



Discussion Paper

**Proposing Employment Standards
and Other Protections for App-Based
Ride-Hail and Food-Delivery Workers
in British Columbia**



July 2023

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INTRODUCTION

This discussion paper continues the Ministry of Labour's engagement on employment standards and other protections for app-based ride-hail and food-delivery workers in B.C.¹ The engagement, which began in Fall 2022, supports a [mandate priority](#) for the Minister of Labour and the Parliamentary Secretary for Labour.

Workers, platform companies, labour organizations, business and community organizations, and academics have participated so far.² The Ministry's initial round of public engagement confirmed that app-based ride-hail and food-delivery services have become a valued part of life in this province. For a growing number of British Columbians, the work provides a flexible way of earning income that they have increasingly come to rely on, while customers benefit from the services.

Engagement has also identified significant concerns about low, unpredictable pay for many workers, and the overall lack of protections, such as fairness when workers are deactivated from an app, as well as worker safety and workers' compensation if injured on the job. Many engagement participants agreed that appropriate employment standards and other protections for the workers are needed in these areas.

The key themes that emerged from the engagement are summarized in more detail in a What We Heard Report that can be found on the Gig Workers Engagement site: [Gig Workers - govTogetherBC](#).

Given the complexity of designing appropriate employment standards and other protections for this sector, the Ministry is taking a phased approach. This first phase addresses priority employment standards and other protections for app-based ride-hail and food-delivery workers in a way that supports the continued viability and effective operation of these services in B.C. The Ministry intends to engage on other potential standards and proposals in later phases.

¹ While this paper refers to "app-based food-delivery workers", government's intention is that any standards and protections will apply to app-based workers who deliver food **or other goods** through an app that matches customer orders with a delivery courier.

² This paper uses the term 'platform companies' to refer specifically to transportation network companies and companies that provide online ordering and delivery services for food or other goods.

PRIORITY EMPLOYMENT STANDARDS AND PROTECTIONS

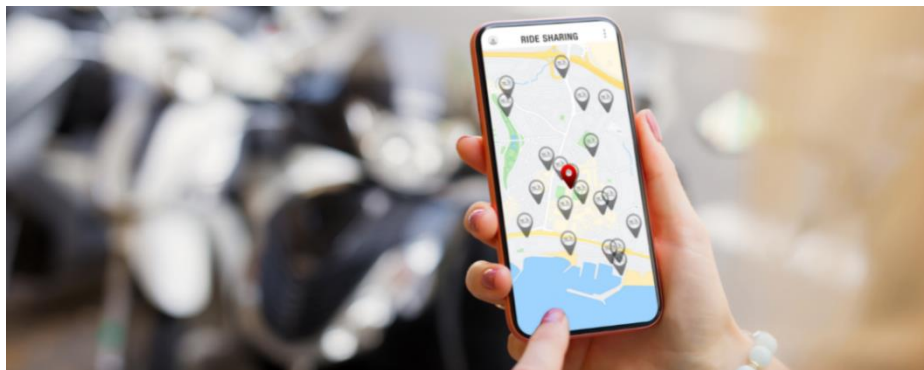
This discussion paper outlines the priority concerns heard during the engagement, including views from workers, platform companies and others, and it provides the policy context for considering appropriate employment standards and other protections for this sector. It also poses discussion questions to consider, as we seek your input on appropriate standards and other protections, including any reasons why you think this way and your suggestions on things to keep in mind when implementing any changes.

When contemplating employment standards for a group of workers in this province, it is helpful to consider B.C.'s *Employment Standards Act* (ESA), which contains minimum standards for employees. Exclusively applying the existing ESA standards, however, would not address some of the priorities and concerns that app-based ride-hails and food-delivery workers raised, such as a lack of transparency in pay and destination or unfair review processes for deactivations.

A second consideration is the value that workers place on the flexible nature of this work and how to preserve this flexibility as much as possible. For example, workers in this sector are not required to work at any specific times, can generally stop working at any time without penalty and have the option to accept or decline specific assignments. The Ministry heard from many platform companies that the way in which standards and protections are designed could impact how much flexibility they provide their workers.

