September 29, 2023 |

Briefs

Submission to the BC Ministry of Labour regarding Proposing Employment Standards and Other Protections for App-Based Ride-Hail and Food Delivery Workers in BC

A pdf of the complete submission can be found here(425 KB).

Introduction

We are pleased to see the BC government propose laws and regulations to better protect workers. You are joining governments across the globe that have already taken action to improve working conditions for ride-hail and food delivery workers.

Ride-hail and food delivery services are widely used in our province. These services themselves are in no way new -- companies have been moving goods and passengers for hundreds of years. All that is new is the use of smartphone-based applications, which have, to a significant degree, replaced traditional dispatch systems.

However, this app-dispatched gig work has been allowed to grow in BC outside of traditional employment standards, health and safety protections and labour laws. This has had harmful consequences for workers and for our province's programs and services.

The exclusion of these workers from basic protections is unacceptable and inconsistent with how we treat other sectors.

Workers in these jobs report a multitude of issues including low wages, long hours, exposure to harassment and violence, unfair suspensions and terminations, tip theft and more. These workers are organizing themselves into networks and raising their voices on social and traditional media, standing up and demanding change.

There is growing evidence that the majority of app-based work is being done by newcomers and racialized workers[1] and their exclusion from the rights and protections afforded to other workers is a systemic issue. Many of our previous and existing exclusions and exemptions to the *Employment Standards Act* ("ESA") also predominantly affect racialized workers — for instance, farmworkers. Allowing these app-based workers to continue to have substandard employment conditions is inconsistent with the *Human Rights Code* and the provincial government's commitment to address systemic racism.

Making exceptions for employers simply because they're app-based sets a terrible precedent. Employers in other sectors are very likely to demand similar (or worse) exemptions, turning employment standards in British Columbia into a patchwork — and dramatically increasing the extent of precarious employment and poor working conditions. The expansion of these practices could set employment protections back a century.

The better path is clear. Workers have delivered two strong messages – they are tired of being treated worse than other workers in our province, and they feel powerless in their dealings with huge multi-national platform companies.

In response to the government's options paper, we have therefore focused on two main themes:

- Ensuring workers have access, at a minimum, to all the basic employment rights and protections other workers receive through the ESA and *Workers Compensation Act*; and

- Providing workers with a pathway to unionization so they can have a voice in their pay and working conditions in negotiations with app companies.

"I began doing food delivery during the pandemic. Back then, there was a lot more demand. I earned pretty good money. But now, I am only getting forced to make choices that the app gives me whether to accept the assignment or not. If I don't accept, that affects my acceptance rate which impacts the next chance of getting assignments. If I accept, I may have to work longer shifts that barely leaves me with less than a minimum wage. I realize that I am forced to make these choices that eventually only benefit the platform, not me as a worker. I am not getting fair compensation for the time that I work." worker K.

Minimum wage = A living wage

Workers have told us emphatically that they are being underpaid for their work"*[2]* They want minimum hourly rate protections, so they know that they are guaranteed a fair wage for all the time they work.

We believe the minimum wage rate for app-based ride-hail and food-delivery workers should be equivalent to BC's highest living wage for a metro area. For 2023, that is $24.49 per hour.

The wage rate must be paid for ALL time worked and be calculated AFTER expenses. We define work as all the time a worker spends on the app performing various duties -- not just the time they are transporting customers or goods.

Their minimum pay should be calculated on a daily basis. We do not believe this amount should be averaged like the taxi industry over a month[3] as suggested in the paper.

Pay rate

All workers in BC should be guaranteed a fair wage. Every year, the Living Wage for Families campaign calculates this rate based on the actual cost of living in our communities; it best reflects

workers' actual economic needs. We believe the living wage should be the minimum wage standard for all workers in BC.

But many workers report to us that after expenses and excluding tips, they are earning far below not only the living wage but even the current minimum wage ($16.75/hr). We believe as a matter of principle that companies in BC should not be permitted to pay poverty-level wages.

> *"If I don't work all seven days now, I cannot make my ends meet. That means 15h or 16h per day."* – worker T.

Workers report that their wages have consistently declined since the introduction of transportation network services ("TNS") while their expenses have increased sharply. To address these low wages, workers report they are having to work more and more hours to make ends meet. Many workers tell us they are working more than 10 hours in a day and more than 60 hours in a week. Many work at least six days a week.[4]

The lack of regulation of earnings leaves workers with no predictability or security around the minimum they are guaranteed to earn for the same amount of work on different days.

