



Seattle Office of Labor Standards

PROPOSED RULES FOR NOTICE AND COMMENT

SEATTLE OFFICE OF LABOR STANDARDS

Seattle Human Rights Rules (SHRR) Chapter 200

Rules for administering the TNC Driver Deactivation Rights Ordinance, Seattle Municipal Code 14.32

Background: On November 1, 2020, the Office of Labor Standards issued proposed rules for administering the TNC Driver Deactivation Rights Ordinance, Seattle Municipal Code (SMC) 14.32. OLS invited public comment on those rules until November 30, 2020. Upon consideration of public comment, OLS proposes changes to select proposed rules and invites the public to submit comments on those rules until **Friday, May 7, 2021, at 5 PM.**

Summary of Proposed Changes

- SHRR 200-040(5): This rule sets forth rules about a driver's eligibility to challenge temporary deactivations and defines the actions that are considered temporary deactivations. The proposed changes promote clarity related to temporary deactivations. Subsection 5(d) addresses temporary deactivations where a TNC driver was precluded from driving in certain geographic locations. Unlike the other three actions, the original proposed SHRR 200-040(5)(d) did not specify a limitation (time or financial loss) that would render it a temporary deactivation. To ensure consistency throughout each type of temporary deactivation, the proposed change specifies a time frame.
- SHRR 200-060: This rule sets forth rules related to the notice that a TNC must provide to a TNC driver about their rights to challenge a deactivation.
 - > SHRR 200-060(1)(c): This proposed change corrects a technical omission.
 - > SHRR 200-060(3)(b): SHRR 200-060(3)(b) relates to the timing of a notice that TNCs must provide drivers about the driver's right to challenge a deactivation if the deactivation at issue was based on alleged egregious misconduct. This proposed change addresses the content of the notice when the TNC cannot ascertain all information before timely notice is required.
 - > SHRR 200-060(6): This proposed change corrects a technical omission.
- SHRR 200-065: This rule sets forth rules related to special considerations in cases where the deactivation of the TNC driver involves allegations of egregious misconduct of a sexual or violent nature, or threats thereof. Proposed rules ensure that the TNC takes reasonable precautions to maintain the confidentiality of a complaining customer (complainant), including redacting the complainant's name and contact information and referring the complainant to support services.

- > SHRR 200-065(2)(a)(ii): This proposed change corrects a technical inconsistency between this section and SHRR 200-065(2)(a)(iii).
- > SHRR 200-065(2)(b): This rule requires the TNC to give information to the complainant about the deactivation process and an opportunity to participate in the arbitration process. The proposed change would remove the requirement to provide the complainant with an opportunity to review the notice prior to supplying the notice to the driver. This proposed change helps ensure that the TNC can provide the driver with timely notice about their rights to challenge the deactivation.
- > SHRR 200-065(2)(c): The proposed change clarifies the TNC's responsibility to refer a complainant to support services.
- SHRR 200-070: This rule sets forth the definition of egregious misconduct.
 - > SHRR 200-070(1): The proposed change to SHRR 200-070(1) removes an unnecessary adjective ("grievously") that may lead to confusion about the definition of "egregious misconduct."
 - > SHRR 200-070(2): The proposed change amends the non-exhaustive list of examples of egregious misconduct.
- SHRR-200-250(1): This rule sets forth a description of the neutral arbitrator's role in the proceedings, including their role in applying and interpreting SHRR Chapter 200. The proposed change gives a non-exhaustive list of examples of matters that a Neutral Arbitrator has the authority to address during an arbitration proceeding.

The proposed changes appear on the following pages, signaled by strikethrough and underline. The original proposed Chapter can be viewed in its entirety on the OLS website by clicking [here](#). Note: The finalized chapter will include immaterial, technical corrections that this document does not describe.

Please send comments by email to laborstandards@seattle.gov with the subject line "Comments: TNC Driver Deactivation Proposed Rules" or by regular mail to:

Seattle Office of Labor Standards
 810 Third Ave., Suite 375
 Seattle, WA 98104-1627
 Attention: Comments: TNC Driver Deactivation Proposed Rules

You can also comment by calling 206-256-5297.

