

PROPOSED RULES FOR NOTICE AND COMMENT

The Office of Labor Standards (OLS) invites public comment on changes to select rules proposed for the App-Based Worker Minimum Payment Ordinance.

On May 31, 2022, City of Seattle Council passed the [App-Based Worker Minimum Payment Ordinance, SMC 8.37](#). This law is effective on January 13, 2024, and provides certain app-based gig workers several rights and protections, including minimum payment, transparency, and flexibility.

On November 28, 2023, the Office of Labor Standards (OLS) published Seattle Human Rights Rules (SHRR) Chapter 240, the administrative rules for SMC 8.37. In the published chapter, OLS reserved the rules section “Affirmative Production of Records (SHRR 240-160).”

OLS now invites public comments on proposed new rules section “Affirmative Production of Records (SHRR 240-160),” which regulates the routine and affirmative records that covered network companies shall transmit to OLS. OLS also invites public comments on proposed changes in rules sections “Definitions (SHRR 240-110)” and “Recordkeeping (SHRR 240-230),” which were made pursuant to “Affirmative Production of Records (SHRR 240-160).”

The proposed changes appear on the following pages, signaled by underline.

The existing SHRR 240 and SMC 8.37 can be viewed on the OLS website by clicking:

<https://www.seattle.gov/laborstandards/ordinances/app-based-worker-minimum-payment-ordinance>

Members of the public are invited to comment on the proposed rules in writing. Written comments must be received no later than **5:00 PM PST on Sep 4, 2024**.

Comments may be mailed or delivered to: Seattle Office of Labor Standards, ATTN: Shuxuan Zhou, Policy Analyst, 810 Third Ave, Suite 375, Seattle, WA, 98104 or emailed to laborstandards@seattle.gov with the subject line: “Comments: App-Based Worker Minimum Payment Ordinance Proposed Rules.”

SEATTLE OFFICE OF LABOR STANDARDS
Seattle Human Rights Rules (SHRR) Chapter 240

Practices for administering App-Based Worker Minimum Payment Ordinance requirements
under Seattle Municipal Code 8.37

SHRR 240-100 Definitions

SHRR 240-160 Affirmative Production of Records

SHRR 240-230 Recordkeeping

SHRR 240-100 Definitions

1. **App-based worker's net earnings.** "App-based worker's net earnings" means network company payment subtracting any deductions.
2. **Associated miles.** "Associated miles" means the miles traveled according to the routed distance between the offer completion location and the offer acceptance location of the subsequent offer.
3. **Associated time.** "Associated time" means a time period that is less than one hour, occurs between (1) two periods of engaged time; (2) the worker logs-on to the worker platform and begins a period of engaged time; or (3) when the worker ends a period of engaged time and when the worker logs off of the worker platform.
4. **Creative services or works.**
 - a. In general....
6. **Fees charged to paying customers.** "Fees charged to paying customers" means any amount charged to paying customers in excess of the amount charged for the underlying goods or services provided.
7. **Gross network company payment.** "Gross network company payment" means a network company's payment to an app-based worker before subtracting any deductions or adding tips, bonus, or incentives.
8. **Make available via the worker platform.** Information is "made available via the worker platform" when....
15. **Routed distance.** "Routed distance" means the shortest driving distance between two locations as determined by the routing service used by the network company.
16. **Subscription and membership fees.** "Subscription and membership fees" mean any amounts paid in exchange for access to and/or reduced pricing for services associated with covered offers.
17. **Original works.** "Original works" are....

