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Title: A Local Law to amend the administrative code of the city of New York, in relation to the wrongful deactivation of high-volume for-hire vehicle drivers

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Attachments: 1. Summary of Int. No. 1078, 2. Int. No. 1078, 3. June 8, 2023 - Stated Meeting Agenda, 4. Hearing Transcript - Stated Meeting 6-8-23, 5. Minutes of the Stated Meeting - June 8, 2023

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Int. No. 1078

By Council Members Krishnan, Hanif, Lee, Cabán, Farías, Avilés, Brewer, Richardson Jordan, Marte, Ung, Abreu, Hudson, Restler, Riley, Won, Gutiérrez, Stevens and Narcisse

A Local Law to amend the administrative code of the city of New York, in relation to the wrongful deactivation of high-volume for-hire vehicle drivers

Be it enacted by the Council as follows:

Section 1. Chapter 12 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 8 to read as follows:

SUBCHAPTER 8

WRONGFUL DEACTIVATION OF HIGH VOLUME FOR-HIRE VEHICLE DRIVERS

§ 20-1281 Definitions. As used in this subchapter, the following terms have the following meanings:

Deactivation. The term “deactivation” means any (i) indefinite or permanent discharge, termination, or layoff of a high-volume for-hire vehicle driver or (ii) revocation or restriction of access to the driver platform or

authorization to accept trips on the driver platform that is either continuously in effect for 72 hours or consists of multiple periods that total at least 72 hours within a 180-day period.

Driver platform. The term “driver platform” means the driver-facing application dispatch system software or any online-enabled application, service, website, or system used by a high-volume for-hire vehicle driver that enables the prearrangement of passenger trips for compensation.

Driving performance data. The term “driving performance data” means any data regarding a high-volume for hire vehicle driver’s operation of the for-hire vehicle, including, but not limited to, data recording a high-volume for-hire vehicle driver’s rates of acceleration, deceleration, braking, speed, road movements, or any other electronic monitoring of driving performance.

High-volume for-hire vehicle driver. The term “high-volume for-hire vehicle driver” means a driver who performs driving services for a high-volume for-hire vehicle service.

High-volume for-hire vehicle service. The term “high-volume for-hire vehicle service” has the same meaning as set forth in subdivision gg of section 19-502.

Just cause. The term “just cause” means a high-volume for-hire vehicle driver’s failure to satisfactorily perform job duties or misconduct that is demonstrably and materially harmful to the high-volume for-hire vehicle service’s legitimate business interests.

Prior deactivation. The term “prior deactivation” means a deactivation that occurred during the 6 years prior to the effective date of the local law that added this subchapter.

Probation period. The term “probation period” means a defined period of time, not to exceed 30 days, from the first date that a high-volume for-hire vehicle driver performs driving services for a high-volume for-hire vehicle service, within which high volume for-hire vehicle services and high-volume for-hire vehicle drivers are not subject to the prohibition on wrongful deactivation set forth in sections 20-1282 and 20-1283.

Progressive discipline. The term “progressive discipline” means a disciplinary system that provides for a graduated range of reasonable responses to a high-volume for-hire vehicle driver’s failure to satisfactorily

perform such high-volume for-hire vehicle driver's job duties, with the disciplinary measures ranging from mild to severe, depending on the frequency and degree of the failure.

§ 20-1282 Prohibition on wrongful deactivation. a. A high-volume for-hire vehicle service shall not deactivate a high-volume for-hire vehicle driver who has completed such service's probation period except for just cause or a bona fide economic reason.

b. In determining whether a high-volume for-hire vehicle driver has been deactivated for just cause, the fact-finder shall consider, in addition to any other relevant factors, whether:

1. The high-volume for-hire vehicle driver knew or should have known of the high-volume for-hire vehicle service's policy, rule, or practice that is the basis for progressive discipline or deactivation and knew or should have known of the potential consequences for violation of the policy, rule, or practice;

2. The high-volume for-hire vehicle service's policy, rule, or practice that is the basis for progressive discipline or deactivation is reasonably related to safe and efficient high-volume for-hire vehicle service operations;

