

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2021**

No. 114

Introduced by Council Members Brannan, Menchaca, Chin, Rivera, Louis, Ayala, Lander, Van Bramer, Rosenthal, Reynoso and Kallos.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to establishing general provisions related to working conditions for third-party service workers and requiring that third-party food delivery services permit delivery workers to set limitations on distance and route for deliveries

Be it enacted by the Council as follows:

Section 1. Title 20 of the administrative code of the city of New York is amended by adding a new chapter 15 to read as follows:

CHAPTER 15

THIRD-PARTY SERVICE WORKERS

SUBCHAPTER 1

GENERAL PROVISIONS

§ 20-1501 Definitions.

§ 20-1502 Outreach and education.

§ 20-1503 Reporting.

§ 20-1504 Retaliation.

§ 20-1505 Notice of rights.

§ 20-1506 Recordkeeping.

§ 20-1507 Administrative enforcement.

§ 20-1508 Remedies for workers.

§ 20-1509 Civil penalties.

§ 20-1510 Enforcement by the corporation counsel.

§ 20-1511 Private cause of action.

§ 20-1512 Civil action by corporation counsel for pattern or practice of violations.

§ 20-1501 Definitions. As used in this chapter, the following terms have the following meanings:

Food delivery worker. The term “food delivery worker” means any natural person or any organization composed of no more than one natural person, whether or not incorporated or employing a trade name, who is hired, retained, or engaged as an independent contractor by a third-party food delivery service required to be licensed pursuant to section 20-563.1 or a third-party courier service to deliver food, beverage, or other goods from a business to a consumer in exchange for compensation.

Food service establishment. The term “food service establishment” means a business establishment located within the city where food is provided for individual portion service directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle.

Third-party courier service. The term “third-party courier service” means a service that (i) facilitates the same-day delivery or same-day pickup of food, beverages, or other goods from a food service establishment on behalf of a third-party food delivery service and (ii) that is owned and operated by a person other than the person who owns such food service establishment.

Third-party food delivery service. The term “third-party food delivery service” means any website, mobile application, or other internet service that: (i) offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from, a food service establishment; and (ii) that is owned and operated by a person other than the person who owns such food service establishment.

Trip. The term “trip” means the time spent, distance travelled, and route followed by a worker to provide delivery services to a consumer through a third-party food delivery service or third-party courier service, including travel to a business, picking up the food, beverage, or other goods for delivery, and taking and depositing such delivery at a different location as requested.

§ 20-1502 Outreach and education. The commissioner shall conduct outreach and education about the provisions of this chapter. Such outreach and education shall be provided to food delivery workers, third-party food delivery services, and third-party courier services.

§ 20-1503 Reporting. The department shall annually report on its website the number and nature of the complaints received pursuant to this chapter, the results of investigations undertaken pursuant to this chapter, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications held to resolve notices of violation issued pursuant to this chapter, and the average time for a complaint to be resolved pursuant to this chapter.

§ 20-1504 Retaliation. No person shall take any adverse action against a food delivery worker that penalizes such worker for, or is reasonably likely to deter such worker from, exercising or attempting to exercise any right protected under this chapter. Adverse actions include threats, intimidation, harassment, discipline, denial of work opportunities to or discrimination against a food delivery worker, reduction in hours or pay, reduction or downgrade of a worker’s public or internal rating, and other negative consequences imposed on a food delivery worker, including actions related to perceived immigration status or work authorization. A food delivery worker need not explicitly refer to this chapter or the rights enumerated herein to be protected from retaliation.

§ 20-1505 Notice of rights. a. The commissioner shall publish and make available a notice for a third-party food delivery service or third-party courier service to provide to food delivery workers informing them of their rights protected under this chapter. Such notice shall be made available in a downloadable format on the city's website and shall be updated if any changes are made to the requirements of this chapter or as otherwise deemed appropriate by the commissioner.

b. A third-party food delivery service or third-party courier service shall provide such notice electronically to a food delivery worker hired, retained, or engaged by such service. Such notice shall be in English and any language spoken as a primary language by at least five percent of the food delivery workers hired, retained, or engaged by such service, provided that the commissioner has made the notice available in such language.