SHRR 240-160 Affirmative Production of Records

1. **In general.** Consistent with SMC 8.37.070.G, each network company shall routinely and affirmatively transmit to the Agency the following records in a form and format to be specified by the Agency.
2. **Effective Date.**
 - a. SHRR 240-160 shall be effective for Network Companies who are covered by SMC 8.37 and have 1000 or more employees worldwide on October 1, 2024;
 - b. SHRR 240-160 shall be effective for all other Network Companies covered by SMC 8.37 beginning on April 1, 2025.
3. **Frequency of transmission.** The records shall be transmitted quarterly according to a schedule provided by the Agency, unless otherwise specified. Network Companies shall make the first transmission 90 days after the effective date of this section SHRR 240-160. For the first transmission, network companies shall also retroactively provide the records required by SHRR 240-160 for the period between the effective date of SMC 8.37, January 13, 2024, and the effective date of SHRR 240-160.
4. **Sample dataset.** Within 30 calendar days after the Agency specifies the form and format of the records, each network company who is covered by SMC 8.37 and has 1000 or more employees worldwide shall transmit a sample set of disaggregated records to the Agency to verify the quality and/or accuracy of the aggregated records. The agency shall specify the scope of the sample, as well as the form and format for transmission. The Director may require sample sets no more than annually to evaluate the quality and/or accuracy of the transmitted aggregated records.
5. **Offers facilitated.** Each network company shall transmit the following records of offers covered by SMC 8.37:
 - a. Total weekly number of all offers;
 - b. Total weekly number of completed offers;
 - c. Total weekly number of all on-demand offers, if the network company uses a different pay basis, pay formula, or pay structure between on-demand and pre-scheduled offers;
 - d. Total weekly number of completed on-demand offers, if the network company differentiates pay structure between on-demand and pre-scheduled offers;
 - e. Total weekly number of offers starting engaged time outside of and then entering Seattle, if the network company differentiate pay rates inside and outside of Seattle;
 - f. Total weekly number of offers that began a period of engaged time inside and then leaving Seattle, if the network company differentiate rates of pay inside and outside of Seattle;
 - g. Total weekly number of offers both starting and ending in Seattle, if the network company differentiate rates of pay inside and outside of Seattle;
 - h. Census tracts of offer destinations (for delivery and other offers that involve more than one stop) or work location (for offers that have only one designated location) and the total weekly number of such offers in each census tracts; and
 - i. Census tracts of offer acceptance locations and the total weekly number of such offers in each census tracts.
6. **App-based Workers.** Each network company shall transmit the following records of app-based workers covered by SMC 8.37:
 - a. Total weekly number of app-based workers who completed a period of engaged time;

- b. The number of app-based workers whose primary addresses (as provided to the Network Company) falls within each Census Tract and the name of the Census Tracts;
 - c. Preferred or primary languages of app-based workers, as input by app-based workers, and the number of app-based workers in each language group, if available, during the reporting period;
 - d. Modes of transportation (i.e. car, bike, e-scooter/bike, and others) used by app-based workers for delivery and the number of app-based workers in each transportation mode group, as input by app-based workers, if available, during the reporting period; and
 - e. All app-based workers' five-digit zip codes as well as first one and last four digits of their phone numbers during the reporting period.
7. **Engaged Time.** Each network company shall transmit the following records of weekly engaged time for app-based workers covered by SMC 8.37:
- a. Percentiles (10th, 25th, 50th, 75th, 90th), mean, and sum of app-based workers' weekly engaged time during the reporting period.
8. **Associated Time.** Each on-demand network company shall transmit the following records of app-based workers' associated time for app-based workers covered by SMC 8.37:
- a. Percentiles (10th, 25th, 50th, 75th, 90th), mean, and sum of app-based workers' weekly associated time during the reporting period; and
 - b. Percentiles (10th, 25th, 50th, 75th, 90th), mean, and sum of app-based workers' weekly sum of engaged time and associated time during the reporting period.
9. **Worker's Earnings.** Each network company shall transmit the following records of earnings for offers covered by SMC 8.37:
- a. Percentiles (10th, 25th, 50th, 75th, 90th), mean, and sum of app-based workers' weekly gross network company payment for each week during the reporting period;
 - b. Percentiles (10th, 25th, 50th, 75th, 90th), mean, and sum of app-based workers' weekly sum of bonuses and incentives for each week during the reporting period;
 - c. Percentiles (10th, 25th, 50th, 75th, 90th), mean, and sum of app-based workers' weekly tips for each week during the reporting period;
 - d. Percentiles (10th, 25th, 50th, 75th, 90th), mean, and sum of app-based workers' weekly sum of deductions (if applicable) for each week during the reporting period;
 - e. Percentiles (10th, 25th, 50th, 75th, 90th), mean, and sum of app-based worker's weekly app-based worker's net earnings for each week during the reporting period;
 - f. Types of deductions and number of app-based workers taking each type;
 - g. Percentiles (10th, 25th, 50th, 75th, 90th) and mean of each app-based workers' weekly gross network company payment divided by the sum of engaged time and associated time for each week during the reporting period;
 - h. Percentiles (10th, 25th, 50th, 75th, 90th) and mean of each app-based workers' weekly app-based worker's net earnings divided by the sum of engaged time and associated time for each week during the reporting period;
 - i. Percentiles (10th, 25th, 50th, 75th, 90th) and mean of each app-based workers' weekly gross network company payment divided by engaged time for each week during the reporting period;
 - j. Percentiles (10th, 25th, 50th, 75th, 90th) and mean of each app-based workers' weekly app-based worker's net earnings divided by engaged time for each week during the reporting period;

