

PROPOSED RULES FOR NOTICE AND COMMENT

SEATTLE OFFICE OF LABOR STANDARDS Seattle Human Rights Rules (SHRR) Chapter 250

Practices for administering App-Based Worker Paid Sick and Safe Time Ordinance requirements
under Seattle Municipal Code 8.39

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SHRR 250-010 Purpose

These Rules govern the practices of the Seattle Office of Labor Standards in administering the requirements of the App-Based Worker Paid Sick and Safe Time Ordinance, Seattle Municipal Code (SMC) 8.39.

SHRR 250-020 Practice Where Rules Do Not Govern

If a matter arises in administering the App-Based Worker Paid Sick and Safe Time Ordinance that is not specifically covered by these Rules, the Director shall specify the practices to be followed.

SHRR 250-030 Construction of Rules

These Rules shall be liberally construed to permit the Seattle Office of Labor Standards to accomplish its administrative duties in implementing the App-Based Worker Paid Sick and Safe Time Ordinance, including providing technical assistance, determining if a violation has occurred and prescribing penalties and remedies.

SHRR 250-040 Severability

These Rules are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection or portion of these rules or the application thereof to any hiring entity, independent contractor, or person or circumstance, is held to be invalid, it shall not affect the validity of the remainder of these Rules, or the validity of the application of the Rules to other persons or circumstances.

SHRR 250-050 Force of Law

These Rules supplement the provisions of the App-Based Worker Paid Sick and Safe Time Ordinance and shall have the force and effect of law.

SHRR 250-060 More Generous Practices

Nothing shall be construed as discouraging or prohibiting any hiring entity from adopting or retaining practices that provide more generous app-based workers labor standards than the protections established by SMC 8.39.

SHRR 250-070 Employment Status

No provision of these Rules shall be construed as providing any determination regarding the legal status of app-based workers as employees or independent contractors.

SHRR 250-080 Other Legal Requirements

The App-Based Worker Minimum Paid Sick and Safe Time Ordinance defines requirements for app-based worker protections and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater requirements; and nothing in SMC 8.39 shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall SMC 8.39 be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under SMC Chapter 8.39 affecting such person.

SHRR 250-090 Definitions

1. Creative Services or Works

- a. In general. Consistent with SMC 8.39, “creative services or works” means labor that results in or contributes to the creation of original works, as well as the works resulting from such labor.
- b. Original works. Original works are artistic, literary, or intellectually created works that are created through processes such as fiction and non-fiction writing, art, photography, graphic design, marketing, and related consulting services, and that exist in a tangible medium (such as paper, canvas, film, or digital format).

2. Make available via the worker platform. Information is “made available via the worker platform” when a) a document in a commonly used electronic format is displayed on the worker platform (e.g., PDF), or b) a link to the content is available on the worker platform, and the link is not password-protected or can be accessed using the same log-in credential that an app-based worker uses for the worker platform.

3. Marketplace Network Companies

- a. In general. Consistent with SMC 8.39, marketplace network company means a network company primarily engaged in facilitating or presenting pre-scheduled offers in which (a) the application or platform enables the prospective customer and app-based worker to exchange information about the scope and details of services to be performed, prior to the customer placing the online order for those services or the app-based worker accepting the offer; (b) the app-based worker sets their own rates; and (c) the network company does not monitor offers by mileage or time. On-demand network companies and companies that primarily provide delivery services are not marketplace network companies.
- b. Primarily engaged in facilitating or presenting pre-scheduled offers.