3. The high-volume for-hire vehicle service provided relevant and adequate training to the high-volume for-hire vehicle driver;

4. The high-volume for-hire vehicle service's rule or practice, including the utilization of progressive discipline, was reasonable and applied consistently;

5. The high-volume for-hire vehicle service undertook a fair and objective investigation into the job performance or misconduct;

6. The deactivation is proportionate and accounts for mitigating circumstances and the high-volume for-hire vehicle driver's past work history; and

7. The high-volume for-hire vehicle driver violated the policy, rule or practice or committed the misconduct that is the basis for progressive discipline or deactivation.

c. Except where deactivation is for an egregious failure by the high-volume for-hire vehicle driver to

perform their duties, or for egregious misconduct, a deactivation shall not be considered based on just cause unless:

1. The high-volume for-hire vehicle service has utilized progressive discipline; provided, however, that the high-volume for-hire vehicle service may not rely on discipline issued more than 1 year before the purported just cause termination; and

2. The high-volume for-hire vehicle service had a written policy on progressive discipline that was provided to the high-volume for-hire vehicle driver.

d. A high-volume for-hire vehicle service shall provide the high-volume for-hire vehicle driver with 14 days' advance notice of the impending deactivation, except that (i) where a deactivation is for bona fide economic reasons, the high-volume for-hire vehicle service must provide 120 days' advance notice, and (ii) advance notice is not required where a deactivation is for egregious misconduct or for an egregious failure to perform duties. Where advance notice is required, the notice shall include a written statement of the reasons for and the effective date of deactivation and provide notice, in a form and manner designated by the department, of the high-volume for-hire vehicle driver's right to challenge such deactivation. The notice shall also include a written statement describing eligible high-volume for-hire vehicle drivers' rights to access unemployment insurance.

e. Within 5 days of deactivating a high-volume for-hire vehicle driver, the high-volume for-hire vehicle service shall provide a written explanation to the high-volume for-hire vehicle driver of the precise reasons for the deactivation. The notice shall also include a written statement describing eligible high-volume for-hire vehicle drivers' rights to access unemployment insurance in New York state. If advance notice is required pursuant to subdivision d of this section, the high-volume for-hire vehicle service shall provide the notice required pursuant to this subdivision in addition to such notice.

f. This section shall not apply to any deactivation that occurred prior to the effective date of the local law that added this section.

§ 20-1283 Wrongful prior deactivations. a. Within one year after the effective date of the local law that added this section, a high-volume for-hire vehicle driver who was subject to a prior deactivation may petition the high-volume for-hire vehicle service for reinstatement and restoration of driver platform access. Within 30 days after receipt of such petition, the high-volume for-hire vehicle service shall reinstate or restore the driver platform access of the petitioner, unless the prior deactivation occurred during the probation period or was due to just cause or a bona fide economic reason.

b. In determining whether a prior deactivation was for just cause, the fact-finder shall consider, in addition to any other relevant factors, whether:

1. The high-volume for-hire vehicle driver knew or should have known of the high-volume for-hire vehicle service's policy, rule or practice that was the basis for deactivation and knew or should have known of the potential consequences for violation of the policy, rule or practice;

2. The high-volume for-hire vehicle service's policy, rule, or practice that was the basis for deactivation was reasonably related to the safe and efficient company operations;

3. The high-volume for-hire vehicle service's rule or practice was reasonable and applied consistently;

4. The deactivation was proportionate and accounted for mitigating circumstances and the high-volume for-hire vehicle driver's past work history; and

5. The high-volume for-hire vehicle driver violated the policy, rule, or practice or committed the misconduct that was the basis for deactivation.

c. If a high-volume for-hire vehicle service does not reinstate or restore driver platform access within 30 days after receipt of a petition pursuant to subdivision a of this section, the high-volume for-hire vehicle service shall provide a written explanation to the high-volume for-hire vehicle driver of the precise reasons for the prior deactivation.