§ 20-1506 Recordkeeping. a. A third-party food delivery service or third-party courier service shall retain records documenting its compliance with the applicable requirements of this chapter for a period of three years and shall allow the department to access such records and other information, consistent with applicable law and in accordance with rules of the department and with appropriate notice, in furtherance of an investigation conducted pursuant to this chapter. A third-party food delivery service or third-party courier service must maintain records in their original format and provide such records to the department in their original format or a machine-readable electronic format as set forth in rules of the department. The department also may establish by rule, and require third-party food delivery services and third-party courier services to adhere to, a uniform system of records, and require submission of such records and

other reports as the department may determine, in accordance with applicable law and rules and with appropriate notice.

b. The failure of a third-party food delivery service or third-party courier service to maintain, retain, or produce a record or other information required to be maintained by this chapter and requested by the department in furtherance of an investigation conducted pursuant to this chapter that is relevant to a material fact alleged by the department in a notice of violation issued pursuant to this subchapter creates a rebuttable presumption that such fact is true.

§ 20-1507 Administrative enforcement. a. The commissioner shall enforce the provisions of this chapter.

b. 1. Any person alleging a violation of this chapter may file a complaint with the department within two years of the date the person knew or should have known of the alleged violation.

2. Upon receiving such a complaint, the department shall investigate it.

3. The department may open an investigation on its own initiative.

4. A person or entity under investigation shall, in accordance with applicable law, provide the department with information or evidence that the department requests pursuant to the investigation. The department may attempt to resolve an investigation concerning a violation of this chapter through any action authorized by chapter 64 of the charter.

5. The department shall keep the identity of any complainant confidential unless disclosure is necessary to resolve the investigation or is otherwise required by law. The department shall, to the extent practicable, notify such complainant that the department will be disclosing the complainant's identity before such disclosure.

c. The commissioner may promulgate rules necessary and appropriate to the administration of this chapter.

§ 20-1508 Remedies for workers. a. For violations of their rights under this chapter, a food delivery worker shall be entitled to the following relief:

1. all compensatory damages and other relief required to make the worker or former worker whole;

2. an order directing compliance with the requirements set forth in this chapter; and

3. for each violation of:

(a) section 20-1504,

(1) \$500 for each violation not involving denial of future work opportunities;

(2) \$2,500 for each violation involving denial of future work opportunities; and

(3) any equitable relief appropriate under the circumstances, including but not limited to payment of any lost earnings resulting from such retaliation.

(b) section 20-1521, \$200;

(c) section 20-1522, including any minimum payment established by rule pursuant to section 20-1522, three times the amount of any payment that should have been made and was not timely made;

(d) section 20-1523, \$200; and

(e) section 20-1524, \$200.

b. The relief authorized by this section shall be imposed on a per worker and per instance basis for each violation.

§ 20-1509 Civil penalties. a. For each violation of this chapter, a third-party food delivery service or third-party courier service is liable for a penalty of \$500 for the first violation and, for subsequent violations that occur within two years of any previous violation of this chapter, up to \$750 for the second violation and up to \$1,000 for each succeeding violation.

b. The penalties imposed pursuant to this section shall be imposed on a per worker and per instance basis for each violation.

§ 20-1510 Enforcement by the corporation counsel. The corporation counsel or such other persons designated by the corporation counsel on behalf of the department may initiate in any court of competent jurisdiction any action or proceeding that may be appropriate or necessary for correction of any violation issued pursuant to sections 20-1507 through 20-1509, including actions to secure permanent injunctions, enjoining any acts or practices that constitute such violation, mandating compliance with the provisions of this chapter, or such other relief as may be appropriate.