Pay for all time worked

Studies have shown that on average 40% of a workers' time is spent outside of what companies define as engaged hours. Even with legislative measures in place to increase usage rates, publicly available data collected in New York[5] – a market much larger than Vancouver -- shows that ride-hail vehicles average one-point-eight (1.8) trips per hour with an average duration of 20 minutes per trip. That means an average of 36 minutes out of every hour are spent with a rider in the vehicle, representing only 60% of the driver's time.[6]

Time between assignments is not "free time" -- it is work. Workers are not free to engage in activities of their choosing because, due to the time-sensitive nature of the work, they must be immediately

available at any moment. Companies control workers' choices during these "in between" times, for example with punitive consequences for workers who do not accept assignments. These consequences may include being blocked from prime pickup areas such as the airport or losing access to critical information about their work, like pay and destination information.

Not paying workers for all of their work time can also exclude them from other benefits they should be entitled to. If a worker is injured between customers while repositioning or immediately after delivering an order, for example, they may be ineligible to make a workers' compensation claim. Not paying workers for all hours of their work hours may also mean they lack the hours for EI eligibility and its associated funding programs.

The dangers of "engaged time"

We believe the government should reject a payment system based only on the made-up construct of "engaged time." This is an extremely dangerous and regressive concept.

The work of providing ride-hail and food delivery services extends beyond transporting customers or products. It includes many other duties including repositioning, waiting for restaurants and customers, cleaning, refueling, searching for assignments, communicating with the company and more. These duties are essential to the services provided by the company, as without them, the transportation of goods and customers could not occur.

The government must also consider the precedent and impact on other sectors and workers. Our employment and labour laws have moved away from compensating workers based on a per job or piece rate — and for good reason. Piece rates raise stress, promote overwork, lower safety

> *"I feel pushed and pressured to work more and more. I am more than 60 now. I push myself to work more too and it's something that's against human right. That's against labor right. That's against even the public safety."* – worker A1.

standards, create unhealthy competition, and can lead to an oversaturation of the labour pool that results in all workers receiving poverty wages. They are profoundly unfair and should not be used. The Federation has long campaigned for the remaining piece rates for hand harvesters (farmworkers) to be eliminated.

> *"We don't even make minimum wage after the gas, insurance and other expenses"* – Survey respondent

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Work-related expenses

Workers must be compensated for work-related expenses and must not be required to pay the company's business costs.

The Ministry must consider the significant impact of expenses on workers' take-home pay. Workers report that their earnings drop below the minimum wage due to the out-of-pocket expenses they must cover. Yet in their estimates of take-home pay, companies fail to account for many of the real costs workers must pay out.

Additionally, workers must not be required to pay to use the app to access work.

Workers using vehicles

> *"For maintenance, I think I put 4 to $5000 a year. I just bought new winter tires. I had to buy new summer tires. I had to get my transmission replaced. I had to get a new 2 new front brakes, new set of rear brakes plus the headlights, my seat's coming apart, my keys are actually falling apart because of so many times that I'm getting back in the car and turning it on and off. And those keys, turns out, are $170 a piece. So it adds up pretty quick."* - worker D2.

An appropriate reimbursement rate should include compensation at the CRA mileage rate for vehicle use. The CRA mileage rate should be paid for all kilometres driven while on the app, including repositioning after a drop off. Workers frequently are asked to drop off customers or orders in areas where they will not be immediately able to access a next assignment.

On top of this amount, workers should be compensated for other expenses including but not limited to: cleaning; safety equipment such as cameras and roadside safety kits; cell phone and data usage; parking; and any additional licensing fees or inspections that are required.

Workers using e-bikes and e-scooters[7]

For workers who use e-bikes and e-scooters for delivery, a per-kilometre rate should be established for vehicle use. This should cover charging, repairs and maintenance, depreciation of equipment including batteries, insurance and attached special equipment like lights, racks and baskets. This rate should be paid for all kilometres travelled on the app.[8]

On top of that rate, workers should be reimbursed for other expenses including but not limited to cell phone and data usage, special equipment including thermal bags, and safety equipment such as gloves, rain gear, high-visibility vests and helmets.