§ 20-1284 Bona fide economic reasons. a. A deactivation, including a prior deactivation, shall not be

considered based on a bona fide economic reason unless supported by a high-volume for-hire vehicle service's business records showing that the deactivations of high-volume for-hire vehicle drivers are in response to a proportionate reduction in volume of sales or profit within the fiscal quarter prior to the deactivation.

b. Where deactivations are based on a bona fide economic reason, the deactivations must be made in order of economic impact and seniority. The department shall promulgate rules establishing a method by which economic impact and seniority shall be considered in determinations of the order of deactivations. This subdivision shall apply only to deactivations that occur on or after the effective date of the local law that added this section.

§ 20-1285 Burden of proof; evidence. a. The high-volume for-hire vehicle service shall bear the burden of proving just cause by a preponderance of the evidence in any proceeding alleging a violation of this subchapter, subject to the rules of evidence as set forth in the civil practice law and rules or, where applicable, the common law.

b. In determining whether a high-volume for-hire vehicle service had just cause for deactivation, the fact-finder may not consider any reasons proffered by the high-volume for-hire vehicle service but not included in the written explanation provided to the high-volume for-hire vehicle driver required by subdivision e of section 20-1282 or subdivision c of section 20-1283.

§ 20-1286 Provision of data. a. Upon the issuance of the notice required pursuant to subdivision e of section 20-1282, the high-volume for-hire vehicle service shall provide the deactivated high-volume for-hire vehicle driver with any information and data relevant to the high-volume for-hire driver's deactivation. Such information shall include, but need not be limited to:

1. Driving performance data specific to the high-volume for-hire vehicle driver;
2. Anonymized and aggregated driving performance data of the high-volume for-hire vehicle service's high-volume for-hire vehicle driver workforce in the city;
3. All customer comments, ratings, and complaints received regarding the high-volume for-hire vehicle

driver; and

4. Anonymized and aggregated reports regarding discipline imposed across the high-volume for-hire vehicle service's high-volume for-hire vehicle driver workforce in the city.

b. Upon the issuance of the notice required pursuant to subdivision c of section 20-1283, the high-volume for-hire vehicle service shall provide the deactivated high-volume for-hire vehicle driver with any information and data relevant to the high-volume for-hire driver's deactivation, such as the information required under subdivision a of this section, to the extent that such information is available to the high-volume for-hire vehicle service.

§ 20-1287 Informal resolution and arbitration. a. Department investigations. The department shall not proceed with its investigation of a complaint filed pursuant to section 20-1207 alleging a violation of section 20-1282 or 20-1283 unless (i) the high-volume for-hire vehicle driver or such high-volume for-hire vehicle driver's representative and the high-volume for-hire vehicle service fail to reach an informal resolution pursuant to subdivision b of this section and do not agree to arbitration pursuant to subdivision c of this section or (ii) an arbitration proceeding relating to the complaint has been withdrawn or dismissed without prejudice.

b. Informal resolution process. After receiving a complaint pursuant to section 20-1207 alleging a violation of section 20-1282 or 20-1283, the department shall notify the high-volume for-hire vehicle driver or such high-volume for-hire vehicle driver's representative and the high-volume for-hire vehicle service that they may resolve the complaint informally. The parties shall have 15 days after receipt of such notice to informally resolve the complaint, unless they mutually agree to a longer timeframe. If the parties resolve the complaint pursuant to this subdivision, they shall memorialize that resolution in a written agreement, on a form provided by the department, and such written agreement shall be subject to approval by the department. A failure on the part of the high-volume for-hire vehicle service to engage in the informal resolution process shall be a violation subject to a civil penalty under section 20-1209, but such violation shall not be subject to enforcement pursuant to sections 20-1207, 20-1208, 20-1210, 20-1211 and 20-1212.

c. Deactivation appeals arbitration process. If the parties fail to resolve the complaint pursuant to subdivision b of this section, the department shall notify the parties of the option to proceed to arbitration pursuant to this subdivision. If the parties elect to proceed to arbitration pursuant to this subdivision, the parties shall file a notice of intent to arbitrate with the department within 30 days after notification by the department. If the parties do not file such a notice, the department shall proceed with its investigation of the complaint pursuant to section 20-1207.

