

Seattle Mandates Temporary Premium Pay and Other Benefits for Certain Gig Economy Workers During Pandemic

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As we wrote about in more detail [here](#), the ongoing coronavirus pandemic has brought increased attention to the legal and practical distinctions between employees (who are entitled to various compensation and employment benefits under the law) and independent contractors (who generally are not). The pandemic has also prompted lawmakers at the federal, state, and local level to explore further legislation designed to provide independent contractors with greater protections under the law.

The Seattle City Council has now passed two ordinances—the “Gig Worker Premium Pay Ordinance” and the “Gig Worker Paid Sick and Safe Time Ordinance”—that will temporarily impose heightened requirements on transportation network and food delivery network companies.

The Gig Worker Premium Pay Ordinance

The [Gig Worker Premium Pay Ordinance](#) went into effect at 8:30 p.m. on June 26, 2020. According to the City Council, the ordinance is designed to “increas[e] [the] retention of gig workers who provide essential services on the frontlines of a global pandemic and who should be paid additional compensation for the hazards of working with significant exposure to an infectious disease.”

Under this ordinance, food delivery network companies are required to pay delivery drivers at least \$2.50 in premium pay for each delivery they complete with a pick-up or drop-off location in Seattle. If the order involves multiple pick-up or drop-off points, drivers are entitled to an additional \$1.25 in premium pay for each additional pick-up or drop-off point in Seattle.

The ordinance requires food delivery network companies to remit premium pay at the same time at which they provide compensation for other components of the delivery, identify the specific orders that qualified for premium pay, and separately itemize premium pay when compensating drivers.

The ordinance also prohibits food delivery network companies from retaliating against drivers for exercising their rights under the law, and from: (i) reducing or modifying service areas in Seattle, (ii) reducing drivers’ compensation, (iii) limiting drivers’ earning capacity, including by restricting drivers’ access to online orders, and (iv) charging customers additional fees for grocery deliveries, if the ordinance is a “motivating factor” in the decision.

Finally, the ordinance requires food delivery network companies to provide drivers with written notice of their rights under the law.

Covered businesses are obligated to provide premium pay for the duration of the coronavirus civil emergency. And covered businesses must maintain records documenting their compliance with the ordinance for three years.

Drivers are entitled to lodge a complaint with the Seattle Office of Labor Standards (“OLS”) or file a civil action in court, in order to enforce the ordinance. Businesses that violate the ordinance will be subject to various penalties and fines, and payment of unpaid compensation owed under the law, liquidated damages, and attorneys’ fees and costs.

The Gig Worker Paid Sick and Safe Time Ordinance

Under the [Gig Worker Paid Sick and Safe Time Ordinance](#), which will go into effect July 13, 2020, covered transportation network and food delivery network companies will be obligated to temporarily provide paid sick and safe time benefits to ride-share and food delivery drivers, notwithstanding the drivers’ independent contractor status. More specifically, covered drivers will earn one day of paid leave for every 30 calendar days that they work in whole or in part in Seattle, dating back to October 1, 2019, or the commencement of their engagement (whichever is later), and continuing through 180 days after certain civil emergency orders relating to the coronavirus pandemic have been terminated.

Drivers will have the right to use paid sick and safe time benefits in 24-hour increments for various reasons, including, among others: (i) to accommodate their need for medical diagnosis, care, or treatment, (ii) to care for a family member with a mental or physical illness, injury, or health condition, and (iii) when a covered business has reduced, suspended, or otherwise discontinued operations for any health or safety related reason. For each day of leave, drivers will be entitled to their “average daily compensation” (which includes any bonuses, commissions, and tips) from their highest earning calendar month since October 1, 2019.

Covered businesses will also be required to provide drivers with written notice of their rights, and of the businesses’ relevant policies and procedures for meeting the requirements of the ordinance. In addition, covered businesses will be prohibited from retaliating against drivers for exercising their rights under the law. Covered business will also be required to maintain records documenting their compliance with the ordinance for three years.

The OLS will enforce the ordinance, and drivers will have the right to lodge a complaint with the OLS, or file a civil action in court, if they believe their rights under the ordinance have been violated. Businesses that violate the ordinance will be subject to various penalties and fines, and payment of unpaid compensation owed under the law, liquidated damages, and attorneys’ fees and costs.

Takeaways

Although the requirements imposed by both Seattle ordinances are temporary, covered businesses will almost certainly need to make changes to their operations in the short-term. Businesses that engage independent contractors should also bear in mind that state and local governments in other jurisdictions may ultimately adopt legislation with similar objectives (particularly if the coronavirus pandemic continues to grow).

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