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RIGHT TO CHALLENGE

SHRR 200-040 TNC Driver Eligibility to Challenge

SHRR 200-060 Notice of TNC Driver's Right to Challenge Deactivation

SHRR 200-065 Notice – Special Considerations

SHRR 200-070 Egregious Misconduct

ARBITRATION PROCEDURES

SHRR 200-250 Neutral Arbitrator's Role

SHRR 200-040 TNC Driver Eligibility to Challenge

- 1. Eligible TNC Driver.** A TNC driver is eligible to challenge all temporary and permanent deactivations as provided in SMC 14.32 if, during the 180 days before the TNC's initial notice to the TNC driver of deactivation or future deactivation, ten percent (10%) or more of the TNC driver's trips begin or end in the City of Seattle.
- 2. Location of Incident.** TNC driver eligibility is independent of the geographic location of the incidents leading to the TNC's decision to deactivate the TNC driver.
- 3. Deactivation.** Deactivation includes the following actions with respect to an individual TNC driver or group of TNC drivers that is implemented by a TNC:
 - a. Blocking access to the TNC driver platform;
 - b. Changing TNC driver status from eligible to provide TNC services to ineligible; or
 - c. Other material restriction in access to the TNC driver platform.
- 4. Permanent Deactivation.** A permanent deactivation is one which is unlimited in duration.
- 5. Temporary Deactivation.** A temporary deactivation is one which is limited in duration and which includes any of the following actions by the TNC for reasons related to TNC driver conduct, performance, productivity, or records, consistent with the definition of deactivation outlined in SMC 14.32:
 - a. A deactivation that is continuously in effect for three or more days;
 - b. Multiple deactivations within a 180-day period that add up to three or more days. The reasons for the deactivations need not be the same and will be reviewed through one arbitration proceeding;
 - c. A deactivation that costs the TNC driver over \$450, either through missed work or through consequential damages of more than \$450, e.g., cost of a blood alcohol test to dispute a passenger claim that TNC driver was operating the vehicle under the influence; or
 - d. Precluding a TNC driver from driving in certain geographic locations when the deactivation(s) for all locations within a 180-day period add up to three or more days.
- 6. Presumption.** There is a rebuttable presumption that a TNC driver is eligible to challenge their deactivation, which the TNC may rebut with a preponderance of the evidence that the TNC driver does not meet eligibility standards outlined in SHRR 200-040.1.

SHRR 200-060 Notice of TNC Driver's Right to Challenge Deactivation

1. **Content of notice.** The TNC must provide the TNC driver with the following information:
 - a. The effective date of deactivation;
 - b. A clear and concise statement of the reason(s) for any deactivation, including the date, time and location of all circumstances supporting the deactivation decision, the rule(s) violated, a copy or summary of the evidence the TNC considered in the deactivation decision, and the length of the deactivation or TNC driver action necessary to remedy the deactivation;
 - c. In cases alleging egregious misconduct of a sexual or violent nature, or threats thereof, the following language: "You are being deactivated based on allegations of egregious misconduct of a sexual or violent nature."; and
 - d. Notice of appeal rights using the following language: "To learn about your right to challenge your deactivation, contact THE DRIVER RESOLUTION CENTER (DRC) at EMAIL, PHONE, or ADDRESS or review its materials at WEBSITE LINK. THE DRC may provide administrative and representation services at no cost to you." The TNC shall substitute relevant contact information for the DRC in place of the words "THE DRIVER RESOLUTION CENTER (DRC)", "EMAIL", "PHONE", "ADDRESS", "WEBSITE LINK", and "THE DRC".
2. **Recipients of notice.** All covered TNC drivers must receive this notice.
3. **Timing of notice.**
 - a. **Non-egregious Conduct.** If the deactivation is for non-egregious circumstances, the TNC must provide this notice 14 days before the deactivation is effective, and again upon deactivation with updated information, if any.
 - b. **Egregious Misconduct.** If the deactivation is allegedly required to comply with law or because the TNC driver is alleged to have engaged in egregious misconduct, the TNC must provide this notice upon deactivation. If the TNC is unable to provide a complete copy or summary of the evidence the TNC considered in the deactivation decision, as required by SHRR 200-060.1.b, the TNC must supplement the notice with the completed copy or summary of the evidence considered in the deactivation decision within 72 hours.
4. **Form of notice.** All notices to TNC drivers must be:
 - a. In English and, within 10 days of the initial notice to the TNC driver, TNCs shall make a good faith effort to communicate the notice in any other language that the TNC knows or has reason to know is the TNC driver's primary language. "Primary language" means the language in which the TNC driver feels most comfortable communicating.
 - b. Provided by email and in one of the following two formats: text or the TNC driver platform, in the same manner that communications are typically sent from the TNC to the TNC driver.
5. **Failure to provide complete or timely notice.** If a TNC fails to provide complete or timely notice to a TNC driver as required by this rule, the 60-day timeline for the TNC driver to file a notice of intent to challenge tolls until the TNC fully complies with the notice requirement.
6. **Office of Labor Standards.** OLS shall create and distribute translated versions of the notice of appeal rights included in ~~Paragraph 1.e~~ Paragraphs 1.c and d to facilitate TNC compliance with translation requirements. TNCs are not required to provide the notice in ~~Paragraph 1.e~~ Paragraphs 1.c and d in languages other than English until OLS has created

and posted the necessary translation on the OLS website. TNCs are encouraged to notify OLS of the need for additional translations.

