



SEATTLE CITY COUNCIL  
**CENTRAL STAFF**

# Pay-Up Proposal [Draft Legislation]

## App-Based Worker Minimum Payment Ordinance

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FEBRUARY 8, 2022

# Pay-Up Proposal

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## **Suite of labor standards protections for app-based workers\***

1. Minimum payment
2. Transparency
3. Flexibility
4. Deactivation
5. Background checks
6. Bathroom access
7. Protections against discrimination and right to reasonable accommodations
8. App-based workers' advisory board

*\* Proposal would also include amendments to the Independent Contractor Protections Ordinance*

# App-Based Worker Minimum Payment Ordinance

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## Creation of Title 8 Labor Standards ♦ Chapter 8.37

1. **Minimum payment**
2. **Transparency**
3. **Flexibility**
4. Notice of rights
5. Recordkeeping
6. Prohibited retaliation
7. Enforcement by Office of Labor Standards (OLS)

# Community Engagement

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## **1. Stakeholder Meetings**

- 10+ Meetings

## **2. Public Safety & Human Services Committee presentations**

- July 13, 2021
- September 14, 2021
- February 8, 2022

# Minimum Payment

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**Policy Goals**

*Provide or ensure payment of minimum wage plus expenses with a per-minute and per-mile floor for the engaged time to perform each offer.*

# App-based Workers

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## 1. Covered

- Workers accepting offers to perform services for pay via a network company's worker platform.

## 2. Not covered

- Workers accepting offers for sale/rental of goods or real estate; licensed professional services (by rule); creative work; wholly digital services; and transportation provided by TNCs, taxis, or for-hire vehicles.

# Network Companies

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## 1. Covered

- Companies using online-enabled applications or platforms to connect customers with workers, present offers to workers, and/or facilitate the provision of services by workers.
- 250 or more app-based workers worldwide.

## 2. Not covered

- Companies offering scheduling software, transmitting payment, or operating as digital advertising/messaging boards that do not facilitate services, intermediate relationships, or govern the terms or oversight of work performance.

# Minimum payment

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Network company must pay, or ensure that worker receives, a minimum payment amount for “engaged time” and “engaged miles.”

- **Engaged time** = time that a worker performs services for an offer.
- **Engaged miles** = miles travelled by a worker during engaged time.

# Engaged time ➡ Covered work

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1. Offer from “on-demand network company” OR offer with performance expected within two hours.
  - Engaged time begins upon acceptance of offer.
  - Engaged time ends upon completing performance of offer, cancellation of offer by network company/customer, or cancellation with cause by worker.
2. All other offers.
  - Engaged time begins upon performance of offer or upon reporting to assigned location.
  - Engaged time ends upon completing performance of offer, cancellation of offer by network company/customer, or cancellation with cause by the worker.

# On-Demand Network Company

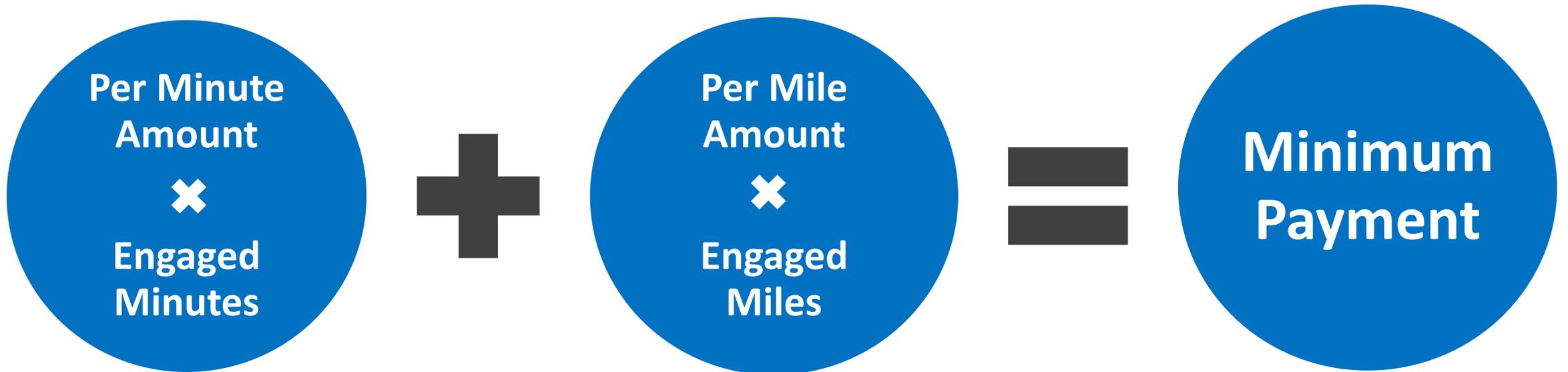
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**On-demand network company** would include, but not be limited to, companies primarily engaged in facilitating or presenting on-demand offers to app-based workers for delivery services from one or more of the following:

- Eating and drinking establishments,
- Food processing establishments,
- Grocery stores, or
- Any facility supplying groceries or prepared food and beverages for an online order.

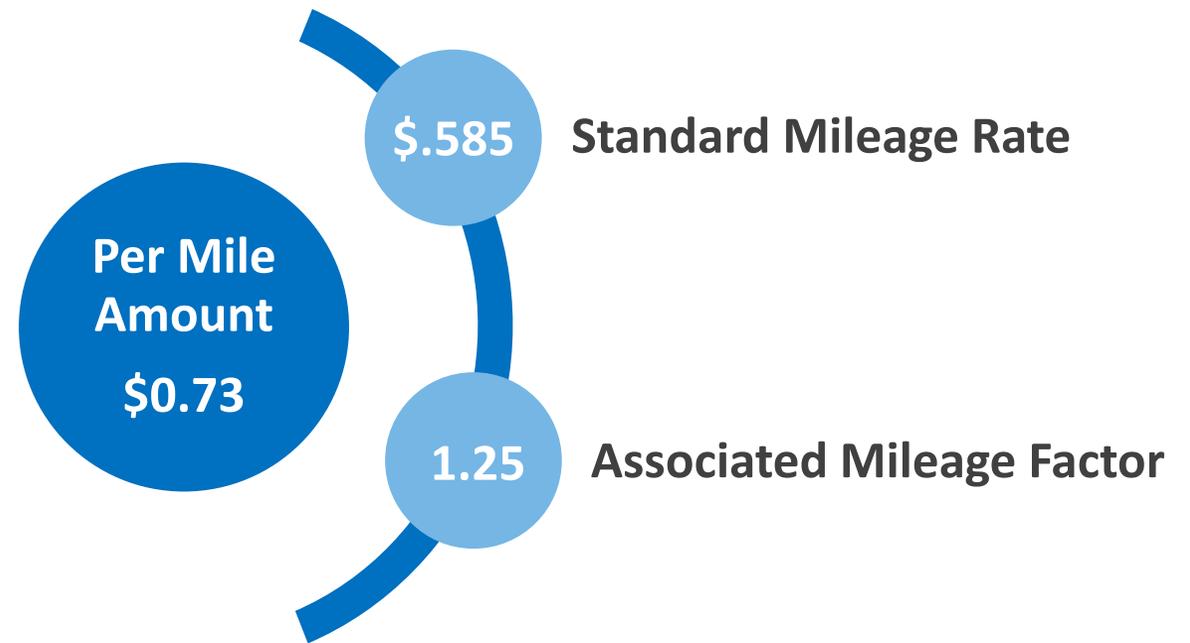
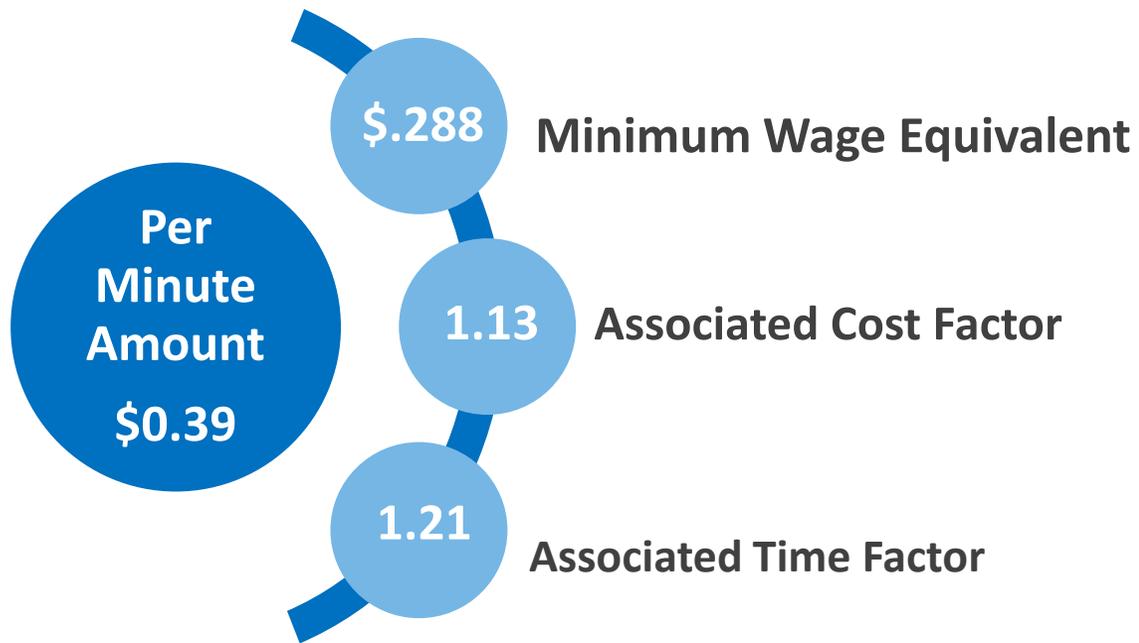
# Minimum Payment $\Rightarrow$ Calculation