§ 20-1511 Private cause of action. a. Any person alleging a violation of the following provisions of this chapter may bring a civil action, in accordance with applicable law, in any court of competent jurisdiction:

- 1. section 20-1504;*
- 2. section 20-1521;*
- 3. section 20-1522, including any minimum payment established by rule pursuant to section 20-1522;*
- 4. section 20-1523; and*
- 5. section 20-1524.*

b. Such court may order compensatory, injunctive and declaratory relief, including the remedies set forth in section 20-1508, and reasonable attorney's fees.

c. A civil action under this section shall be commenced within two years of the date the person knew or should have known of the alleged violation.

d. 1. Any person filing a civil action shall simultaneously serve notice of such action and a copy of the complaint upon the department. Failure to so serve a notice does not adversely affect any person's cause of action.

2. A worker need not file a complaint with the department pursuant to subdivision b of section 20-1507 before bringing a civil action; however, no person shall file a civil action after filing a complaint with the department unless such complaint has been withdrawn or dismissed without prejudice to further action.

3. No person shall file a complaint with the department after filing a civil action unless such action has been withdrawn or dismissed without prejudice to further action.

4. The commencement or pendency of a civil action by a worker does not preclude the department from investigating a third-party food delivery service or third-party courier service or commencing, prosecuting or settling a case against a third-party food delivery service or third-party courier service based on some or all of the same violations.

§ 20-1512 Civil action by corporation counsel for pattern or practice of violations.

a. 1. Where reasonable cause exists to believe that a third-party food delivery service or third-party courier service is engaged in a pattern or practice of violations of this chapter, the corporation counsel may commence a civil action on behalf of the city in a court of competent jurisdiction.

2. *The corporation counsel shall commence such action by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, relief for food delivery workers set forth in section 20-1508, civil penalties set forth in section 20-1509, and any other appropriate relief.*

3. *Such action may be commenced only by the corporation counsel or such other persons designated by the corporation counsel.*

4. *Nothing in this section prohibits (i) the department from exercising its authority under section 20-1507 through 20-1509 or (ii) a person alleging a violation of this chapter from filing a complaint pursuant to section 20-1507 or a civil action pursuant to section 20-1511 based on the same facts pertaining to such a pattern or practice, provided that a civil action pursuant to this section shall not have previously been commenced.*

b. Investigation. The corporation counsel may initiate any investigation to ascertain such facts as may be necessary for the commencement of a civil action pursuant to subdivision a of this section, and in connection therewith shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as are deemed necessary.

SUBCHAPTER 2

FOOD DELIVERY WORKERS

§ 20-1521 Delivery distance and route.

§ 20-1522 Reserved.

§ 20-1523 Reserved.

§ 20-1524 Reserved.

§ 20-1521 Delivery distance and route. a. Each third-party food delivery service and third-party courier service shall provide each food delivery worker with the ability to specify:

1. the maximum distance per trip, from a location selected by a food delivery worker, that such worker will travel on trips;

2. that such worker will not accept trips that require travel over any bridge or over particular bridges chosen by such worker; and

3. that such worker will not accept trips that require travel through any tunnel or through particular tunnels chosen by such worker.

b. Each third-party food delivery service and third-party courier service shall allow each food delivery worker to change the parameters established by such worker pursuant to subdivision a at any time.

c. A third-party food delivery service or third-party courier service shall not offer any food delivery worker any trip that is inconsistent with the parameters established by such worker and shall not penalize a food delivery worker for selecting or changing such parameters.

d. Each time a third-party food delivery service or third-party courier service offers a trip to a food delivery worker, before such worker accepts such trip, such third-party food delivery service or third-party courier service shall disclose to such worker the following information:

1. the address where the food, beverage or other goods must be picked up;

2. the estimated time and distance for the trip;

3. the amount of any gratuity, if specified by the consumer; and

4. the amount of compensation to be paid to the food delivery worker, excluding any gratuity.

e. The requirements of this section shall apply to trips that originate in the city, end in the city or involve picking up food from a food service establishment located in the city.

§ 2. This local law takes effect 180 days after it becomes law, provided that the department of consumer and worker protection may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on September 23, 2021 and returned unsigned by the Mayor on October 25, 2021.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 114 of 2021, Council Int. No. 2289-A of 2021) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEPHEN LOUIS, Acting Corporation Counsel.