Expenses should not unnecessarily pass through workers or be billed back

Other business costs like city or airport fees, levies and GST should be handled directly by the companies and should not be funneled through workers.

Workers report they are currently being charged for many business-related expenses such as airport fees, booking fees, GST on fees, city fees and split-fare fees. Companies must not be permitted to make deductions from workers' pay to cover these types of business expenses.

As well, companies must not be permitted to bill workers for any benefits that the company must provide them. For example, the company must be prevented from billing workers for employer compensation contributions or for the employer’s share of payroll taxes.

Prohibit unauthorized deductions

As set out in the ESA, companies must be prohibited from making unauthorized deductions from a worker's pay. We have received several reports of deductions and "overpayment" reimbursements where workers have not consented to the charge or negotiated a repayment plan. A recent example is a company making deductions for criminal record checks when numerous workers report they have already paid for them at the police station.

When unauthorized deductions are made, workers are faced with a poor communication system in order to challenge the charge. Some workers may not see the deduction or be afraid to make a complaint because of fear of suspension or deactivation.

Tip protection

Workers should have access to the tip protection provided in the ESA. Tips are not wages, and the Ministry must ensure that workers' base wages are calculated separately from tips.

Tips are highly variable and at the discretion of customers. How much a worker receives can be impacted by racism, sexism and discrimination based on other prohibited grounds.

We see no need to develop and administer a different set of rules for this industry. There should be one clear standard for how tips are treated across industries, as universal protections are more likely to be adhered to and are easier to enforce.

Pay and destination transparency

> *"Because I am in a group community, we often talk about this algorithmic wage differences. And unless I talk to other drivers and actually compare our apps together, I will never know that we are offered different pays for the exact same assignment. And this has happened to me many times already which is one of the reasons why I am going to stop working this job soon."* – worker K.

Pay and destination transparency is a significant issue for workers. They have expressed frustration that assignments are offered with very little to no information.

Workers should receive both an estimate of pay and destination information at the time an assignment is offered. Companies currently offer pay and destination information to some workers (often as a perk), so we do not see any legal or administrative barrier to providing this information.

Workers should also be informed of the tips they have received for each assignment. When providing this information, companies should also disclose any fare multipliers or bonusing that applies to the assignment that alters the base rate of pay.

In addition, workers should receive wage statements (pay stubs) for each pay period that clearly indicate the time worked, the rate of pay including any incentive or bonuses, allowances and/or expense reimbursements, vacation and statutory holiday pay, tips and the statutory or other deductions that were made. They should also receive their remaining paid sick leave entitlement. Section 27 of the ESA outlines the appropriate information workers should receive. The wage statement should also include an accounting of tips and expense reimbursements.

Suspensions and terminations (deactivation)

The majority of workers we've spoken with say they've been suspended from working for ride-hail and food delivery companies at least once in the time they've been working. Many are unaware of the reason for the suspension and report poor communication with the company when trying to rectify the situation. In many cases, the workers were reinstated. However, they report a significant loss in income and are not made whole even when it is found they were not at fault.

> *"Uber deactivates the account without listening the driver. If the passenger calls for whatever reason, Uber first deactivates your account. Then they may review what happened, but they don't care. They are not going to give any compensation for the time they kept you deactivated."*
>
> Worker A

Further, workers report that they have been threatened with suspension and/or deactivation for raising concerns about issues with their pay, tips and safety.

Many workers whose accounts were deactivated say they had few avenues to challenge the deactivations. This resulted in unemployment and a significant loss of income. Since most of these workers have not paid into the Employment Insurance ("EI") system, they were ineligible for EI benefits.

Ride-hail and food delivery workers would like to see protections that extend beyond those provided in the ESA in the event of a suspension or termination. We believe these protections should be available to all workers in BC.

The suspension and termination provisions in the ESA should be strengthened for all workers as follows.

Suspensions

Workers should not be suspended without prior warning and without just cause. When discipline is warranted, it must be progressive and appropriate to the infraction. Suspensions are a serious form of discipline and not an initial step except in the case of the most egregious violations. Should a suspension be made in error, or should a worker be found not to have engaged in misconduct, they should be made whole including the repayment of their average daily wages for any time loss.

Terminations

Workers should not be terminated without cause.

Notice and compensation for length of service

Ride-hail and food delivery workers should be eligible to receive notice or compensation for length of service in the case of a layoff, as per the ESA.