A third consideration that has broad implications for the design of standards and protections is the definition of paid 'work'. The way that any standards and protections address "engaged" and "unengaged" time as paid work could have significant impacts for workers and the way this industry operates in B.C.³

For these reasons, the Ministry is exploring alternate standards to better address the workers' priorities and how these industries operate.



³ "Engaged" time is the period from the point a worker accepts an assignment to the end of the passenger drop-off or delivery. "Unengaged" time is time spent logged on to a platform but not engaged in a ride or delivery.

DISCUSSION QUESTIONS

For the current phase, the Ministry is seeking proposals, feedback and perspectives on the following priority issues:

1. Fair compensation standards
2. Pay and destination transparency
3. Account suspensions, deactivations, and terminations
4. Workers' compensation and occupational health and safety coverage

As part of the policy context, the section below includes relevant provisions of the ESA, the *Workers Compensation Act* (WCA) and the *Occupational Health and Safety Regulation* (OHS Regulation) that apply to employees for each discussion issue. They are included for information and consideration only and provide a baseline for seeking proposals. We are interested in proposals for this sector, which may be the same as, or different from, the existing standards and protections in the ESA, WCA and OHSR.

1. Fair Compensation Standards

a) Minimum Wage

What We Heard

- Many workers told the Ministry that their net income (after vehicle and work-related expenses are deducted) is less than B.C.'s general minimum hourly wage (\$16.75 as of June 1, 2023) because the payments offered for some assignments are low, and they spend periods of unpaid time waiting for assignments.
- Platform companies noted that earning opportunities for workers vary based on when and where they choose to work, with some choosing to work short stints when the demand for rides/deliveries is high, and others choosing to work long hours outside of peak times. According to some platform companies' own survey results, most workers on platforms do not rely on this work as their primary source of income. Some platform companies stated that many of their workers already earn more than B.C.'s minimum hourly wage for the time they spend engaged on assignments – however, this claim is often based on workers' gross income, including tips. If tips are excluded from the calculation, and vehicle costs they pay themselves are taken into account, many workers stated that they are often not earning B.C.'s minimum hourly wage through this work. Further, even if many workers are earning higher than the minimum hourly wage, it still means that some workers doing this work are earning less.

- Platform companies explained it would no longer be feasible to operate, and they would no longer be able to offer the flexibility that workers value – such as the ability to decline assignments or work the hours they choose – if the companies were compelled to pay workers for the entire time spent logged in (including unengaged time).
- Some academic experts and worker advocates believe the reason workers value the ability to work across platforms or decline certain orders is because this work can be unpredictable and poorly paid, so workers need that flexibility to maximize their earnings. They suggest that if there was a minimum earning standard, workers would be paid more and no longer need to accept the low-paying assignments they want the ability to decline, nor would they feel the same need to jump between platforms in search of better offers.
- Some economists noted that if the government established a minimum wage for engaged time only, it might increase the per-assignment payments workers are offered, but not their hourly incomes. Higher per-trip payments would draw more people into the sector. The result would be more workers logged onto platforms, waiting longer for fewer, better-paid assignments, while earning the same overall hourly wages they did before the policy change. This concern aligns with what the Ministry heard from workers, who said that as more people become involved in this work, they are waiting longer for assignments, therefore earning less for the time they spend logged in. Some academics also said that any policy that causes a rise in the number of workers on the road seeking assignments may have negative impacts on workforce productivity, traffic congestion and emissions.



Policy Context

- While workers are paid for engaged time, they are generally not paid for unengaged time.
- Under the ESA, employers must pay at least the minimum wage to all applicable workers. A minimum wage only sets the minimum that workers must be paid.
- The government may set a minimum wage for workers in a specific sector that is different from B.C.'s general minimum hourly wage if an alternative minimum wage better meets the needs of workers and employers in the sector.
- In designing an appropriate minimum wage for workers, some considerations include:
 - the impact of the general minimum hourly wage versus an alternative minimum wage for these workers
 - whether unengaged time should be considered part of "hours worked" for the purposes of a minimum wage, and how the minimum wage should provide compensation for engaged time
 - the impact on worker flexibility
 - the impact on costs for the platform companies
 - the impact on prices for customers
 - the impact on labour force productivity
 - the impact on traffic congestion and emissions