- k. Percentiles (10th, 25th, 50th, 75th, 90th) and mean of gross network company payment for each completed on-demand offer during the reporting period; and
 - l. Percentiles (10th, 25th, 50th, 75th, 90th) and mean of gross network company payment for each completed pre-scheduled offer during the reporting period.
- 10. **Engaged Miles.** Each on-demand network company shall transmit the following records of app-based workers' weekly engaged miles:
 - a. Percentiles (10th, 25th, 50th, 75th, 90th), mean, and sum of app-based workers' weekly engaged miles during the reporting period.
- 11. **Associated Miles.** Each on-demand network company shall transmit the following records of app-based workers' associated miles:
 - a. Percentiles (10th, 25th, 50th, 75th, 90th), mean, and sum of app-based workers' weekly associated miles during the reporting period.
- 12. **Customer Charges.** Each network company shall transmit the following records of offers covered by SMC 8.37:
 - a. Percentiles (10th, 25th, 50th, 75th, 90th) and mean of the total amount of paying customer payments to the network company for offers covered by SMC 8.37 during each week;
 - b. Percentiles (10th, 25th, 50th, 75th, 90th) and mean of the total amount of network company fees charged to paying customers, if applicable, on offers covered by SMC 8.37 during each week; and
 - c. The number of paying customers in Seattle who paid subscription and membership fees during each week, if applicable.
- 13. **Offer cancellation.** Each network company (except that SHRR 240-160.14.f only applies to on-demand network companies) shall transmit the following records of facilitated by the network company that includes a period of engaged time within Seattle:
 - a. Total weekly number of cancelled offers;
 - b. Total weekly number of offers canceled by app-based workers with cause;
 - c. Total weekly number of offers canceled by app-based workers without cause;
 - d. Total weekly number of offers canceled by customers;
 - e. Total weekly number of offers canceled by network companies; and
 - f. Each on-demand network company shall transmit the following records for offers cancelled by customers or the company:
 - i. Percentiles (10th, 25th, 50th, 75th, 90th) and mean of minutes elapsed between the offer acceptance and the cancellation during the reporting period; and
 - ii. Percentiles (10th, 25th, 50th, 75th, 90th) and mean of miles travelled between the offer acceptance and the cancellation during the reporting period.
- 14. **Notice of Rights.** Each network company shall transmit:
 - a. Additional language(s) of Notice of Rights pursuant to SMC 8.37 other than English, Amharic, Arabic, Chinese (traditional), Japanese, Korean, Oromo, Russian, Somali, Spanish, Tagalog, Tigrigna, and Vietnamese that one or more requests app-based workers during the reporting period; and
 - b. Additional language(s) of Notice of Rights pursuant to SMC 8.37 other than English, Amharic, Arabic, Chinese (traditional), Japanese, Korean, Oromo, Russian, Somali, Spanish, Tagalog, Tigrigna, and Vietnamese that are created by the network company during the reporting period.