Access to Employment Insurance

Workers should have access to EI in the event of layoff through both their own contributions and contributions made on their behalf by app companies through payroll deductions.

Complaints

Complaints should be handled through a fully-funded and effective Employment Standards Branch, with the resources to conduct timely investigations and adjudications. Workers accessing the services of the Branch have the right to representation. The Ministry should consider developing an expedited complaints process to deal with unfair terminations for all workers. When a worker's livelihood is jeopardized, they should be able to get an immediate adjudication.

Workers should also have access to unionization and be able to file complaints through their union representative using the grievance procedure.

Workers' compensation coverage

The safety of these workers is at risk every day. Within the past year there have been several high-profile incidents involving ride-hail and food delivery workers. These incidents include a stabbing, a physical and verbal assault and the death of a worker in a motor vehicle accident.

> *"On my last shift or my last delivery of the night in the winter last year, I dropped the order off at the customer's door and then, as I was walking back to my vehicle. I missed a step on their pathway. And my foot turned. It was very badly sprained, and I fractured it in 3 places. But I yelled out help because I mean, I felt my foot go. And yeah, the customer picked up their order. I don't know if they just saw me or didn't see me and didn't choose to see me, I have no idea. So I had to drive myself to the emergency room. and the and the injury was on my right foot. Unfortunately, I was just too desperate to start making or needing money that I didn't fully go through their contract in the beginning and we're all independent contractors. We are responsible for our own personal insurance. We have absolutely no rights and no coverage under SkipTheDishes."* – worker J.

Companies are not following the health and safety laws designed to prevent injuries and deaths. They are not implementing violence prevention plans, addressing bullying and harassment or providing safety equipment.

Currently most workers employed in ride-hailing and food delivery have no workers' compensation protection in the case of an injury or occupational disease. The few that may be eligible (mostly food delivery workers using bikes or on foot) likely don't even know they could file a claim. In general, companies are not contributing to our workers' compensation system.

Prevention and compensation

In addition, to ensuring that workers can access compensation in the case of an injury, ride-hail and food delivery workers must be protected by all of our health and safety laws. Employers should be required to establish health and safety committees and create safe work policies to prevent injury and illness. Premiums should be paid by the companies and not downloaded onto workers.

Protection for all work

It is essential that workers are protected for all of their work time because they continue to be vulnerable to injury between transporting passengers or orders. If a worker completes a delivery but is injured exiting a building, or if a ride-hail driver is assaulted while waiting outside a concert for an assignment, they should be covered. Workers should not be forced to prove the injury arose "out of employment" and have to face legal challenges from deep-pocketed app companies. If they are active on the app, they must be covered.

Manitoba provides workers' compensation coverage to ride-hail and food delivery workers with only narrow, strict exclusions.[9]

Paid sick leave

During the COVID-19 pandemic, we saw the critical importance of having access to paid sick leave as a way of preventing the transmission of communicable diseases. Providing workers access to paid sick leave keeps our economy functioning and our communities safe. Ride-hail and food delivery

workers fulfilled essential tasks when British Columbians were required to isolate or unable to take public transportation.

The BCFED and other worker advocacy groups fought to ensure that paid sick leave was available to casual and part-time workers, and the government agreed. These workers, whether they work casually, part-time or full time, are just as deserving of access to the five days of paid sick leave as other workers in our province.

Other employment protections

Ride-hail and food delivery workers deserve access to all the other protections provided to workers in BC. This includes but is not limited to meal breaks, vacation and statutory holiday pay, and domestic and sexual violence leave.

Workers should be protected from retaliation by a company for raising an employment, health and safety or human rights issue.

Flexibility

We want to stress that there is nothing in the ESA that prevents employers from providing flexibility to workers over when and where to work. For example, in many school districts, teachers on call are able to choose from half- to full-day assignments and can even choose what grade level or neighborhood they would like to work in. While there may be a minimum number of assignments they must take in a school year, the district doesn't dictate on which days they must occur. Flexibility is purely a function of how the employer chooses to manage its workforce.

It is also important to note that despite many companies touting worker flexibility, in actual practice, workers have little control. Workers report that of the three main food delivery companies operating in the Lower Mainland, only one is accepting new workers. Several food delivery companies are requiring workers to sign up for shifts and limiting the number of shifts that are available. Workers have reported that they'd like to work but that a shift is unavailable.

