

Testimony of Daniel Ocampo

National Employment Law Project

In Support of Extending Minimum Pay Standard to Grocery Delivery Workers

Hearing before the New York City Department of Consumer and Worker Protection

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Testimony Before the Department of Consumer and Worker Protection:

My name is Daniel Ocampo, and I am a lawyer with the National Employment Law Project (NELP), a New York-based national nonprofit with more than fifty-five years of experience advocating for the labor and employment rights of low-wage workers. NELP works extensively at the federal, state and local levels, and regularly advocates for laws and regulations that protect workers in New York City.

I write today in strong support of DCWP's proposed rule to extend the city's minimum pay standard for third-party restaurant delivery workers to include grocery delivery workers. App-based grocery delivery workers for companies like Instacart and Shipt do essential work in New York City. They should be entitled to the same minimum pay standard that applies to app-based restaurant delivery workers

App-Based Restaurant and Grocery Delivery Work are Substantially Similar, and Workers Should All Be Entitled to the Same Pay Floor

DCWP is entirely correct to apply its existing restaurant delivery worker pay standard to grocery delivery workers because app-based restaurant delivery work and app-based grocery delivery work are "substantially similar," as city law requires.¹

Like DoorDash and Uber, grocery delivery platforms like Instacart and Shipt direct the third-party delivery of food in New York City. While DoorDash and Uber Eats focus primarily (though not exclusively) on the delivery of restaurant meals, and Instacart focuses primarily on the delivery of groceries, that is the only real difference. All of these corporations use platforms to engage workers to transport food from commercial establishments across New York City to customers' doors. These workers navigate the same city streets and face the same traffic, weather, and safety conditions.

1. The Experience of the Work is Substantially Similar

From the workers' perspective, the daily experience is nearly identical. Both sets of workers can log into the platform and make themselves available online to take delivery requests. While many workers are in theory free to log in whenever they choose, in practice, to make a living, workers must log in during certain peak times from prime locations—whether that's near popular restaurants or large grocery stores. They must remain continuously attuned to the app for long periods, waiting in specific locations to fulfill orders quickly when requests come through. And the platforms' algorithms appear to function the same way, determining differential pay rates according to undisclosed factors.

Workers are expected to begin working immediately after accepting a trip request on the app, traveling to the pickup location, collecting the items (whether a prepared meal or groceries), and delivering them promptly to the customer. Like

¹ New York City Local Law 2025/124, Section 1 (see discussion below; where conditions of work are "substantially similar," the pay standards should be the same).

restaurant delivery workers before the pay standard, Instacart and Shipt workers are paid only for their “on-trip” time, not for their “on-call” time—meaning many of their actual working hours go unpaid.² Similarly, Instacart and Shipt workers must themselves cover the substantial costs of doing delivery work in New York (including buying and maintaining a car or e-bike, insurance, fuel, and other necessary equipment) and both rely heavily on customer tips to supplement inadequate base pay.³

2. The Workforce is Substantially Similar

The workforce is also essentially the same. These are primarily low-wage immigrant drivers, many from Latin America, West Africa, South Asia, and China, working long hours in challenging conditions to support themselves and their families.⁴ In fact, many of the workers who deliver meals for DoorDash and Uber Eats also do grocery delivery work for platforms like Instacart. In practice, the distinction between app-based restaurant delivery workers and app-based grocery delivery workers is thin; these are often the same people doing the same work for different platforms.

3. The Business Model is Substantially Similar

The business models of these companies are also, for the most part, the same. Both rely on an army of largely immigrant low-wage workers around the city being regularly available on their platform to fulfill orders. Both classify their workers as independent contractors, giving the companies the flexibility to avoid complying with basic labor and employment laws. Both use similar algorithmic management systems to control their workforce and to make sure they have adequate labor supply at any given time—dispatching workers, monitoring performance, setting pay, and maintaining control without providing employee benefits or protections. Both generate revenue by taking substantial commissions from merchants and fees from customers, while shifting the costs and risks of the work onto workers.⁵

Despite Instacart’s repeated protestations in its public communications, in its extensive lobbying campaign, and now in its filings in federal court, there is nothing unique about Instacart’s business model, and no special “flexibility” its workers enjoy.⁶

² For a further discussion of these terms and how compensation is structured for app based workers, see *A Minimum Pay Rate for App-Based Restaurant Delivery Workers in NYC*, N.Y. City Dept. of Consumer & Worker Protection, 18-20 (Nov. 2022), <https://www.nyc.gov/assets/dca/downloads/pdf/workers/Delivery-Worker-Study-November-2022.pdf>.

³ Id.

⁴ Id. at 12.

⁵ See, e.g., *Gridwise Gig Mobility Report, 2025*, available at <https://gridwise.io/analytics/2025-annual-gig-mobility-report/> (discussing the similar business models of gig delivery companies nationally).

⁶ See, e.g., Sophia Lebowitz, *Inside Instacart’s Astro-Turf Group Opposing Worker Minimum Wage*, Streetsblog (Aug. 5, 2025), <https://nyc.streetsblog.org/2025/08/05/inside-instacarts-astro-turf-group-opposing-worker-minimum-wage>; Dani Dudeck, *Op-Ed: NYC’s Grocery Delivery Workers Deserve \$21.44 an Hour—and the Flexibility to Earn It*, PoliticsNY (Sep. 8, 2025), <https://politicsny.com/2025/09/08/op-ed-nycs-grocery-delivery-workers->

The City Council Agreed, and the Law is Clear

The New York City Council could not have been more explicit in its determination that grocery delivery workers perform work that is “substantially similar” to food delivery workers and operate under “substantially similar” working conditions. Local Law 124 contains extensive legislative findings documenting these similarities, and concludes that “the method for calculating minimum payments for a food delivery worker set forth in section 7-810 of title 6 of the rules of the city of New York may be utilized to calculate minimum payments for a grocery delivery worker.”⁷ The proposed rule faithfully implements this legislative directive by applying the existing minimum pay calculation methodology to grocery delivery workers.

