

Note: New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting nyc.gov/dcwp. The Law is current as of January 2022; please monitor nyc.gov/dcwp for upcoming Rules.

Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer and Worker Protection (DCWP) is not responsible for errors or omissions in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

NEW YORK CITY ADMINISTRATIVE CODE

TITLE 20: CONSUMER AND WORKER PROTECTION

CHAPTER 15: THIRD PARTY SERVICE WORKERS

SUBCHAPTER 1: GENERAL PROVISIONS

§ 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.

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 food service establishment where such worker will pick up food, beverages, or other goods, 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.

§ 20-1522 Minimum payment.

a. 1. The department shall study the working conditions for food delivery workers. In conducting such study, the department may coordinate with any other agency, organization, or office that can assist in such study. Such study shall include, at minimum, consideration of the pay food delivery workers receive and the methods by which such pay is determined, the total income food delivery workers earn, the expenses of such workers, the equipment required to perform their work, the hours of such workers, the average mileage of a trip, the mode of travel used by such workers, the safety conditions of such workers, and such other topics as the department deems appropriate.

2. In furtherance of such study, the department may request or issue subpoenas for the production of data, documents, and other information from a third-party food delivery service or third-party courier service relating to food delivery workers that include, but are not limited to, worker identifiers, information about the times that such workers are available to work for such third-party food delivery service or third-party courier service, the mode of transportation such workers use, how trips are offered or assigned to food delivery workers, the data such service maintains relating to the trips of such workers, the compensation such workers receive from such third-party food delivery service or third-party courier service, any gratuities such workers receive, information relating to both completed and cancelled trips, agreements with or policies

covering such workers, contact information of such workers, information relating to the setting of fees paid by food service establishments and consumers, and any other information deemed relevant by the department. In accordance with applicable law and rules and with appropriate notice, a third-party food delivery service or third-party courier service must produce such information to the department in its original format or a machine-readable electronic format as set forth in rules of the department.

3. Based on the results of the study conducted pursuant to paragraph a of this subdivision, and no later than January 1, 2023, the department shall by rule establish a method for determining the minimum payments that must be made to a food delivery worker by a third-party food delivery service or third-party courier service. In establishing such method, the department shall, at minimum, consider the duration and distance of trips, the expenses of operation associated with the typical modes of transportation such workers use, the types of trips, including the number of deliveries made during a trip, the on-call and work hours of food delivery workers, the adequacy of food delivery worker income considered in relation to trip-related expenses, and any other relevant factors, as determined by the department. Any rules promulgated by the department pursuant to this subdivision shall not prevent payments to food delivery workers from being calculated on an hourly or weekly basis, or by any other method, provided that the actual payments made to such workers comply with the minimum payment requirements determined by the department.

b. Any minimum payment determined by the department pursuant to this section shall not include gratuities. A third-party food delivery service or third-party courier service shall not retain any portion of any gratuity or use gratuities to offset or cover any portion of minimum payments required by this section. A third-party food delivery service shall clearly and conspicuously disclose to food delivery workers which payments constitute gratuities from consumers and which payments constitute compensation paid by the third-party food delivery service.

c. Beginning February 1, 2024 and no later than February 1 of each year thereafter, the department shall announce any update to the minimum payment method established pursuant to this section if it determines an update is warranted or necessary. Any such update shall become effective the following April 1 after it has been announced. If the department determines that an amendment to the minimum payment standard is warranted or necessary, it is hereby authorized to promulgate such amendment by rule.

d. The department shall, no later than September 30, 2024, and two years thereafter, submit to the council and the mayor a report on the minimum payment standard, any amendment to such standard, and the effect of such minimum payment standard on food delivery workers and the food delivery industry.

§ 20-1523 Payments to workers.

a. A third-party food delivery service or third-party courier service shall not charge or impose any fee on a food delivery worker for the use of any form of payment selected by such service to pay such worker for work performed.

b. A third-party food delivery service or third-party courier service shall pay a food delivery worker for work performed no less frequently than once a week.

§ 20-1524 Insulated food delivery bags.

a. 1. A third-party food delivery service or third-party courier service shall provide at its own expense, or ensure the availability of, an insulated food delivery bag to each food delivery worker, provided that such worker has completed at least six deliveries for such service. Such service may not require any food delivery worker to provide an insulated food delivery bag at such worker's expense. Such insulated food delivery bag must be designed for use in accordance with section 1235 of the vehicle and traffic law.

2. Nothing in this section shall be construed to require the use of insulated delivery bags by food delivery workers.