Ride-hailing companies restrict where workers can pick up assignments. Workers can be prohibited from pick ups in certain areas due to having low acceptance rates or customer ratings.

This is clear evidence that it is not classification that determines the flexibility of the work, but rather how management exercises its discretion.

Access to unionization

One of the strongest themes we've heard from workers is the sense of powerlessness they feel in their relationship with app companies. The companies unilaterally set the customers' rates and workers' pay, and control ratings, privileges and in some cases when and where drivers can work. As individuals, these workers have no power over the terms and conditions of their employment. They need the ability to negotiate collectively.[10]

Workers also want to have influence over terms that extend beyond basic employment standards. Though the government may choose to intervene in some areas in the short term – like pay and destination transparency as discussed earlier -- companies often make changes to their services based on changes in consumer behavior and the algorithmic data they collect. It is nearly impossible for the government to respond to potential changes in a timely manner.

Every worker in Canada must have access to their Charter-protected right to unionize. As it stands, ride-hail and food delivery workers do not have a clear path to unionization. There are significant legal and practical hurdles to unionization that would need to be overcome.

We see the pathway to unionization as a two-step process.

First, ride-hail and food delivery workers must be covered by the *Labour Relations Code*. This should happen through inclusion in the ESA as employees. As we see companies make more significant interventions into the management of the workforce – requiring workers to accept shifts, punishment for rejecting offers of work, promoting and demoting workers based on performance -- it is likely that these workers would meet the current legal test as an employee.

Though there is a pathway to unionization as dependent contractors, workers would not be guaranteed the basic standards provided by the ESA. In practical terms it means rather than starting to negotiate from $16.75/hr, workers would start from $0.00/hr, and there would be no requirement for the final agreement to meet or exceed the ESA. And as discussed earlier, excluding a workforce that is predominantly made up of newcomers and racialized workers from the entitlements of the ESA is systemic racism and goes against the grain of the government's agenda to address structural and systemic racism.

The second step is to implement a sectoral bargaining model. It makes sense for ride-hail and food delivery to be the pilot area for expanded sectoral bargaining in BC. There are significant challenges in identifying and agreeing on the eligible list of workers: the work is low pay, the workforce has high turnover, there is no central dispatch location, workers can be spread out over a large geographic area and the use of algorithms and AI significantly interfere in the allocation and management of work. And this is what companies say they want; they have publicly asked for sector-wide labour standards in order to ensure a level playing field between companies.

Conclusion

The writing is on the wall. Ride-hail and food delivery (and, we argue, all gig workers) need employment, health and safety and labour rights. Governments across the globe are taking action and BC is being left behind. Our province is uniquely positioned to get this right, by taking the most logical and simplest path forward: providing workers with the same basic protections afforded to other workers in our province. Let's apply the proven BC model to this form of work, and not create a new, unnecessary approach. This works because we have already built up a network of intersecting rights and protections to ensure that workers don't fall through the cracks. From wage protections to sick leave, from EI to Canada Pension Plan, from violence prevention strategies to compensation for injuries on the job, the legislation is already written and it works.

For more information on working conditions for ride-hail and food delivery workers, you can also read our previous submission to the Ministry on this topic at https://bcfed.ca/precariouswork.

[1] From the BCFED's recent survey of gig drivers, approximately three-quarters (74%) were immigrants and 83% were non-white.

[2] The quotes featured in this submission are taken from the BCFED's focus groups with gig drivers during Summer 2023. We have kept them anonymous to allow them to speak without fear of retaliation.

[3] We also support requiring the taxi industry to move to a daily standard.

[4] From the BCFED's recent survey of gig drivers, almost one quarter are working over 60 hours per week.

[5] https://toddwschneider.com/dashboards/nyc-taxi-ridehailing-uber-lyft-data/

[6] In our survey, drivers estimated only 30% of their time was spent transporting a customer or package.

[7] We have not observed many workers still using traditional bicycles for this purpose.

[8] Electric bike rental companies may provide an effective comparator in determining this rate. For example, Evo car share charges $.35 per minute for an e-bike rental.

[9] https://wcb.mb.ca/wcb-coverage-for-app-based-workers

[10] According to the BCFED survey, 87% of workers would join a union if they had the option.