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November 4, 2024

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

Re: DLSS Fall Rulemaking, Proposed DATA Labor Rules

Director Moss:

Thank you for the opportunity to provide our comment on the proposed DATA Labor rules published by the Division. TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.5 million employees and countless customers in the fields of information technology, artificial intelligence, ecommerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance.

Our comments on this draft rule are intended to provide clarity for the businesses seeking to comply with these new laws, as well as for the workers looking to understand their rights under the law. Ultimately, we appreciate that the draft rule is within the scope of the enacted laws, and we ask that the Division does not expand the draft rule beyond the enacted statute.

5.1 Wage transparency disclosures

Proposed Section 5.1.1 of the rules requires that this information be disaggregated by transaction, if available. While disaggregation of consumer tips on the receipt is possible when a delivery task involves multiple transactions, a similar per-transaction treatment is not necessarily possible for platforms, and does not account for a business model in which compensation is calculated and offered for each delivery task, whether the task includes one or multiple consumer transactions. The current language could be interpreted to argue that DNCs should arbitrarily assign some portion of compensation to each delivery in the delivery task. We request that the Division clarifies this language the final rule, or alternately issues guidance clarifying

that this disaggregation is not required where compensation is offered by delivery task. This could be accomplished by adding to 5.1.1:

“Disaggregation of compensation from the DNC by transaction is not required if the DNC only offered compensation on a delivery-task basis.”

5.2 Task acceptance time

The proposed rules requiring DNCs to provide drivers 60 seconds to accept delivery task offers, even for pre-scheduled blocks (block of time), present significant challenges for this particular business model. Unlike individual, on-demand delivery offers, the pre-scheduled block model operates more like a flexible marketplace where DNCs make blocks of time available on a first-come, first-served basis, allowing drivers the freedom to pick up work according to their own schedules and availability. Imposing a strict 60-second acceptance window for these pre-scheduled blocks is not technically feasible given the dynamic, marketplace-style nature of these blocks. Implementing such a requirement would disrupt the flexibility and efficiency of the pre-scheduled block model, to the detriment of both drivers and customers. Suggested edit to the proposed rules:

5.2.1 The requirement that a DNC ensure all drivers have at least sixty seconds to decide whether or not to accept an offered delivery task applies to all task offers directed to an individual driver, including an offer to compensate a driver for a block of time for multiple deliveries.

5.3 Disclosures to consumers

The proposed rule requires in Paragraph (B) that a DNC “prompt each individual consumer at the time that it connects them to a driver.” This language could be interpreted to impose a temporal requirement that the prompt must be sent at the time the driver accepts the delivery task offer and the connection first occurs. We find it unnecessary to have this level of specificity in the rule and this provision is not contemplated by the statute. If the ultimate goal of this provision is to ensure that each consumer receives a timely and relevant safety prompt, that can be accomplished without the rule specifying the timing of the prompt in a manner that is not workable in all scenarios and models.

An immediate safety notification at the time the driver accepts a delivery task is actually not optimal timing for most deliveries. Take for instance that many DNC delivery tasks are accepted by the driver an hour or more before the delivery arrives to the consumer. As a result, the current practice of some DNCs is to send these types of prompts once the driver has picked up the delivery and is en route to the consumer, so that the timing of the prompt aligns better with when the consumer typically is preparing for the delivery’s arrival. We suggest the following revisions to 5.3:

(A) A DNC is considered to connect a driver to a consumer when a driver accepts a delivery task.

(B) If a delivery task includes transactions involving more than one consumer, a DNC must prompt

each individual consumer ~~at the time that it connects them to a driver.~~

(C) A DNC must prompt each individual consumer prior to the driver arriving at the consumer's location.

These changes are also necessary because drivers for pre-scheduled block delivery models can provide and allow a worker to accept a task offer far in advance, often days, and DNCs do not then have the information of a specific customer order or orders as they are only estimating the volume of customer orders at that future time. Providing companies with the ability to customize when they send safety notifications would increase the effectiveness of these notifications, as they could be sent when they are most likely to be seen, and also avoids an issue of spamming customers with excessive notifications. This could lead come customers to disable alerts altogether and not receive any safety notifications, defeating the purpose of this requirement.

There are also common scenarios where customers may not receive the in-app notification at all, such as if they have turned off notifications, or placed their order through a website rather than the app. Relying solely on an in-app method of notification could result in inconsistent coverage and reduce the overall effectiveness of the safety prompt requirement. Additionally, the content of the notification should be relevant to the nature of the delivery and the circumstances, to ensure that consumers are receiving helpful and tailored notifications.

Under this rule, DNCs should be able to determine the prioritization and tailoring of the notification to the delivery task, as well as the implementation, communication method, timing and frequency of these notifications based on their specific business models and customer behavior and engagement, and we request that this rule is amended accordingly.

7.1 Translations

Should CDLE determine that a DNC's deactivation policy or worker contracts be made available in additional languages as C.R.S. § 8-4-126(4)(f) and (5)(a) allow, it would be reasonable that the Division provide DNCs and TNCs an implementation timeline of at least 120 days after the rule's effective date. This would help to ensure that DNCs and TNCs can develop accurate translations for their workers in these additional languages.

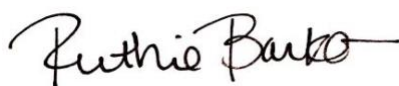
Additional Guidance

We also ask for guidance to be issued under this proposed rule on the following items:

- DNCs need more clarity in the 24-hour earnings disclosure requirements under the law, specifically for situations where a driver accepts a task but then cancels within the allowed cancellation window without penalty. It would be unreasonable to require DNCs to generate an earnings report for the driver in scenarios where no actual services were rendered and the disclosures would serve no practical purpose. We ask the Division to provide guidance on whether the 24-hour earnings disclosure requirement is triggered in cases of driver-initiated cancellations within the allowable timeframe to avoid administrative burden and driver confusion.
- 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. There specificity in this law that may difficult to comply with, and we request the adoption of a safe harbor rule by the Division to ensure that businesses are not penalized when they are implementing designs that prominently display the required information and intend to draw the eye to such information as the law states.
- Similarly, C.R.S. §8-4-126(3)(a) requires that the address or addresses where goods must be picked up is displayed, and there may be scenarios where this is not possible to do on a single screen. Guidance from the Division would be helpful to clarify that displaying this required information in alternate visuals, such as a map would qualify as fulfilling this requirement.

TechNet appreciates the opportunity to share our perspective on behalf of the members we represent. Please reach out to rbarko@technet.org with any questions regarding our feedback on this proposed rule.

Best regards,



Ruthie Barko
Executive Director, Colorado & the Central U.S.
TechNet