



September 13, 2024

Re: Fall Rulemaking 2024 – Implementation of House Bill 24-1129

Dear Director Moss:

I write to you on behalf of Portier, LLC (“Portier”), a subsidiary of Uber Technologies, Inc. (“Uber”), that contracts with independent couriers who deliver goods through the Uber platform. Portier submits these initial comments and recommendations regarding the implementation of House Bill 24-1129, codified at Colorado Revised Statutes (C.R.S.) Title 8, Article 4 (2024), C.R.S. § 8-4-126. Additionally, because this is the first time that the Colorado Department of Labor and Employment (CDLE) has regulated a delivery network company (“DNC”), Portier offers context and background information regarding the technological requirements for implementation.

Comments

1. Definition of “deactivation”

C.R.S. § 8-4-126(1)(b) defines a deactivation as “conduct that a delivery network company engages in to materially restrict a driver's access to the digital platform for more than seventy-two hours, including blocking a driver's access to the digital platform, suspending a driver, or changing a driver's status from eligible to ineligible to provide delivery services.”

A thoughtful definition of “deactivation” is critical to ensuring workable regulation in this area. Portier urges CDLE to consider the below additional contours to the definition of a deactivation.

Portier notes that couriers may lose access to the platform for administrative reasons—for example, the courier has not yet submitted an outstanding document. In that instance, the platform will send a timely notification letting the courier know that they need to submit the document. At the time of that notification, Portier expects that the loss of access will be remedied

as soon as the courier submits the document. Only if the courier fails to take action to submit the document could the loss of access exceed seventy-two hours.

From Portier's perspective, this would not require a reconsideration process. Indeed, invoking the challenge procedure in such a case has the potential to inadvertently prolong the courier's loss of access. Portier therefore recommends clarification that access issues that the courier may resolve through unilateral action are not "deactivations" that would give rise to the availability of a challenge procedure or the additional requirements related to "deactivations."

Similarly, certain conditions outside Portier's control that give rise to a temporary suspension may ultimately persist beyond seventy-two hours (e.g., inclement weather that necessitates a pause in all activity on the Uber platform). Portier recommends clarification that in such cases temporary suspensions do not constitute "deactivations" so long as the DNC regularly communicates to the courier the fact of and the reason for the ongoing temporary suspension.

Suggested language: "Deactivate" or "deactivation" means conduct that a delivery network company engages in to materially restrict a driver's access to the digital platform for more than seventy-two hours, including blocking a driver's access to the digital platform, suspending a driver, or changing a driver's status from eligible to ineligible to provide delivery services through the delivery network company's digital platform.

"Deactivation" does not include:

- (i) A restriction in access that is resolvable through unilateral action by a driver, regardless of the ultimate duration of the restriction;
- (ii) A restriction in access that is contingent on a driver's compliance with licensing, insurance, or other regulatory requirements; or
- (iii) Any other temporary suspensions when the digital platform is unavailable to a driver due to reasons unrelated to the action or behavior of the driver and that are clearly communicated to the driver at the time of the temporary suspension. Such reasons include but are not limited to: technology, software, or network outages; account access or security issues; routine maintenance; and inclement weather endangering the safety of drivers. If the conditions giving rise to such reasons persist beyond seventy-two hours, the DNC must regularly communicate to the driver the existence of the temporary suspension and the reason for the temporary suspension.

2. Enforceability of deactivation policy

C.R.S. § 8-4-126(4)(e) provides that a DNC's contract with a courier must be disclosed and emailed to couriers fourteen days before becoming enforceable. However, there may be instances in which a new courier could experience an access restriction consistent with a DNC's deactivation policy or contract with the courier within the first fourteen days of the courier's providing services through the platform. Portier seeks clarification that platforms may take action based on policy or contract violations, especially in cases of egregious misconduct, regardless of whether the courier has been providing services for at least fourteen days.

3. Format of required disclosures for delivery tasks

C.R.S. § 8-4-126(3)(f) requires that certain information about each delivery task be prominently displayed, in a font size that is at least one and one-half times larger than any other information, and presented using design techniques intended to draw the eye. Portier observes that these requirements may inadvertently result in designs that are difficult to parse and interact with. For example, delivery addresses must be smaller than pickup addresses, and buttons allowing couriers to accept offers may be obscured. Portier recommends that CDLE adopt a safe harbor rule allowing for designs that prominently display the required information and intend to draw the eye to such information.

One of the required pieces of information that must be displayed pursuant to C.R.S. § 8-4-126(3)(a) is the address or addresses where goods must be picked up. Portier notes that it may not be possible to display all pickup addresses on a single screen, along with the additional required information, unless the addresses are shown through a visual such as a map. Portier recommends clarification that displaying pickup locations in a visual map, which also shows cardinal and intercardinal directions for the delivery route, satisfies the requirement to display pickup addresses.

4. Additional languages

C.R.S. § 8-4-126(4)(f) and (5)(a) empower CDLE to require DNCs to make their deactivation policies and contracts with couriers available in up to three additional languages beyond English, Spanish, and Arabic. Should CDLE determine that a DNC's deactivation policy or contract with a courier be made available in additional languages, Portier requests that CDLE provide an implementation timeline of at least 120 days after the rule's effective date to allow for additional translations. This ensures adequate time to develop accurate translations.

5. Consumer prompt

C.R.S. § 8-4-126(6) requires a DNC to prompt a consumer as a means to encourage the consumer to ensure a clear, well-lit, safe delivery path and to secure pets. Portier notes that consumers receive key prompts related to their activity on the Uber platform, such as order status information. If any prompt is perceived by the consumer as irrelevant, it dilutes the importance of each notification and can overwhelm the consumer. We recommend clarification that consumer prompts may be prioritized and tailored based on context and relevance—for example, prompting consumers to ensure paths are well-lit only at night.

Background on tech development

Portier appreciates that CDLE has never before regulated a digital platform in this manner, and therefore would like to provide a broad introduction to the process of product development and the implementation of product changes.

Uber builds tech at a global level for our customers across multiple devices; a change to one part of the app experience is never made in a vacuum. For example, displaying the information required at C.R.S. § 8-4-126(3)(a), which must be displayed in compliance with the requirements at C.R.S. § 8-4-126(3)(f), is not just a matter of increasing font size. The new requirement dictates a redesign that not only involves adjustments to size and style, but also that accounts for different means of access (e.g., app vs. browser), different devices (e.g., mobile phone vs. tablet vs. computer), and different operating systems (e.g., iOS vs. Android).

After design is complete and the user experience is confirmed, the changes must then actually be built and undergo rigorous testing. Although a new requirement may appear simple, it can take months of work across multiple teams. Overly prescriptive regulations as to the method and format in which DNCs provide the information required by a law can be excessively burdensome and necessitate delays in implementation.

If CDLE introduces new technological requirements through the rulemaking process, Portier respectfully requests that the effective date of the new requirements be no sooner than January 1, 2026.

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Portier appreciates your consideration of these comments. Should you have any questions, please contact me at

Sincerely,