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# Minimum Payment ➡ 2022

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# Minimum Wage Equivalent

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**Minimum Wage Equivalent for app-based workers** = per-minute equivalent of the hourly minimum wage for Schedule 1 employers (large employers with more than 500 employees worldwide) under the Minimum Wage Ordinance, SMC 14.19.

- **2022 Minimum Wage for employees** = \$17.27 per hour
- **2022 Minimum Equivalent for app-based workers** = \$0.288 per minute.

# Associated Cost Factor

- **Associated Cost Factor** for baseline expenses paid by app-based workers treated as independent contractors (vs. baseline expenses paid by companies). Adjustable by OLS Director after the ordinance is in effect for three years.

Item	Amount	Notes
Pay roll tax	7.65%	Additional “employer share” of payroll taxes
State Paid Family Medical Leave	0.25%	Expense of contractor opt-in to PFML
Unemployment compensation	1.06%	Average cost of state unemployment insurance
Workers Compensation	2.84%	Average cost of state workers comp coverage
Miscellaneous expenses	1.2%	Equipment, business taxes & license fees
<b>Total associated cost factor</b>	<b>113%</b>	1.13

# Associated Time Factor

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- **Associated Time Factor** for additional working time to successfully perform work. Adjustable by OLS Director after the ordinance is in effect for three years.

Item	Amount per engaged hour	Notes
Rest breaks	2.5 minutes	10 minutes of rest time per 4 hours of work
Time to review offers	3 minutes	Minimal estimate of time to review offers
Time to availability	5 minutes	Minimal estimate of time from performing offer to availability for next offer
Time for administrative tasks	2 minutes	Minimal estimate of time for managing account, recordkeeping & customer support
<b>Total associated time factor</b>	<b>121%</b>	1.21

# Associated Mileage Factor

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- **Associated Mileage Factor** for miles driven while a worker is not engaged on a specific offer, but when those miles are required to successfully perform work.

Amount	Notes
For every 10 engaged miles:	Non-exclusive examples
• 1.25 miles	Miles to travel to locations where offers are available or return to starting location when dispatched from hub
• 1.25 miles	Miles to travel to locations for rest breaks, meal breaks, restroom access, and administrative needs.
<b>Total associated mileage factor 125%</b>	1.25

# Minimum Per Offer Amount ➡ \$5

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## Minimum per offer amount

- Minimum payment per offer of at least \$5.
- Annual adjustment to reflect the rate of inflation.
- OLS Director rules could establish a “grace period” (between acceptance and cancellation of an offer) as exemption.