- i. “Primarily engaged in facilitating or presenting pre-scheduled offers” that meet the criteria outlined in SMC 8.39.020 (“marketplace network company” definition) means, for all offers requiring services performed in Seattle, the ratio of the offers that meet the criteria outlined in the “marketplace network company” definition compared to total offers facilitated or presented by a network company equals or exceeds 65% during the preceding calendar year. For a network company that did not facilitate or present an offer during the preceding calendar year, the calculation shall be based on the first 90 calendar days of the current year in which the network company engaged in business.
 - ii. The Agency may review the network company’s marketing materials, promotional materials, or public statements (e.g., public company filings and investor presentations). In the event that a network company describes itself in a way that is inconsistent with the definition of “marketplace network company” in SMC 8.39.020, the Agency may request evidence of compliance with SMC 8.39 and these Rules.
- c. The application or platform enables the customer and app-based worker to exchange information. “The application or platform enables the customer and app-based worker to exchange information” means that the network company does not limit either
 - i. the types of information the customer and app-based worker can exchange about the scope and details of the service; or
 - ii. the time periods and length during which the app-based worker can communicate with the customer through the network company’s messaging platform. Provided, however, that the network company may limit the exchange of information before the prospective customer initiates communication or contact with the app-based worker (e.g., initiates a request that the app-based worker perform a service, sends the app-based worker a message, or solicits responses from interested app-based workers related to an online order) and after the app-based worker begins performance of services in furtherance of the offer.
- d. App-based Worker sets their own rates.
 - i. “App-based worker sets their own rates” means that app-based workers list their own rates or rate ranges on their individual profiles, and there is no network company policy or algorithm that impedes app-based workers from setting their own rates. A network company that allows customers to set the rate paid for an offer or prioritizes some app-based workers over others based on the rates the app-based workers set for their own services does not meet the definition of “worker sets their own rates.” (E.g., use of an algorithm that takes into account app-based workers’ rates when determining initial order of appearance in search results or suggesting an app-based worker as a service provider.) A functionality enabling customers to search or sort results based on service price does not impede app-based workers from setting their own rates.
 - ii. A network company is permitted to set minimum rates for app-based workers on its platform.
 - iii. A network company is permitted to set maximum rates for app-based workers on its platform as reasonably necessary for regulatory compliance, fraud mitigation, and security management purposes. A network company shall publish a clear rationale when setting a maximum rate for such a purpose.

- e. Network company does not monitor offers by mileage or time.
 - i. A network company “monitors offers by mileage or time” when it collects and tracks data that give the company knowledge of the time(s) or mileage when an app-based worker begins, performs work in furtherance of, and/or completes an offer.
 - ii. Collection of data includes, but is not limited to, requiring an app-based worker or customer to inform the network company regarding the information outlined in SHRR 250.100.4.e.i or using the worker or customer facing platform or other technology to gather such information (e.g., by using GPS tracking).
 - iii. Tracking data includes, but is not limited to, taking actions to compile or analyze the data and/or making decisions that include consideration of the data.
 - iv. In determining whether a network company monitors offers by mileage or time, the Agency may consider what information regarding offer mileage or offer time a network company knows before, during, and after performance of an offer. If a network company collects data that give the company knowledge of the time(s) or mileage when an app-based worker begins, performs work in furtherance of, and/or completes an offer, the Agency presumes that the network company also tracks the data unless the network company explicitly informs the customers and app-based workers on its platforms that the network company does not conduct the behaviors defined in SHRR 250.100.4.e.iii (e.g., publishes a policy regarding use of such data on its website).
- f. Network companies that primarily provide delivery services are not marketplace network companies. “Primarily provide delivery services” means, for all offers requiring services performed in Seattle, the ratio of the offers for delivery services relative to the total offers facilitated or presented by the network company equals or exceeds 65% during the preceding calendar year. For a network company that did not facilitate or present an offer during the preceding calendar year, the calculation shall be based on the first 90 calendar days of the current year in which the network company engaged in business.

4. **Network Company**

- a. In general. Consistent with SMC 8.39, a network company that does not fall within any of the exclusions listed in subsection 8.39.020 is subject to the requirements of SMC 8.39.
- b. Marketplace network company not covered. A network company meeting the definition of “marketplace network company” pursuant to subsection 8.39.020 is not a covered network company and is not subject to the requirements of SMC 8.39.
- c. Facilitation of orders excluded from coverage.
 - i. **Coverage exclusion of network company due to facilitating excluded online orders.** A network company is excluded from coverage if it exclusively facilitates online orders within the excluded categories in the definition of “online order” in SMC 8.39.020. If any of the transactions facilitated by an otherwise covered network company meets the definition of an “online order,” the network company is covered by SMC 8.39.
 - ii. **Network companies that facilitate both covered and excluded online orders.** A network company that facilitates both covered and excluded online orders must provide app-based workers with a policy that describes how the network company differentiates offers that it considers to be associated with covered

and with excluded online orders. The policy must be available to the app-based worker via the worker platform.

5. On-Demand Network Companies

- a. In general. Consistent with SMC 8.39, on-demand network company means a network company that is primarily engaged in facilitating or presenting on-demand offers, as defined by SMC 8.39.020, to app-based workers.
- b. Primarily engaged in facilitating or presenting on-demand offers. When determining whether a network company is “primarily engaged in facilitating or presenting on-demand offers,” OLS will consider whether:
 - i. For all offers requiring services performed in Seattle, the ratio of on-demand offers relative to total offers facilitated or presented by the network company equals or exceeds 65%, during the preceding calendar year. For a network company that did not facilitate or present an offer during the preceding calendar year, the calculation shall be based on the first 90 calendar days of the current year in which the network company engaged in business; and
 - ii. The company’s marketing materials, promotional materials, and public statements (e.g., public company filings and investor presentations) describe the company as meeting the definition of “on-demand network company” in SMC 8.39.020.

