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

April 7, 2023

Dear Commissioner Mayuga,

As the New York State Senator representing the 13th District and as Chair of the Senate Committee on Labor, I am deeply disappointed by the Department of Consumer and Worker Protection (DCWP). DCWP's decision to reissue the draft rule for implementing Local Law 115 of 2021 both delays and undermines the law requiring a minimum pay standard for deliveristas by January 1, 2023. With this unlawful delay, DCWP is stealing at least five months of pay from workers it is legally charged to protect.

Perhaps even worse, 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.

"Multi-Apping" is a scheme 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. They fulfill that delivery when they receive a job, they fulfill that delivery, so only one app pays them. DCWP has provided no evidence that workers are being paid by multiple apps simultaneously.

Regardless, multi-apping has precipitously decreased as many apps require reservations to work, along with reduced order volume. As a result, the amount of multi-apping accounted for by the rule and the accompanying monetary reduction needs to be more inflated. In addition, DCWP bases its monetary reduction on outdated figures because the apps refuse to comply with subpoenas.

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 the workers must complete during the same trip. Ignoring this and other potentially harmful business practices will allow the app companies to continue paying delivery workers far below the minimum wage – a right all other workers enjoy in our city.

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 costs must be calculated after an annual review of expenses as required by § 20-1522(c) of the Administrative Code. In addition, 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 worsen this for our essential deliveristas.

Inflation is at its highest point in 40 years, and corporate profits are at their highest point in 70 years. The Department of Consumer and Worker Protection should focus on helping alleviate the burden of rising costs for workers and consumers by ensuring work is fairly compensated. When deliveristas bear the overhead for app-based companies, they will feel pressured to cut costs in other aspects of their work to ensure they take as much home as possible. Every day of delay is money lost for delivery workers who deserved a raise by law on January 1, 2023. Instead, workers can expect to lose upwards of 5 months of guaranteed minimum pay.

Rather than compromising on worker pay, I request that the agency focuses on regulating the business practices that favor employer profits over worker livelihoods.

Sincerely,

A handwritten signature in black ink that reads "Jessica Ramos". The signature is written in a cursive, flowing style with a large initial "J".

Jessica Ramos
New York State Senator
Chair, NYS Senate Labor Committee