

## **Labor & Employment Law Daily Wrap Up, EXPERT INSIGHTS—NYC delivering on minimum wage promise for app-based delivery workers, (Jun 22, 2023)**

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If they have not done so already, apps should take immediate steps to come into compliance with the new law.

For the first time ever, app-based restaurant delivery workers in New York City – engaged as independent contractors – are set to make a minimum wage. The nation's first-of-its-kind law is set to have a massive impact, as it will affect approximately 65,000 delivery workers when it takes effect on July 12. The law treads new ground by providing delivery workers with workplace protections typically provided to employees and not independent contractors. Here is what third-party restaurant delivery services and third-party courier services need to know.

### **What is Required Under the New Law?**

Under the new law, effective July 12, app-based food delivery services must pay their deliver workers a minimum wage. The delivery app companies can meet the pay requirement through two methods:

- **Flat Rate:** Apps that **pay for all the time a worker is connected to the app** (i.e., time spent waiting for trip offers and trip time) must pay delivery workers at least \$17.96 per hour, which amounts to approximately 30 cents per minute not including tips. In addition to an adjustment for inflation each year, this rate will increase to \$18.96 per hour on April 1, 2024, and \$19.96 per hour on April 1, 2025.
- **Per Delivery:** Apps that **only pay for trip time** (i.e., time from accepting a delivery offer to dropping off the delivery) must pay at least approximately 50 cents per minute, not including tips. On April 1, 2024, this rate will reach approximately 53 cents per minute and 55 cents per minute on April 1, 2025, plus an adjustment for inflation each year.

While some apps may use unique pay methods that may not display a per minute or per hour rate, they are nonetheless required to follow one of the minimum pay rates listed above.

### **Minimum Pay Rate Adds to Other Deliver Worker Protections**

The minimum pay rate is the final piece of NYC legislation providing workplace protections for delivery workers previously enacted by the City Council. In addition to the minimum pay rate, the following protections apply to app-based delivery workers:

- Workers must be paid at least once a week.
- The app must tell the worker how much a customer tips for each deliver.
- The app must also tell the worker their total pay and tips for the previous day.
- The delivery worker can limit their maximum delivery distance.
- The app must tell the worker the route details before accepting a delivery, including address, estimated time and distance for the trip, the amount of the tip (if known), and pay.
- The app must provide a free insulated food delivery bag to the driver after six deliveries.

- Delivery workers must also have access to restaurant bathrooms when picking up orders.

## Conclusion

If they have not done so already, apps should take immediate steps to come into compliance with the new law. Failure to do so could have significant consequences, as delivery workers not paid the minimum pay rate in the accordance with the new law can file a complaint with the DCWP.

Additionally, subject to certain exceptions, apps must be sure to:

- pay their delivery workers at least once a week;
- tell their delivery workers how much the company tips for each delivery; and
- tell their delivery workers their total pay and tips.

We will monitor developments related to this law, so make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information directly to your inbox. If you have questions about new law, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in [our New York City office](#).

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