

Testimony of Daniel Ocampo

National Employment Law Project

In Support of Int. No. 1133-2024 and Int. No. 1135-2024: Protections for Contracted Delivery Workers

Hearing before the New York City Council

Committee on Consumer and Worker Protection

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Dear Chair Menin & Members of the Committee:

My name is Daniel Ocampo, and I am a lawyer with the National Employment Law Project (NELP), a national nonprofit with more than fifty years of experience advocating for the labor and employment rights of low-wage workers. NELP works extensively at the federal, state and local levels, and has regularly advised the New York City Council on protecting workers in the city. Relevant for the legislation that the Committee is considering today, NELP works across the country with groups of app-based workers, supporting campaigns at the local, state, and federal levels for policies to protect this exploited workforce. Also relevant, we worked with the Department of Consumer & Worker Protection (DCWP) to advocate for an effective pay standard pursuant to the restaurant delivery worker law enacted in 2021.

We are delighted to testify today in strong support of these two bills.

Int. No. 1135 would extend some workplace protections and the existing pay standard for third-party restaurant delivery workers to grocery delivery workers, who are retained to deliver groceries for companies like Instacart and Shipt. Because restaurant and grocery delivery workers perform work that is substantially similar, this bill would allow DCWP to apply its existing restaurant delivery pay standard to grocery delivery workers, avoiding the cost and delay of a new rulemaking.

Int No. 1133 would extend these protections beyond the restaurant and grocery sectors to all contracted delivery workers, including workers who deliver packages through services like Walmart Spark and Amazon Flex. Unlike Int. No. 1135, it would require DCWP to conduct a new pay standard rulemaking for this group of workers.

Taken together, these bills would provide a meaningful wage floor and protections to an underpaid and exploited workforce, who are currently excluded from New York's workplace laws.

All Contracted Delivery Workers Need a Wage

Contracted delivery workers increasingly provide critical labor services in New York City—delivering meals, packages, groceries, medications, and more across the city every day. The companies that rely on this labor, however, have avoided paying the minimum wage and complying with other labor standards enshrined in New York’s labor and employment laws by classifying them as independent contractors. The companies’ exploitative business model denies contracted delivery workers basic protections such as a guaranteed minimum wage, as well as benefits like paid leave, unemployment insurance, and workers’ compensation guaranteed to employees under New York law.

As a result, these workers regularly earn subminimum wages with no benefits for difficult and dangerous work.¹ Worse, the pay is not only low but inconsistent job-to-job and week-to-week, which makes it difficult for workers to care for their families and themselves, pay their bills on time, or build up savings.

The Restaurant Delivery Worker Pay Standard Has Been a Success and Is a Model to Follow

This legislation builds on the example and demonstrated success of the restaurant delivery worker minimum pay standard.²

Since going into effect, DCWP’s pay standard has delivered clear gains for workers. Over the first six months of 2024, delivery workers’ hourly pay increased from a sub-minimum wage of \$10.62, to \$19.26 by April, and \$22.48 by June (all after tips).³ On a weekly basis, overall earnings also grew 32% over the period.⁴ And despite repeated warnings from Uber, DoorDash, Grubhub, and Relay that demand would collapse and delivery workers would lose out, there was a 5 percent year-on-year increase in the number of weekly deliveries made, to 2.64 million.⁵ In short: New Yorkers continue to order food delivery, delivery companies continue to operate profitably, and delivery workers now earn fairer wages.

Building on this success, the City Council should extend these pay protections to all contracted delivery workers in the city. Couriers who deliver groceries,

packages, and medications perform work that is essentially the same as those who deliver restaurant meals: they receive work requests and assignments, usually through an app, to transport and deliver goods across New York City. In fact, there is a significant overlap in this workforce. Many of the workers engaged to do restaurant delivery also perform deliveries from convenience stores, grocery stores, or other retailers through the same apps.⁶

NELP supports a strong minimum pay standard for New York City's entire contracted delivery workforce. Given the success of the initial pay standard, and the similarity of the work performed by these workers, the City Council should pass both of these bills and ensure that all delivery workers earn at least a minimum wage.

This Legislation Extends Other Important Workplace Protections to Contracted Delivery Workers

Int. No. 1133 would also extend several other important labor protections to all of the city's contracted delivery workers.

First, it gives workers some power to set parameters for the kinds of trips they will accept and reject. Delivery workers can set a maximum distance they are willing to travel, and specify certain bridges and tunnels that they do not want to cross. Second, the legislation would prohibit delivery companies from retaliating against workers exercising their workplace rights. And third, it would give all delivery workers the right to use toilet facilities at businesses where they are picking up goods. All contracted delivery workers, not just restaurant delivery workers, deserve toilet access and retaliation protections.

The Council Should Make its Intent Clear, Minimizing the Risk of Further Costly and Frivolous Corporate Lawsuits

In 2023, days before the restaurant delivery minimum pay standard was set to go into effect, Uber, DoorDash, and Grubhub all filed suit against the city to stop application of the pay standard.⁷ While these claims were essentially baseless and subsequently thrown out, they succeeded in throwing sand in the gears of the city machinery and slowing down the rollout of the pay standard.⁸ DCWP was

forced to direct significant resources to fighting the litigation, and delivery workers continued to work for subminimum wages for several additional months.