6. Online Order

- a. In general. Consistent with SMC 8.39, online order means an order for services that is placed through an online-enabled application or platform and is facilitated or presented by a network company for its own benefit.
- b. Exclusion of Services Subject to Professional Licensure
 - i. **Excluded professional licenses.** The term “online order” excludes transactions for services subject to the following professional licenses: license to practice law and license to practice medicine.
 - ii. **Criteria for exclusion of additional professional licenses.** The Director may issue rules excluding additional categories of professional licenses based on the Director’s evaluation of the professionals’ bargaining power and influence over their compensation and working conditions when performing app-based work, the average earnings in the industry, information provided by professionals, trade groups, and/or industry representatives, and existing labor standards protections in relevant statutory and/or regulatory frameworks.

7. **Primary language.** “Primary language” means the language in which the app-based worker feels most comfortable communicating. Each network company shall make a good faith effort to determine the primary languages of app-based workers accessing its worker platform.

SHHR 250-100 Accrual of Paid Sick and Safe Time

1. Accrual Notification

- a. In general. Consistent with SMC 8.39, network companies are required to provide monthly notification of accrued paid sick and safe time for app-based workers that work with covered network companies.
- b. Retained Accrued Time. If an app-based worker has accrued paid sick and safe time under Ordinance 126091, then the network companies shall also include the app-based worker’s retained accrued time under Ordinance 126091 when providing monthly notification as required in SMC 8.39.

SHHR 250-110 Use of Paid Sick Time and Safe Time

1. Retention of paid sick and safe time

- a. In general. Consistent with SMC 8.39, a food delivery network company must retain paid sick and safe time that an app-based worker may have accrued under Ordinance 126091.
- b. Compensation. A network company shall compensate the app-based worker for use of paid sick and safe time retained under Ordinance 126091 or Ordinance 126788 using the average daily compensation calculation defined in SMC 8.39.

2. No use of paid sick and safe time due to verified allegation of sexual assault

- a. In general. Consistent with SMC 8.39, an app-based worker can use their paid sick and safe time during a deactivation or other status that prevents work for the network company, unless such status is due to a verified allegation of sexual assault perpetrated by the app-based worker.
- b. Verified allegation of sexual assault. A verified allegation of sexual assault is an allegation that is supported by external evidence, substantiated by the network company, such as:
 - i. Victim or witness testimony or statement;
 - ii. Police report;
 - iii. Court documents;
 - iv. Statement of an advocate for victims of domestic violence, sexual assault, or stalking;
 - v. Statement of an attorney;
 - vi. Statement of a member of the clergy;
 - vii. Documentation from a medical provider or other professional;
 - viii. Video or pictures of the alleged incident; or
 - ix. Other evidence in accordance with the network company's policies and procedures for verifying allegations of sexual assault.
- c. Retroactive access. An app-based worker shall have retroactive access to previously approved paid sick and safe time if the network company, upon concluding their verification process, found the sexual assault allegation to be unsubstantiated.

3. Accessible System

- a. In general. Consistent with SMC 8.39, a network company shall establish an accessible system for app-based workers to understand, request, and use their paid sick and safe time and shall make the accessible system available via smartphone application or online web portal.
- b. Requirements for Accessible System.
 - i. The network company shall include a link to the accessible system in its worker platform.
 - ii. The network company shall make the accessible system available in English and the primary language of the app-based worker.
 - iii. The network company shall make the accessible system accessible from any location.
 - iv. An accessible system shall include monthly information on how the network company calculated the app-based worker's average daily compensation, including:

1. The current rate of average daily compensation for use of paid sick and safe time;
2. A designation of which days worked were included in the accrual calculation, and;
3. Total earnings for the applicable period.
- v. An accessible system shall include a mechanism for the app-based worker to request paid sick and safe time and for the network company to approve such requests, including timely responses from network company to app-based worker's requests to use paid sick and safe time.
 1. A network company's response is timely when it confirms the receipt of the request within 1 hour and either approves or denies the request within 48 hours of the app-based worker's request.
 2. The approval notification shall include the specific start and end time of the paid sick and safe time hours, which shall be in 24-hour increments.
- vi. The network company shall make the written Notice of Rights pursuant to SMC 8.39 available in the accessible system.
- c. Provision of monthly paid sick and safe time information. The network company may also use the accessible system to include ongoing access to paid sick and safe time information since the last notification pursuant to SMC 8.39.060.L, including:
 - i. Amount of accrued paid sick and safe time available since the last notification;
 - ii. Amount of paid sick and paid safe time used since the last notification period;
 - iii. Any unused paid sick and safe time available for use.
4. **Notification where use of paid sick and safe time not authorized.**
 - a. In general. Consistent with SMC 8.39 the network company can withhold compensation if the network company determines an app-based worker used paid sick and safe time for a reason not authorized in SMC 8.39. A network company shall provide a method of contact and accessible procedure for the app-based worker to contest the withholding of compensation and to assert that the app-based worker's use of paid sick and safe time was for an authorized purpose.
 - b. Method of contact. A network company shall provide the app-based worker a designated email or phone number where the app-based worker can directly communicate with network company personnel on issues related to contesting the withholding of compensation and to assert that the app-based worker's use of paid sick and safe time was for an authorized purpose.
 - c. Performed services during the requested paid sick and safe time. When a network company withholds compensation for the requested day(s) of paid sick and safe time pursuant to SMC 8.39.060.E.2, the network company shall provide the evidence of their determination (e.g. a record of the app-based worker's performed order(s) during the requested day(s) of paid sick and safe time) to the app-based worker along with the notification of determination.

SHHR 250-120 Notice of Rights

1. **In general.** Consistent with SMC 8.39, a network company shall provide each app-based worker with a written Notice of Rights established by SMC 8.39. The Agency shall create and distribute a model notice of rights in English and other languages. Network company shall provide the Notice of Rights in an electronic format that is readily accessible to the app-based worker.

2. **Required languages for its translation.** A network company shall make the Notice of Rights available to the app-based worker in English, and any language that the network company knows or has reason to know is the primary language of the app-based worker. If the Agency creates a model notice of rights in English and other languages, the network company shall make the model notice of rights available in all such languages to all app-based workers on the worker platform.
3. **Manner of distribution.** The written Notice of Rights shall be made available to the app-based worker via the accessible system. No less than annually, the network company shall affirmatively provide the app-based worker with the Notice of Rights via email and in one of the following two formats: text message or via a message in the accessible system. The manner of distribution shall be the same manner that communications are typically sent from the network company to the app-based worker. For a new app-based worker or an app-based worker who has not begun a period of engaged time for a six-month period, the network company shall affirmatively provide the app-based worker with the Notice of Rights within 48 hours of the app-based worker beginning a period of engaged time via email and in one of the following two formats: text message or via the accessible system. The manner of distribution shall be the same manner that communications are typically sent from the network company to the app-based worker.

SHHR 250-130 Policies and Procedures

1. **In general.** Network companies shall affirmatively provide each app-based worker with written notice of the network company's policy and procedure for meeting the requirements as stated in SMC 8.39.100.B
2. **Accessible System.** The network company shall publish clear instructions and procedures for the accessible system. The instructions and procedures shall include information on where an app-based worker can access the accessible system and how to navigate such system including, but not limited to, easy-to-follow steps to request their paid sick and safe time.
3. **Procedure where use of paid sick and safe time not authorized.** The network company shall publish its policy for meeting the accessible procedure under SMC 8.39.060.I.1. The policy shall have the following elements:
 - a. The network company's expected response time to an app-based worker's contestation;
 - b. Made available via the worker platform, and;
 - c. Made available in English and the primary language of app-based worker(s).

SHHR 250-140 Network Company Records

1. **In general.** A network company shall retain records that document compliance with SMC 8.39 and SHRR Chapter 250 for each app-based worker.
2. **Retention period.** A network company shall retain the records required by subsection SHRR 250-140.1 for a period of three years.
3. **Presumption where records not retained.** If a network company fails to retain adequate records required under subsection SHRR 250-140.1, there shall be a presumption, rebuttable by clear and convincing evidence, that the network company violated SMC 8.39 and SHRR Chapter 250 for the relevant periods and for each app-based worker for whom records were not retained.
4. **Records verifying allegations of sexual assault.** The network company shall retain all records that document the verification of sexual assault allegation(s) where the app-based worker is the alleged perpetrator and shall retain it for three years.
5. **Records of unauthorized use of paid sick and safe time.** The network company shall retain all records that are used to determine that an app-based worker uses paid sick and safe time for a reason not authorized in SMC 8.39, in addition to records of all communications when the app-

based worker contests the determination. Network company shall retain these records for three years.

SHRR 250-150 Effective Date of Rules

These rules shall take effect on January 13, 2024.