Discussion Questions

- What should the minimum wage for app-based ride-hail and food-delivery workers be, and how should it be structured? To assist in answering the questions, here are two approaches (listed in no particular order) that could be used:
 1. Apply a minimum hourly wage for engaged time only, setting it higher than B.C.'s general hourly minimum to recognize unpaid unengaged time. This approach requires determining the appropriate higher minimum wage. California has passed a law that provides app-based drivers with 120% of the local minimum wage for engaged time only. For ride-hail workers, [New York City](#) uses a multiple of the minimum wage for engaged time that is based on the average proportion of time workers spend unengaged, incentivizing platform companies to ensure hourly earning opportunities for workers are not undermined by an oversupply of labour.

2. Apply the general minimum hourly wage to engaged time and time spent online actively seeking assignments. Like the minimum wage standard for B.C.'s taxi drivers, the hours could be averaged over the month. Taxi companies must ensure that the total wages a taxi driver receives over the course of a month are equivalent to – or more than – the wages the driver would have received if they had been paid B.C.'s minimum wage for every hour worked in the month. If the driver has earned less than an equivalent of B.C.'s hourly minimum wage, the taxi company must pay the driver the difference.
- Do you recommend either of these approaches, or do you have a different approach to recommend for the minimum wage?
 - What is the rationale for your minimum wage recommendation? How would it address concerns from some workers that they are not able to earn B.C.'s minimum hourly wage (after expenses and excluding tips)?
 - What should government consider when implementing a minimum wage for these workers?



b) Work-Related Expenses

What We Heard

- Workers generally are not compensated for the cost of fuel, vehicle maintenance or cell phone data. Some workers say these costs are one of the reasons their net hourly income is less than the general minimum hourly wage.
- Some platform companies also require food-delivery workers to purchase their own thermal bags.

Policy Context

- Workers are interested in fair compensation after paying any work-related expenses.
- Employers may establish conditions of employment, such as requiring employees to use their own vehicles or cell phones.
- Under the ESA, however, an employer must not require an employee to pay the employer's business costs (including fuel costs and cell phone charges incurred to perform work when employees use their own vehicle or phone).
- Independent contractors, in contrast, generally pay their own business expenses, including vehicle and cell phone costs, but can charge a fee for their services to compensate for their time and expenses.

Discussion Questions

- How should workers be compensated for work-related expenses? To assist in answering this, here are three approaches (listed in no particular order) that could be used:
 1. Workers are paid an amount separate from their wages that reimburses them for work-related expenses.
 2. Set a higher minimum wage to compensate workers for work-related expenses (e.g., include a component for work-related expenses in the amount referred to in proposal number one for minimum wage above).
 3. Set a separate minimum standard in regulations to reimburse workers for vehicle expenses (e.g., a minimum rate per kilometre driven) in addition to their wages.
- Do you recommend any of these approaches, or do you have a different approach to recommend for work-related expenses?

- What would an appropriate reimbursement rate be?
- What is the rationale for your recommendation on work-related expenses? How would it address concerns from some workers that they are not able to earn B.C.'s minimum hourly wage (after expenses and excluding tips)?
- What should government consider when implementing standards for work-related expenses for these workers?



c) Tip Protection

What We Heard

- Workers said that, in some instances, platform companies will reduce their base pay based on customer tips.
- Many platform companies report that 100% of tips are paid to the workers.

Policy Context

- Traditionally, tips are a payment directly from a customer to a worker, separate from the worker's wages or earnings.
- Under the ESA, tips are not considered to be part of an employee's wages.

- Further, the ESA provides tip protection for employees by prohibiting an employer from withholding tips from an employee, making a deduction from an employee's tips, or requiring an employee to return or give the employee's tips to the employer.

Discussion Questions

- Should these workers have a tip protection standard like the existing ESA protections, or should an alternate standard be created?
- What is the rationale for your tip protection recommendation? How would it address concerns from workers that in some instances platform companies reduce their base pay based on customer tips?
- What should government consider when implementing a tip protection standard for these workers?

2. Pay and Destination Transparency

a) Pay Transparency

What We Heard

- Workers are provided with varying levels of information about the assignments offered and how pay is calculated, depending on the platform.
- Workers stated that lack of transparency on how their pay is calculated makes it difficult to decide which assignments they will accept or determine if they have been paid correctly.

