips” means a verifiable sum to be presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the gig worker receiving the tip.

(t) *Worker platform.*

“Worker platform” means the worker-facing application dispatch system software or any online-enabled application service, website, or system, used by a food delivery network worker, that enables the prearrangement of delivery services for compensation.

(u) *Work-related stop within Baltimore City.*

(1) *In general.*

“Work-related stop within Baltimore City” means the time spent by a gig worker on a commercial stop within Baltimore City that is related to the provision of delivery services associated with an online order.

(2) *Exclusions.*

“Work-related stop within Baltimore City” does not include:

- (i) stopping for refueling;
- (ii) stopping for a personal meal or errands: or
- (iii) time spent in Baltimore City solely for the purpose of traveling through Baltimore City from a point of origin outside Baltimore City to a destination outside Baltimore City with no commercial stops in Baltimore City.

§ 3A-2. Scope of subtitle.

(a) *Gig workers.*

This subtitle only applies to gig workers who are performing work for a hiring entity where the work is performed in whole or in part within Baltimore City.

(b) *Hiring entities.*

(1) *In general.*

This subtitle only applies to hiring entities who hire 250 or more gig workers worldwide in a calendar year, as determined in paragraph (2) of this subsection.

(2) *Calculation of workers.*

- (i) For the purposes of this paragraph, all gig workers who worked for compensation for a hiring entity shall be counted, including:
 - (A) gig workers who are not covered by this subtitle;
 - (B) gig workers who worked within Baltimore City; and
 - (C) gig workers who worked outside Baltimore City.
- (ii) The calculation is based upon the average number per calendar week of gig workers who worked for compensation during the preceding calendar year for any and all weeks during which at least one gig worker worked for compensation.
- (iii) If a hiring entity did not have any gig workers during the preceding calendar year, the number of gig workers hired for the current calendar year is calculated based on the average number per calendar week of gig workers who worked for compensation during the first 90 calendar days of the current year in which the hiring entity engaged in business.

(3) *Separate hiring entities as an integrated enterprise.*

(i) *In general.*

- (A) Separate entities that form an integrated enterprise shall be considered a single hiring entity under this subtitle.
- (B) Separate entities will be considered an integrated enterprise and a single hiring entity under this subtitle where a separate entity controls the operation of another entity.

(ii) *Factors.*

In making a determination as to whether this paragraph applies, the factors to consider in making this determination include:

- (A) the degree of interrelation between the operations of multiple entities;
- (B) the degree to which the entities share common management;
- (C) centralized control of labor relations; and
- (D) the degree of common ownership or financial control over the entities.

§ 3A-3. Rules and regulations.

Subject to Title 4 {“Administrative Procedure Act - Regulations”} of the General Provisions Article, the Commission may adopt rules and regulations to carry out the provisions of this subtitle.

§ 3A-4. {Reserved}

§ 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 the gig worker, including actions related to perceived immigration status or work authorization.

(b) *In general.*

- (1) A person may not take any adverse action against an gig worker that penalizes that employee for, or is reasonably likely to deter that employee from, exercising or attempting to exercise any right protected under this subtitle.

- (2) An gig worker need not explicitly refer to this subtitle or the rights enumerated under this subtitle to be protected from retaliation.

§ 3A-7. Notice and posting.

(a) *In general.*

- (1) Hiring entities shall provide each gig worker with a written notice of rights established by this subtitle.
- (2) The Commission may create and distribute a model notice of rights, however, hiring entities are responsible for providing gig workers with the notice of rights required by this section, in a form and manner sufficient to inform gig workers of their rights under this subtitle, regardless of whether the Commission has created and distributed a model notice of rights.

(b) *Contents of notice.*

The notice of rights required by this section shall provide information on:

- (1) the right to premium pay guaranteed by this subtitle;
- (2) the right to be protected from retaliation for exercising in good faith the rights protected by this subtitle; and
- (3) the right to file a complaint with the Commission for a violation of the requirements of this subtitle.

(b) *Languages.*

The notice required by this section shall be in English and in any other language spoken as a primary language by at least 5% of the gig workers of the hiring entity.

§ 3A-8. Recordkeeping.

(a) *In general.*

A hiring entity shall:

- (1) make and retain, for at least 3 years, records that document its compliance with this subtitle; and
- (2) allow the Commission to access the records and other information, in accordance with applicable law and with appropriate notice, in furtherance of an investigation conducted under this subtitle.

(b) *Failure to maintain, retain, or produce.*

A hiring entity's failure to make, retain, or produce a record or other information required to be maintained by this subtitle and requested by the Commission in furtherance of an investigation conducted pursuant to this subtitle that is relevant to a material fact alleged by the Commission in a notice of violation issued pursuant to this subtitle creates a rebuttable presumption that the alleged fact is true.

§ 3A-9. {Reserved}

§ 3A-10. Enforcement procedures.

Subtitle 4 {"Enforcement Procedures"} of this Division I shall govern the administration of complaints, investigations, and enforcement of this subtitle.

§ 3A-11. Penalties and fines.

Any person who violates any provision of this subtitle is subject to the penalties and fines set forth in Subtitle 6 {"Penalties and fines"} of this Division I.

Section 2. And be it further ordained, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

Section 3. And be it further ordained, That this Ordinance shall only apply prospectively and shall have no retroactive effect on any contract or agreement between a hiring entity and a gig worker entered into prior to the effective date of this Ordinance.

Section 4. And be it further ordained, That this Ordinance takes effect on the 30th day after the date it is enacted.