1. The parties to an arbitration proceeding shall jointly select the arbitrator from a panel of arbitrators. The number of arbitrators on the panel shall be determined by the department. The arbitrators on the panel shall be chosen by a committee of 8 participants established by the department and comprised of:

(a) Four high-volume for-hire vehicle driver-side representatives, including high-volume for-hire vehicle drivers or advocates; and

(b) Four high-volume for-hire vehicle service-side representatives, including high-volume for-hire vehicle services or advocates.

2. If an insufficient number of high-volume for-hire vehicle driver-side and high-volume for-hire vehicle service-side representatives agree to participate in the committee pursuant to paragraph 1 of this subdivision, the department shall consult with those who have agreed to participate and select individuals to fill the requisite number of openings on the committee.

3. If the committee established pursuant to paragraph 1 of this subdivision is unable to select a sufficient number of arbitrators for the panel as determined by the department, the department shall select the remaining arbitrators.

4. If the parties are unable to agree on an arbitrator, the department shall select an arbitrator from the panel.

5. The department shall provide interpretation services to any party requiring such services for the arbitration hearing.

6. The high-volume for-hire vehicle service shall pay all the costs, fees, and expenses of an arbitration proceeding conducted pursuant to this subdivision. The arbitration hearing shall be held at a location designated by the department or a location agreed to by the parties and the arbitrator. Except as otherwise provided in this chapter, such arbitration shall be subject to the labor arbitration rules established by the American Arbitration Association and the rules promulgated by the department to implement this subchapter. In case of a conflict between the rules of the American Arbitration Association and the rules of the department, the rules of the department shall govern. Any rules promulgated by the department implementing this section shall be consistent with the requirement that in any arbitration conducted pursuant to this section, the arbitrator shall have appropriate qualifications and maintain personal objectivity, and each party shall have the right to present its case, which shall include the right to be in attendance during any presentation made by the other party and the opportunity to rebut or refute such presentation.

7. If a high-volume for-hire vehicle driver or such high-volume for-hire vehicle driver's representative agrees to an arbitration proceeding pursuant to subdivision c of this section, arbitration shall be the exclusive remedy for the wrongful deactivation dispute and neither the high-volume for-hire vehicle driver nor such high-volume for-hire vehicle driver's representative shall have a right to bring or continue a private cause of action or administrative complaint under this subchapter, unless such arbitration proceeding has been withdrawn or dismissed without prejudice.

8. Each party shall have the right to apply to a court of competent jurisdiction for the confirmation, modification, or vacatur of an award pursuant to article 75 of the civil practice law and rules, as such article applies, pursuant to applicable case law, to review of arbitration proceedings in accordance with standards of due process.

§ 20-1288 Exceptions. This subchapter shall not:

1. Apply to any high-volume for-hire vehicle driver during a probation period;
2. Limit or otherwise affect the applicability of any right or benefit conferred upon or afforded to a

high-volume for-hire vehicle driver by the provisions of any other law, regulation, rule, requirement, policy, or standard including but not limited to any federal, state, or local law providing for protections against retaliation or discrimination; or

3. Limit or otherwise affect the authority of the taxi and limousine commission to issue, revoke, or suspend the licenses of high-volume for-hire vehicle drivers or prevent a high-volume for-hire vehicle service from deactivating a high-volume for-hire vehicle driver whose license has been revoked or from deactivating a high-volume for-hire vehicle driver whose license has been suspended for the duration of the suspension.

§ 2. Paragraph 1 of subdivision b of section 20-1207 of the administrative code of the city of New York, as amended by local law number 80 for the year 2020, is amended to read as follows:

1. Any person, including any organization, alleging a violation of this chapter may file a complaint with the department within two years of the date the person knew or should have known of the alleged violation, except that (i) a complaint alleging a violation of section 20-1282 or section 20-1283 may be filed only by the deactivated high-volume for-hire vehicle driver or by a representative of such high-volume for-hire vehicle driver, provided that the high-volume for-hire vehicle driver has agreed to such representation and (ii) a complaint alleging a violation of section 20-1283 may be filed within one year after the effective date of the local law that added subchapter 8 of this chapter.

