

November 4, 2024

Scott Moss
Director, Division of Labor Standards and Statistics
Colorado Department of Labor and Employment
633 17th Street, Suite 201
Denver, CO 80202-3660

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 comments and recommendations regarding the proposed rules implementing House Bill 24-1129, codified at Colorado Revised Statutes (C.R.S.) Title 8, Article 4 (2024), C.R.S. § 8-4-126.

Comments

1. Design of offer

C.R.S. §§ 8-4-126(3)(a) and (f) purport to require 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. These requirements will result in designs that are difficult to read and interact with. In some cases, it may be impossible to disclose all the information in the required font size on one screen in a readable way. This will likely lead to unsafe app interactions while driving, such as taking longer to review an offer or clicking or scrolling through multiple screens.

These requirements also may be impossible to implement on platforms and software that the DNC does not own, such as phones (outside of the DNC’s own app) and car interfaces (e.g., Apple CarPlay). Based on our data and feedback from drivers, out-of-app experiences like Apple CarPlay are desirable and more convenient for drivers and increase their engagement with earning opportunities: drivers using out-of-app experiences accept offers they want *and* reject offers they don’t want at a higher rate. While Portier can control the amount and design of information that the Uber app discloses to drivers, Portier is bound by the product constraints of other platforms that drivers may choose to use to review offer information.

Accordingly, Portier makes the following recommendations:

- Adopt a safe harbor rule allowing for designs that prominently display the core of the required information without unduly posing risks to driver safety.
- Clarify that at least the requirement that a DNC disclose information to the driver in C.R.S. § 8-4-126(3)(a) applies only to offers presented within the DNC's native digital platform and, so long as the DNC discloses the required information in the DNC's digital platform for each offered delivery task, the DNC has discharged its obligation.

2. When a DNC is considered to connect a consumer and a driver

Portier cautions that the proposed rule may be read to impose an untenable timing requirement regarding the exact moment the DNC must prompt the consumer. Such prescriptive requirements may have unintended consequences that run counter to the purpose of the rule. For example, requiring a consumer notification at a time when the consumer may be viewing other relevant prompts may result in a consumer choosing to disable all notifications, including those concerning driver safety. Portier recommends rule language that affords DNCs flexibility to determine the appropriate time and method to deliver the driver safety prompt to maximize its effectiveness.

Suggested language: (A) A DNC is considered to connect a driver to a consumer when the consumer pays for a driver to complete a delivery task.
 (B) If a delivery task includes transactions involving more than one consumer, a DNC must prompt each individual consumer.

3. Batched order fare

Portier requests clarification that a disclosure pursuant to C.R.S. §§ 8-4-126(3)(b)(I)-(II) for a delivery task involving multiple transactions must disaggregate the fare if the fare for each transaction is calculated individually. If the fare is calculated on a delivery task basis, rather than on a transaction basis, the DNC should not be required to disaggregate the fare.

Suggested language: When a DNC makes a disclosure pursuant to C.R.S. § 8-4-126(3)(b)(I)-(II) for a delivery task involving multiple transactions, the DNC shall provide the required amounts disaggregated by transaction, if such amounts are determined on a transaction basis.

4. 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.”

Portier requests clarification that, if a driver is unable to access the platform because the driver has not completed a basic requirement for platform access and the issue is unilaterally resolvable by the driver, the DNC is not considered to be engaging in conduct to restrict the driver's access. In the same way that a DNC would not be engaging in conduct to restrict a driver's access if the driver simply did not log into the platform, the DNC is not engaging in conduct to restrict a driver's access if the driver has not uploaded required identity documents (such as a valid and unexpired driver's license) or met basic device or software requirements.

Suggested language: “Deactivation” or “suspension” does not include a driver's inability to access a DNC's or TNC's digital platform due to the driver's failure to complete access requirements applicable to all drivers and if the driver can take unilateral action to regain access to the digital platform.

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

Sincerely,

/s/ Allison Peck

Allison Peck, Counsel
Uber Technologies, Inc.