



September 2021

New York City Passes Sweeping Food Delivery App Laws

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New York City Council has passed a package of six bills that together regulate nearly every aspect of the relationships between third-party food delivery services and their delivery workers within New York City. The bills, passed on September 23, 2021, (and explained in more depth below) are expected to be signed into law by Mayor Bill de Blasio within the next few days.

Restaurants will be directly impacted by a provision in one of the bills that says all third-party food delivery services must modify contracts with restaurants to ensure that bathroom facilities are made available to delivery workers unless exceptions apply.

Prohibition on Fees for Payment of Wages

Bill [2296-2021](#) prohibits third-party food delivery services from charging delivery workers a fee in order to obtain their wages and tips in a specific payment method, such as direct deposit or check. Additionally, the bill requires third-party food delivery services to pay its delivery workers on a weekly basis.

Disclosure of Gratuity Polices

Bill [1846-2020](#) prohibits third-party food delivery services from soliciting a tip from a customer unless it also discloses (i) the proportion or fixed amount of each tip that will be distributed to the food delivery worker, (ii) the manner in which the tip is provided to the

worker (whether immediately or not), and (iii) the method in which the tip will be provided (in cash or another method).

The law also requires that, for each transaction, a food delivery worker shall be notified:

- how much the customer paid as a gratuity
- whether the customer paid an additional gratuity after delivery
- if the customer decided to remove the gratuity, and
- the reason for the removal if such a reason is provided

Upon any change or payment of gratuity, the third-party delivery service shall notify the food delivery worker and credit such gratuity to the individual's account. The delivery service shall also disclose to the courier the aggregate amount of compensation and the aggregate amount of gratuities earned by the courier no later than the day after they are earned.

Third-party food delivery services must maintain for at least three years records demonstrating compliance with the above requirements as a condition of maintaining a license to operate in New York City.

Minimum Payments Per Trip

Bill [2294-2021](#) establishes the mechanism by which the City will determine the minimum

amount earned by a food delivery worker per trip, exclusive of gratuities.

Under this bill, the Department of Consumer and Worker Protection (the Department) is tasked with analyzing the working conditions for food delivery workers, including:

- the pay they receive and the methods by which pay is determined
- total income typically earned
- expenses of such workers
- equipment required to perform their work
- the hours of such workers
- average mileage per delivery trip
- mode of travel
- safety conditions

The bill gives the Department the power to request or issue subpoenas for production of data, documents and other information from a third-party food delivery service relating to food delivery workers. Such information may include the times that workers are available to work for the third-party service, how trips are offered or assigned to workers, the compensation workers receive from the service, any gratuities workers receive, agreements or policies covering workers, contact information of workers, information relating to the setting of fees paid by food service establishments and consumers, and any other information deemed relevant by the Department.

Based on its analysis, the Department shall, no later than January 1, 2023, establish a method for determining the minimum payments for a food delivery worker. How much a food delivery worker will earn per trip will be based upon such calculation. Third-party food delivery services are forbidden from taking a tip credit toward wages it must pay food delivery workers.

Beginning February 1, 2024 (and no later than February 1 of each year thereafter), the Department shall announce any update to the minimum payment calculation. The update, if any, would then take effect on April 1 of the same year.

Geographic Limits on Delivery

Bill [2289-2021](#) addresses general provisions relating to the working conditions for workers and requires that third-party food delivery services permit workers to set limits on distance and routes for deliveries.

Third-party food delivery services must inform the delivery worker, prior to the trip, the address where the food, beverage or other goods must be picked up, the estimated time and distance per trip, whether the customer provided a gratuity, and the compensation for the trip (excluding gratuity).

Delivery workers must also be provided the opportunity to (i) set the maximum distance per trip they will travel, and (ii) reject routes that include bridges or tunnels, both of which can be changed at any time by the worker and at their sole discretion. Third-party food delivery services are forbidden from retaliating against a worker for their chosen parameters in the form of, amongst other things, denial of work opportunities, reduction in hours or pay or a reduction in the worker's public or internal "approval" rating.

Each third-party food delivery service must also provide its workers with a notice of rights under the law. Such notice of rights will be created and published by the Department.

For each violation, a third-party food delivery service will be subject to a \$500 fine for the first violation and, for subsequent violations that occur within two years of any previous violation, up to \$750 for the second violation

and up to \$1,000 for each succeeding violation. Food delivery workers will also be entitled to seek compensatory damages in actions against third-party food delivery service for any violations under the law.

Insulated Food Bags to Be Provided to Delivery Workers

Bill [2288-2021](#) requires third-party food delivery services to provide, at their own expense, insulated food bags to food delivery workers that have worked at least six deliveries for the service. Previously, a third-party food delivery service could require its workers to provide insulated food bags at their own expense.

The bill gives the Department the power to deny, suspend, or revoke a third-party delivery service's license to operate in New York City if the service is found to have violated these provisions two or more times within a two-year period.

Bathroom Access for Delivery Workers

Bill [2298-2021](#) states that a third-party food delivery service must include in its contracts with restaurants a provision that requires the restaurant to make available its bathroom facilities to third-party food delivery workers so long as the delivery worker seeks access to the facilities while picking up an order for delivery. However, the bill notes that a restaurant is not required to do so if (i) accessing the toilet facility would require a worker to walk through the establishment's kitchen, food preparation area, storage area or utensil washing area or (ii) accessing the facility "would create an obvious health and safety risk to the food delivery worker or to the establishment."

While the bill does not define the term "health and safety risk," the Department is charged with developing rules and enforcing the bathroom measures.

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