SHRR 200-065 Notice – Special Considerations

- 1. Notice – Egregious Misconduct of a Sexual/Violent Nature.** In allegations of egregious misconduct of a sexual or violent nature, or threats thereof, involving a complainant, the TNC must include the following language in the notice to the TNC driver outlined in SHRR 200-060: “It is a criminal act of tampering with a witness to attempt to induce the complainant or witness to testify falsely, withhold testimony, or to absent themselves from the arbitration proceedings.”
- 2. TNC - Special Precautions in Cases of Egregious Misconduct of a Sexual/Violent Nature.** The TNC must take reasonable precautions in cases alleging egregious misconduct of a sexual or violent nature, or threats thereof, involving a complainant:
 - a. The TNC shall take steps to maintain the confidentiality of the complainant. Unless the complainant requests a more specific notice, the TNC shall revise the notice provided pursuant to SHRR 200-060.1.b as follows:
 - i. Redact the individual’s name and contact information;
 - ii. Include the zip ~~code~~ code(s) of the location of the incident (instead of stating the specific location of the incident);
 - iii. Include the 24-hour period during which the incident occurred (instead of stating the specific time of the incident).
 - b. The TNC shall inform the complainant about the process and provide the complainant with the option to participate. ~~Before providing notice to the TNC driver, the TNC shall provide the complainant the information that will be provided to the TNC driver and give the complainant an opportunity to review it and recommend additional redactions.~~
 - c. The TNC shall refer the complainant ~~and witness~~ to a nonprofit organization ~~who~~ that provides brief intervention support, advocacy, safety planning, and counseling.

SHRR 200-070 Egregious Misconduct

- 1. Definition.** Egregious misconduct is an abhorrent or ~~grievously~~ wrong action or behavior that endangers the physical, emotional, or economic well-being or safety of the passenger, a third person, or the TNC. Egregious misconduct may include conduct that occurs outside of the TNC driver’s provision of TNC services if the TNC can prove by clear and convincing evidence that the conduct directly bears on the TNC driver’s fitness to provide TNC services.
- 2. Examples.** Egregious misconduct includes but is not limited to the following conduct in connection with a TNC driver’s provision of TNC services: assault, sexual assault, sexual harassment, communicating with a minor for immoral purposes, sexual conduct as defined in RCW 7.90.010.4, harassment as defined in RCW 10.14.020, unlawful imprisonment as defined in RCW 9A.40.040, solicitation of ~~a commercial sex~~ any sexual act, theft, fraud, robbery, burglary, prostitution, reckless driving, or driving under the influence of alcohol or drugs; solicitation (picking up a passenger in a vehicle used by a TNC driver without the passenger arranging the trip through an online-enabled application or platform, such as an application dispatch system, unless the ride is arranged through another for-hire service provider and the driver has the appropriate license); failing to maintain a valid state driver’s license, for hire driver’s license or permit,

personal vehicle insurance, or vehicle insurance that covers commercial transportation services.

3. **Discrimination.** Egregious misconduct includes a TNC driver's conduct which is intended to or results in different treatment or differentiates between or among individuals or groups of individuals by reason of the protected classes covered by Seattle Municipal Code Chapter 14.06.

ARBITRATION PROCEDURES

SHRR 200-250 Neutral Arbitrator's Role

1. **Rules.** The Neutral Arbitrator shall interpret and apply these rules to arbitrate all disputes efficiently and fairly. The Neutral Arbitrator is the sole decision-maker on how to conduct the proceedings, with the purpose to afford all parties a full and equal opportunity to present evidence material and relevant to the resolution of the dispute. The Neutral Arbitrator shall also direct the order of proof, the admission of evidence, bifurcation of proceedings, and the determination of dispositive issues. For example, the Neutral Arbitrator would address, as appropriate, any concerns by complainants or witnesses regarding safety or confidentiality, as well as due process rights of drivers.
2. **Expedited Proceedings.** The Neutral Arbitrator may order expedited proceedings.
3. **Non-compliance.** In the case of willful non-compliance with any order issued by the Neutral Arbitrator, the arbitration panel may draw adverse inferences and the Neutral Arbitrator may exclude evidence and other submissions, make interim award of costs arising from such non-compliance and issue any other enforcement orders that the Neutral Arbitrator is empowered to issue under applicable law. Before drawing an adverse inference, the arbitration panel must allow the party against whom it is drawing the inference to argue against the adverse inference.
4. **Remedy Calculations.** If a Deactivation Appeals Panel determines that a deactivation is unwarranted, the Neutral Arbitrator may either calculate the remedy due to the TNC driver or retain jurisdiction for up to 30 days to permit the parties to reach a resolution on the remedy.