Policy Context

- These app-based workers have the ability to accept or refuse specific assignments, so they are interested in knowing what an assignment will pay before accepting an assignment.
- While the ESA requires employers to provide each employee with a written wage statement every pay day showing pay information for the pay period, there are no standards for pay information for individual work assignments.

Discussion Questions

- What standards should there be for pay transparency to show workers the minimum they will be paid (excluding tips) prior to accepting an assignment, and verify that they have been paid correctly? To assist in answering the questions, here are two approaches (listed in no particular order) that could be used:
 1. Before accepting an assignment, workers are able to see the minimum payment (separate from the tip) that they are assured to receive for completing the assignment.
 2. Each month, workers must receive a pay summary that specifies the time worked during that period and provides (at a minimum) a breakdown of the amount they were paid for their time, including all the details that contribute to the pay including the tips they received.
- Do you recommend either or both of these approaches, or do you have a different approach to recommend for pay transparency?
- What is the rationale for your pay transparency recommendation? How would it address concerns from some workers that they cannot always make informed decisions about what assignments to accept or verify that they have been paid correctly?
- What should government consider when implementing a pay transparency standard for these workers?



b) Destination Transparency

What We Heard

- Some platforms withhold the destination of the trip until the assignment has been accepted or the passenger/delivery has been picked up.
- Workers explained that the lack of destination transparency makes it challenging to assess the safety of assignments they are offered.
- Workers also value destination transparency for economic and other reasons, such as the ability to refuse an assignment that takes them to a location where the return may not be compensated.

Policy Context

- These app-based workers have the ability to accept or refuse specific assignments, so they are interested in knowing the pick-up and drop-off locations before accepting an assignment.
- The OHS Regulation under the WCA provides employees with the ability to refuse unsafe work without repercussions.
- The ESA, WCA and OHS Regulations do not have standards for providing location information for individual work assignments.



Discussion Questions

- How could a destination transparency standard be designed that would allow workers to see the pick-up and drop-off locations associated with an assignment prior to accepting it?
- What is the rationale for your destination transparency recommendation? How would it address concerns from some workers that they cannot make informed decisions about which assignments to accept, or to refuse unsafe work?
- What should government consider when implementing a destination transparency standard for these workers?

3. Account Suspensions, Deactivations and Terminations

a) A Fair Process for Account Suspensions and Deactivations

What We Heard

- Unfair deactivations and timely reinstatement were the concerns raised most often by ride-hail drivers. Workers described instances of drivers' accounts being suspended for days – or terminated – based on a negative passenger report. Drivers described the devastating impact of being suddenly cut off from what is sometimes their only source of income, or an important part of their overall income.
- Workers often alleged that processes to have a suspension or deactivation decision reviewed can be unfair or non-existent. They claimed that they were not always told of the reasons for a suspension or deactivation, did not have the opportunity to present their side, had trouble accessing the platform's review process (if there was one), or did not receive timely responses to their questions or concerns.
- Workers stated that when riders and drivers have a dispute with a platform company, the complaint and deactivation process should more fairly consider their version of events.
- When workers were unfairly deactivated or suspended, they felt they should receive compensation for lost income.
- Platform companies indicated that deactivations are carried out for the protection of customers, for reasons including violence, fraud, harassment, or discrimination. Several companies reported having a review process in place for workers to dispute a deactivation. The review processes vary from company to company.

Policy Context

- Standards for suspensions and deactivations can promote fairness and transparency for workers, whose livelihoods can depend on access to a company's platform.
- For employees, the ESA does not include minimum standards related to how employers conduct complaint investigations or reach termination decisions. The ESA does recognize an employer's right to terminate an employee, including termination for just cause.
- If an employee believes they have been unfairly dismissed, however, they may bring a complaint to the Employment Standards Branch (ESB). The ESB may consider the process undertaken by the employer to reach its decision on the termination.



Discussion Questions

- What should the minimum standards be for a platform company's complaint investigation, suspension and deactivation process? To assist in answering the question, potential minimum standards could include:
 - Establishing a maximum time that a worker can be suspended from access to a platform before the suspension is considered a termination/deactivation.
 - Ensuring workers have the opportunity to respond to complaints made against them or concerns raised about their performance before they are terminated/deactivated.

