

Vilda Vera Mayuga  
Commissioner  
Department of Consumer and Worker Protection 42  
Broadway, 9th floor  
New York, NY 10004

April 7, 2023

Dear Commissioner Mayuga,

New York City's more than 65,000 app-based delivery workers are essential workers. Delivery workers kept New Yorkers fed and countless small businesses afloat during the height of the Covid-19 outbreak, enabling people to remain in their homes. Two years later, they continue to deliver for New Yorkers every day at subminimum wages and without benefits.

The Street Vendor Project at the Urban Justice Center, representing 2,900 New York City street vendors, we write to express our deep disappointment with the delay of implementation of Local Law 115 of 2021 – the law requiring a minimum pay standard for deliveristas by January 1, 2023 – and to raise concerns about the updated minimum pay proposals.

In addition to delaying for five months pay for workers whom the City is legally charged to protect, we are concerned with the proposed rule, once it does take effect, would allow the app companies to continue to pay delivery workers far below the minimum wage rate if the impact of certain business practices such as “order bundling” is ignored.

It is especially disturbing that it appears the delay and the undermining of the rule were the result of potentially unreported lobbying by the app companies. These multi-billion dollar corporations have established a business model based on denying basic workers' rights to some of the most vulnerable and exploited workers. **These companies have even declared in their comments that they don't believe delivery workers deserve a minimum wage.**

### **“Multi-Apping” is Simply a Canard Invented by the Apps to Pay a Sub-Minimum Wage**

The proposal to reduce workers' pay by \$3.60 per hour because they may keep several apps open while waiting for their next job, so-called “multi-apping,” is premised on faulty assumptions. Like for-hire vehicle (FHV) drivers, who receive no “multi-apping” deduction in their comparable minimum pay rule, delivery workers may spend their on-call/waiting time with multiple apps open; however, during this time, no one is paying them. When they receive a job, they proceed to fulfill that delivery, so only one app is paying them. DCWP has provided no evidence that workers are being paid by multiple apps at the same time.

In addition, multi-apping has precipitously decreased. Many apps have begun to require reservations to work. There has also been reduced order volume. As a result, the amount of multi-apping accounted for by the rule (and the accompanying monetary reduction) is overinflated. DCWP bases its monetary reduction

for multi-apping on outdated figures as a result of the apps refusing to comply with subpoenas for more recent data.

### **Each Day of Delay Is Money Lost**

Every day of delay is money lost for delivery workers who deserved a raise by law on January 1, 2023. Workers can expect to lose upwards of 5 months of guaranteed minimum pay (The rule cannot go into effect any sooner than May 8).

### **Phase-In is an Unlawful Delay**

The revised rule reduced, but continues to include, a “phase in,” which explicitly allows multi-billion dollar app corporations to delay paying their workers a minimum wage for an additional two years. All other employers (even including small businesses, such as the restaurants these apps are delivering for) were required to begin paying their workers a \$15 per hour minimum wage four years ago, in 2019. The initial TLC driver pay rule immediately brought FHV drivers up to minimum wage with no phase-in. There is no conceivable justification for it here.

### **Unregulated Business Practices That undermine Proposed Pay Rates**

DCWP should study and closely monitor the impact of practices such as “order bundling,” which can reduce workers’ pay under the Alternative Method scenario. This practice on the part of apps consists of sending multiple orders that the workers need to complete during the same trip. Ignoring this and other potentially harming business practices will allow the app companies to continue to pay delivery workers far below the minimum wage – a right that all other workers enjoy in our city.

### **Undercounting Inflation for Expenses**

At a time when transportation-sector business expenses have faced an inflationary rate three times the overall increase in the consumer price index, the COLA formula for expenses must be calculated after an annual review of expenses as required by § 20-1522(c) of the Administrative Code. The adjusted rate should reflect maintenance and safety costs and tax treatment, regardless of whether the worker delivers by car, moped or bike. This is the same methodology that the Taxi and Limousine Commission uses for app-based for-hire drivers.

By missing the deadline to enact the minimum pay law earlier this year and continuing to delay the process, DCWP has reduced the pay of workers it is charged with protecting. I urge you to revisit and strengthen the updated rule so that the City doesn’t make this any worse for our essential Deliveristas.

Sincerely,

Carina Kaufman-Gutierrez  
Deputy Director  
Street Vendor Project