# Transparency

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## Policy Goals

- *Provide workers with information to make informed choices about which offers to accept and to verify compliance with minimum pay requirements.*
- *Provide end customers with information on the nature of charges, including amounts paid to workers and retained by the company.*
- *Provide OLS with regular and routine access to aggregated and disaggregated company records.*

# Transparency (1/2)

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1. **Offer information** – a network company shall provide, and/or ensure a customer provides:
  - Offer information for at least three minutes.
  - Best estimate of engaged time and mileage to complete performance.
  - Locations of work (e.g., geographic and business locations).
  - Guaranteed minimum amount of payment.
  - Physical requirements of work (e.g., flights of stairs, weight of materials).
  - Contents of online orders (e.g., network company shares info from customer).

# Transparency (2/2)

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2. **Electronic receipts** within 24 hours of performed and/or cancelled offers.
  - Worker receipts
  - Customer receipts
3. **Weekly statements** to workers on performed and/or cancelled offers.
4. **14-day notice** to workers before significant change(s) to payment calculation.
5. **Routine and affirmative disclosure to OLS** of aggregated and disaggregated company records, subject to rules.

# Flexibility

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**Policy Goals**

*Protect workers' flexibility, including the right to freely choose jobs and hours, while maintaining companies' provision of services to end customers and third-party businesses.*

# Rights for App-based Workers (1/2)

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1. Right to be logged into platform for any dates and times of day.
2. Right to be logged onto platform without limitation except for health and safety restrictions.
3. Right to decide work availability.
4. Right to accept or reject any individual offer, any types of offers, and any number or proportion of offers.

# Rights for App-based Workers (2/2)

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5. Right to cancel offer with cause (“cancellation with cause”).
  - Offer information is substantially inaccurate.
  - Offer cannot be completed due to customer actions (e.g., customer not present, customer fails to communicate).
  - Timely completion of the offer is unsafe or impracticable due to an unforeseen obstacle or occurrence.
  - Good faith complaint about sexual harassment or discrimination.

# Policy Decisions

# Policy Decisions (1/6)

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## 1. Restructured pay standard

- Payment for “engaged time” would depend on whether the offer is from an “on-demand network company,” rather than whether the offer is “on-demand” or “pre-scheduled.”
- OLS investigators could quickly determine the pay standard for *all* offers from a particular company, rather than having to scrutinize each offer.

# Policy Decisions (2/6)

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## 2. Clarified payment obligations

- Network companies would “pay” or “ensure that worker receives” minimum network company payment.
- Some companies do not directly compensate workers, but rather facilitate a work connection between the end customer and worker or distribute payment through a third-party.

# Policy Decisions (3/6)

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## 3. Established authority for a “grace period” exemption from \$5 minimum payment per offer

- OLS could issue rules to establish a grace period (specific amount of time) between acceptance and cancellation of an offer.
- Workers would receive pay for engaged time and miles for orders cancelled within the grace period but would not have a right to the \$5 minimum payment.

# Policy Decisions (4/6)

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- 4. Simplified requirements to provide information on the contents of an order**
- Instead of disclosing contents of an online order that would pose health risks or violate personal beliefs, company would share information it has about the contents of an order.
  - Workers could decide for themselves whether to accept an offer.

# Policy Decisions (5/6)

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## 5. Updated penalty amounts

- 3.42% adjustment to account for rate of inflation.
- 2022 CPI-W for Seattle-Tacoma-Bellevue Area for 12-month period ending in August 2021.
- For example, \$566.30 to \$575.31 per aggrieved party.

# Policy Decisions (6/6)

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## 6. Anticipated effective date

- 12 months after Council passage.
- Time for OLS to prepare for implementation.
- For example, conduct rulemaking, create informational materials, obtain translations for model notices in multiple languages, update online information, adapt enforcement strategies, coordinate outreach with community partners and OLS staff.

# Next steps

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## 1. Introduction of App-Based Worker Minimum Payment Ordinance

## 2. Discussion of unintroduced draft bills

- Right to access work: Deactivation and background checks
- Bathroom Access
- App-based Worker Advisory Board
- Protections against discrimination and right to reasonable accommodations
- Amendments to Independent Contractor Protections Ordinance

# Questions?