- Providing workers with the right to be represented by a labour or a worker advocacy organization, or other representative of the worker's choice, in a deactivation review process.
- Do you recommend any or all of these approaches, or do you have a different approach to recommend?
- What is the rationale for your recommendation? How would it address concerns from some workers about how complaints are investigated and the deactivation/termination process?
- What should government consider when implementing standards for complaint investigation, suspension and deactivation processes for these workers?

b) Notice of Termination

What We Heard

- For some workers, ride-hail and food-delivery is their only or primary source of income, or a significant part of their overall earnings. Workers described the financial hardship they face when their ability to earn income through a platform is suddenly cut-off.

Policy Context

- A requirement to give notice of termination or compensation in lieu of notice, unless there is just cause for the termination, can discourage the unfair termination of workers.
- Under the ESA, after three consecutive months of employment, employees are entitled to one weeks' notice of termination, or compensation in-lieu, when they are terminated without just cause. The entitlement increases with an employee's years of service, to a maximum of eight weeks' notice after eight years of consecutive employment.

Discussion Questions

- Should app-based ride-hail and food-delivery workers be entitled to notice of termination, or compensation in-lieu, when they are deactivated from a platform without just cause? If so, should the entitlement be the same as that for employees under the ESA, or should it be different and how so?

- What is the rationale for your recommendation for notice of termination? How would it address concerns from workers about the financial hardship they face when their ability to earn income through a platform is suddenly terminated?
- What should government consider when implementing a notice of termination standard for these workers?

4. Workers' Compensation and Occupational Health and Safety (OHS) Coverage

What We Heard

- Workers raised concerns a range of safety risks, such as loading heavy luggage, walking or cycling in unsafe neighbourhoods and being injured by passengers.
- Immigrant-serving organizations and worker organizations noted that many workers assume they would receive compensation if they became injured on the job and were unable to work, when in fact they may have no protection provided by the platform companies.
- Platform companies indicated that they provide varying levels of training on safety issues to the workers, depending on the company. For example, some provide training videos on hazards associated with the work, while others offer minimal safety training.
- Many platform companies do not provide workers' compensation coverage to ride-hail and food-delivery workers.



Policy Context

Compensation for Work-Related Injuries

- Workers' compensation provides financial support to workers while they recover from a work-related injury, recognizing their lost earnings due to the injury.
- Employers fund this coverage through payroll-based premiums.
- Independent contractors can receive workers' compensation coverage by purchasing Personal Optional Protection from WorkSafeBC. The Ministry understands that few ride-hail and food-delivery workers have pursued this type of coverage.
- Ride-hail workers are covered by a blanket insurance policy that platform companies are required to purchase from ICBC, which can provide income replacement for injuries sustained in a motor vehicle accident.
- Food-delivery workers who have not purchased commercial vehicle insurance may not benefit from this protection for motor vehicle injuries sustained while working.

Occupational Health and Safety

- While ride-hail workers generally remain inside their vehicles while working, they can sustain an injury that is not covered by ICBC insurance if the injury is not related to a motor vehicle accident. For example, a worker might receive an injury while lifting luggage.
- Food-delivery workers are exposed to hazards, including icy pathways and stairs, and poorly lit or maintained buildings and yards.
- Both types of workers can be subject to harassment and violence from customers, resulting in unsafe conditions and injuries.
- Given that this work involves vehicles and bicycles, fatigue associated with working long hours creates safety risks both for workers and the public.
- Under the WCA, employers are responsible for ensuring the safety of their employees in compliance with the OHS Regulation.

Discussion Questions

- Should all workers be covered by workers' compensation paid by the platform companies and by the OHS Regulation?
- Is there an alternative approach the Ministry should consider?
- What is the rationale for your recommendation? How would it address concerns from some workers about lack of wage-loss compensation for some work-related injuries, and about worker safety?
- What should government consider when implementing workers' compensation and occupational health and safety coverage for these workers?



PROVIDING FEEDBACK

The Ministry is seeking input on all or any of the priority standards and protections set out above, as well as any additional relevant comments you may have. Please send input or comments to precariousworkstrategy@gov.bc.ca by September 30, 2023.