Only a Uniform Pay Floor Prevents Arbitrage Opportunities

The need for consistent regulation is particularly important given the current market reality. Platforms like DoorDash and Uber Eats, which are subject to the existing pay standard, are also offering grocery delivery services. Workers performing this exact same work for some companies currently receive minimum pay protections while workers doing identical work for other companies do not. This creates an arbitrage opportunity that allows platforms like Instacart and Shipt to offer the same services as their competitors while avoiding paying their workers a minimum wage, giving them an unfair competitive advantage and incentivizing a race to the bottom. Only a uniform delivery worker pay standard can remedy this.

To the Extent there are Differences in Working Conditions, they Counsel in Favor of a Higher Pay Standard for Grocery Delivery Workers

The only plausible basis for establishing differential pay standards Instacart has been able to articulate is the assertion that their workers primarily use cars.⁸ While comprehensive workforce data remains largely unavailable because platforms like Instacart refuse to make their extensive data holdings publicly available to researchers and regulators, available evidence suggests many New York City grocery delivery workers use e-bikes rather than cars.⁹ This makes intuitive sense: the grocery delivery market is focused in Manhattan, where delivery workers are much better able to navigate city streets and make deliveries on a bike rather than in a car, and riding an e-bike is much cheaper than driving a car in New York.

[deserve-21-44-an-hour-and-the-flexibility-to-earn-it/](https://www.bloomberg.com/news/articles/2025-12-03/instacart-sues-nyc-over-grocery-delivery-pay); Beth Wang, *Instacart Sues NYC Over Grocery Delivery Pay, Tipping Laws*, Bloomberg Law (Dec. 3, 2025), <https://news.bloomberglaw.com/payroll/instacart-sues-nyc-over-grocery-delivery-minimum-pay-standards>.

⁷ New York City Local Law 2025/124, Section 1.

⁸ See *Maplebear Inc. v. City of New York*, No. 1:25-cv-09979 (S.D.N.Y. Dec. 2, 2025) (complaint at 16).

⁹ Evidence gleaned from regularly seeing e-bike based delivery workers outside grocery stores in New York City, and from discussions with grocery delivery customers about their experiences using the platforms. See also, e.g., *A Minimum Pay Rate for App-Based Restaurant Delivery Workers in NYC*, N.Y. City Dept. of Consumer & Worker Protection (Nov. 2022).

Observational evidence at major grocery locations such as Wegmans in Astor Place confirms substantial numbers of e-bike delivery workers waiting for assignment.¹⁰

To the extent there are significant numbers of grocery delivery workers who do use cars, this difference is not material enough to justify setting a whole new pay standard. The work is still essentially the same; car-based delivery just involves higher expenses (the cost of purchasing and maintaining a vehicle, fuel, insurance, and parking costs) than bike or moped-based delivery does.¹¹ But the consequence of that is that this proposed pay standard, which includes an expense component based on lower-cost delivery methods, may undercount worker expenses for those doing car-based delivery—therefore setting a pay floor that is, if anything, too low. Instacart and Shipt’s central argument for why they need a bespoke pay standard might actually support setting a higher wage floor for car-based delivery workers.

Moreover, car-based *restaurant* delivery—especially in the outer boroughs—is not uncommon. The Department is not required to set separate pay standards for e-bike delivery and for car-based delivery. But even if they did, it would not cut neatly across platform lines. This is ultimately one workforce operating as part of one app-based delivery economy. A large number of e-bike-based workers and a much smaller number of car-based delivery workers are, for the most part, working for the same platforms doing the same work. The regulatory framework should reflect this reality.

Instacart and Shipt Have No Principled Basis for Seeking an Exemption from the Minimum Pay Standard.

New York City is not generally required to set bespoke wage floors for workers in different industries. The minimum wage under federal, state, and city law is universal: all workers deserve to receive, at minimum, wages they can live on in New York City. The only reason separate standards are necessary for app-based workers is that the companies who profit from their labor classify them as independent contractors rather than employees, placing them outside the coverage of minimum wage laws.

DCWP’s proposed minimum pay standard is meant to ensure that app-based grocery delivery workers make at least the minimum wage that applies to employees in New York. The thoroughness of the Department’s study of the app-based delivery economy that produced the initial pay standard should be commended as an exercise in good policymaking, but it is not necessary to repeat this process for every subgroup of app-based workers.

App-based grocery delivery workers face the same cost of living as restaurant delivery workers. They have similar expenses for transportation and equipment.

¹⁰ Sophia Lebowitz & Olivia Bensimon, *The Instacart Loophole: Workers Are Not Covered by Minimum Wage*, Streetsblog (Nov. 14, 2024), <https://nyc.streetsblog.org/2024/11/14/newly-arrived-migrants-delivering-groceries-not-covered-by-minimum-wage-nyc>.

¹¹ *A Minimum Pay Rate for App-Based Restaurant Delivery Workers in NYC*, N.Y. City Dept. of Consumer & Worker Protection, 18-20 (Nov. 2022), <https://www.nyc.gov/assets/dca/downloads/pdf/workers/Delivery-Worker-Study-November-2022.pdf>.

They do the same kind of delivery work for the same companies—companies that have the same business model—and are paid in the same way. There is no principled basis for establishing different minimum compensation standards.

We therefore strongly support the proposed rule and urge DCWP to adopt it without delay.

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