Relay also filed suit, seeking an exemption from the pay standard. In their telling, they should not have been required to pay their workers a minimum wage because they have a different business model. These claims were thin at best: while it is true that Relay does not directly contract with end-users (like Uber Eats and DoorDash), they hire delivery workers as independent contractors to deliver food from restaurants. Their business is functionally the same, and they should also be required to comply with the wage floor.

Unfortunately, their litigation strategy succeeded, and they won a temporary carveout from the pay standard. As a result, Relay workers are now earning lower hourly wages than their counterparts at covered companies—by the best estimates, only \$11 an hour after expenses.⁹ This legislation would make clear that Relay workers, too, are entitled to a pay floor.

The Council Should Take Up Additional Legislation to Address Other Significant Issues Facing New York’s Delivery Workers

Restore tip access

Shortly after the roll-out of the restaurant delivery worker minimum pay standard in 2023, some apps retaliated by making the tipping option much more difficult to access on the user interface. DoorDash, for example, prevented users from adding tips when they confirmed their order—as had been the norm before—instead requiring them to navigate back into the app after their food had been delivered. The result was a huge drop-off in tips, and a significant loss of income for the workforce. Int. No. 0737-2024, sponsored by Council Member Abreu, would require companies to give users a straightforward way to tip their workers.

Prohibit unfair deactivations

App-based corporations continue to unfairly and arbitrarily “deactivate” (industry speak for terminate) ridehail drivers and delivery workers. Even worse, because the deactivation happens through the app, these workers often do not know the reasons for the deactivation and face obstacles to talking about or appealing the decision to a human at the corporation.

For the workers affected, the impact of losing your job abruptly can be devastating. It leaves workers and their families unable to pay their rent, mortgages, and other bills, often leading to extreme hardship. In a 2023 survey, 43% of New York workers reported that, if their paychecks were cut off, they have little savings to fall back on and within one month would be unable to pay their bills.¹⁰ The impact on contracted delivery workers is compounded by their low wages and exclusion from benefits like unemployment insurance.

There is therefore an urgent need to protect ridehail and delivery workers from being fired without a good reason and a fair process. The Council should take up legislation to extend just cause protections to New York’s contracted delivery workers and ridehail drivers.

Conclusion

These common-sense protections would be enforced by the Department of Consumer and Worker Protection (DCWP)’s Office of Labor Standards Enforcement—an excellent and effective city agency with a proven track record of fairly implementing the city’s labor standards—including for delivery workers. The positive experiences of DCWP in enforcing the city’s existing restaurant delivery worker protections should give the City Council confidence in extending those safeguards to other contracted delivery workers.

NELP respectfully urges the City Council to pass Int. No. 1033 and Int. No. 1035.

Endnotes

1. Ken Jacobs, Michael Reich et al., Gig Passenger and Delivery Driver Pay in Five Metro Areas, U.C. Berkeley Lab. Ctr. (May 2024), <https://laborcenter.berkeley.edu/wp-content/uploads/2024/05/Gig-Passenger-and-Delivery-Driver-Pay-in-Five-Metro-Areas.pdf>.
2. DCWP Website: Minimum Pay Rules, <https://www.nyc.gov/site/dca/workers/Delivery-Worker-Public-Hearing-Minimum-Pay-Rate.page>.
3. See DCWP Data, Q1 2024, <https://www.nyc.gov/assets/dca/downloads/pdf/workers/Restaurant-Delivery-App-Data-Q1-2024.pdf>; DCWP Data Q2, 2024, <https://www.nyc.gov/assets/dca/downloads/pdf/workers/Restaurant-Delivery-App-Data-Q2-2024.pdf>.
4. DCWP Data Q2, 2024.
5. Id.
6. A Minimum Pay Rate for App-Based Restaurant Delivery Workers in NYC, Dept. of Consumer & Worker Protection, at 5 (Nov. 2022), available at <https://www.nyc.gov/assets/dca/downloads/pdf/workers/Delivery-Worker-Study-November-2022.pdf>.
7. Kellen Browning & Ana Ley, Food-Delivery Companies Sue New York City Over Minimum Pay Law, N.Y. Times (Jul. 6, 2023), <https://www.nytimes.com/2023/07/06/nyregion/uber-minimum-wage-lawsuit-nyc.html>.
8. NYC Dept. of Consumer & Worker Protection v. Uber Techs., Index No. 155943/2023 (TRO entered Jul. 11, 2023), available at https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=yFHETQJwD89IH8k5ZI_PLUS_0pw==.
9. Relay v. NYC Dept. of Consumer & Worker Protection, Index No. 155944/2023 (Krinsky Decl., Oct. 24, 2024), <https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=G0FD8VmrsJ3u4rAyB8w4gQ==>.
10. Fired Without Warning or Reason: Why New Yorkers Need Just Cause Job Protections, Data for Progress, National Employment Law Project & Make the Road New York (Jan. 2023), available at <https://www.nelp.org/app/uploads/2023/01/Fired-Without-Warning-or-Reason-Just-Cause-Report.pdf>.