2. Upon receiving such a complaint, the department shall investigate it, except that for a complaint alleging a violation of section 20-1282 or 20-1283, the department shall follow the procedures set forth in section 20-1287.

§ 3. Paragraph 5 of subdivision b of section 20-1207 of the administrative code of the city of New York, as amended by local law number 80 for the year 2020, is amended to read as follows:

5. The department shall keep the identity of any complainant confidential unless disclosure is necessary to resolve the investigation or is otherwise required by law, except that for complaints alleging violations of section 20-1282 or 20-1283, the department shall provide notice of the complaint and the identity of the

complainant to the high-volume for-hire vehicle service as soon as practicable. The department shall, to the extent practicable, notify such complainant that the department will be disclosing the complainant's identity before such disclosure.

§ 4. Subdivision c of section 20-1208 of the administrative code of the city of New York, as added by local law number 107 for the year 2017 and redesignated by local law number 2 for the year 2021, is redesignated subdivision d and amended to read as follows and a new subdivision c is added to read as follows:

c. For each violation of section 20-1282 or 20-1283, the department shall order reinstatement or restoration of the driver platform access of the high-volume for-hire vehicle driver, unless waived by the high-volume for-hire vehicle driver. For each violation of 20-1282, the department may, in addition, grant the following relief: \$500, an order directing compliance with section 20-1282, rescission of any discipline issued, payment of back pay for any loss of pay or benefits resulting from the wrongful deactivation, and any other equitable relief as may be appropriate.

d. The relief authorized by this section shall be imposed on a per employee or high-volume for-hire vehicle driver and per instance basis for each violation.

§ 5. Section 20-1209 of the administrative code of the city of New York, as added by local law 107 for the year 2017, is amended to read as follows:

a. For each violation of this chapter, except for any violation of section 20-1283, an employer or high-volume for-hire vehicle service is liable for a penalty of \$500 for the first violation and, for subsequent violations that occur within two years of any previous violation of this chapter, up to \$750 for the second violation and up to \$1,000 for each succeeding violation.

b. The penalties imposed pursuant to this section shall be imposed on a per employee or high-volume for-hire vehicle driver and per instance basis for each violation.

§ 6. Subdivision a of section 20-1211 of the administrative code of the city of New York, as amended by local law number 2 for the year 2021, is amended to read as follows:

a. Claims. Any person, including any organization, alleging a violation of the following provisions of this chapter may bring a civil action, in accordance with applicable law, in any court of competent jurisdiction:

1. Section 20-1204;
2. Section 20-1221;
3. Subdivisions a and b of section 20-1222;
4. Section 20-1231;
5. Subdivisions a, b, d, f and g of section 20-1241;
6. Section 20-1251;
7. Subdivisions a and b of section 20-1252; [and]
8. Section 20-1272;
9. Section 20-1282; and
10. Section 20-1283.

§ 7. Subdivisions c and d of section 20-1211 of the administrative code of the city of New York, as amended by local law number 2 for the year 2021, are amended to read as follows:

c. For each violation of section 20-1272, 20-1282 or 20-1283, the court shall order reinstatement or restoration of hours of the fast food employee or reinstatement or restoration of the driver platform access of the high-volume for-hire vehicle driver, unless waived by the fast food employee or high-volume for-hire vehicle driver, and shall order the fast food employer or high-volume for-hire vehicle service to pay the reasonable attorneys' fees and costs of the fast food employee or high-volume for-hire vehicle driver. [The] For each violation of section 20-1272 or 20-1282, the court may, in addition, grant the following relief: \$500 [for each violation], an order directing compliance with section 20-1272 or 20-1282, rescission of any discipline issued, payment of back pay for any loss of pay or benefits resulting from the wrongful discharge or deactivation, punitive damages, and any other equitable relief as may be appropriate.

d. Statute of limitations. A civil action under this section shall be commenced within two years of the

date the person knew or should have known of the alleged violation, except that for a violation of section 20-1283, a civil action shall be commenced within one year after the effective date of the local law that added subchapter 8 of this chapter.

§ 9. This local law takes effect 120 days after it becomes law, provided that the commissioner of consumer and worker protection shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

RL
LS #10312
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