15. **Records not for transmission.** Except as provided in SHRR 240-160.6.e, a network company shall not transmit to the Agency any personally identifiable app-based worker information, including name, date of birth, home address, social security number, vehicle license plate number, driver's license number, or other similar records.
16. **Agency Authority.**
 - a. Form, format, and security protocols. The Agency is authorized to order that each Network Company produce records in a particular form or format and to order particular security or privacy protocols.
 - b. Frequency of transmission. The Agency is authorized to order that each Network Company produce records more or less frequently than quarterly. Notice of such orders will be provided directly to each Network Company or via posting on the Agency website.
 - c. Sample periods. The Agency is authorized to require each Network Company to produce sample data that is more precise than the data specified otherwise required to be produced in in SHRR 240-160.
17. **Privacy Principles.** The Agency shall use, store, and maintain records produced under SHRR 240-160 in accordance with the City of Seattle's Privacy Principles.

SHRR 240-230 Recordkeeping

1. **In general.** Each network company shall retain records that document compliance with SMC 8.37 and SHRR Chapter 240 for each app-based worker.
2. **Retention period.** Each network company shall retain the records required by subsection SHRR 240-230.1 for a period of three years.
3. **Presumption where records not retained.** If a network company fails to retain adequate records required under subsection SHRR 240-230.1, there shall be a presumption, rebuttable by clear and convincing evidence, that the network company violated SMC 8.37 and SHRR Chapter 240 for the relevant periods and for each app-based worker for whom records were not retained.
4. **Retention format for some records.** Each network company shall retain the following records pursuant to SHRR 240-160:
 - a. For each offer facilitated by the network company:
 - i. Unique identifier of the paying customer request;
 - ii. Date and time the order was placed by the paying customer;
 - iii. Tip amount listed by the paying customer, if applicable;
 - iv. Unique identifier of the offer;
 - v. Date and time the offer was transmitted by the network company to one or more app-based workers;
 - vi. For each offer accepted by an app-based worker:
 1. Unique identifier/account ID of the first app-based worker who accepted the offer;
 2. Date and time the offer was accepted by the app-based worker;
 3. Guaranteed minimum amount of network company payment for the offer when the offer was accepted;
 4. Location of app-based worker when offer was accepted;
 5. Date and time when app-based worker arrives at or report to the first business stop;

6. Location of the first business stop; and
 7. Mode of transportation as input by app-based worker (e.g. car, scooter, e-bike, bike, walk), if available.
 - vii. For each completed offer:
 1. Date and time when the app-based worker completed an offer;
 2. Location of the app-based worker when the offer was completed;
 3. For each completed offer facilitated by an on-demand network company, retain the total miles travelled between the offer acceptance and completion in miles;
 4. Amount of gross network company payment provided to app-based worker;
 5. Amount of tips from the customer earned by the app-based worker;
 6. Amount of bonus and incentives earned by the app-based worker;
 7. Amount of deduction subtracted from the app-based worker's compensation;
 8. App-based worker's net earnings;
 9. The total amount charged to the paying customer;
 10. The amount of network company fees charged to the paying customer, if applicable;
 11. Whether and how much the paying customer pays subscription and membership fees to the network company during this time, if applicable; and
 12. The amount paid to the third-party business, if applicable.
 - viii. For each offer cancelled by the app-based worker:
 1. Date and time the app-based worker canceled an offer;
 2. Whether the app-based worker reported it as cancellation with cause;
 3. If with cause, the app-based worker-reported cancellation reason;
 4. Whether the network company recorded this cancellation as with cause or without; and
 5. Total compensation provided to app-based worker by the network company for canceled offer, if any.
 - ix. For each offer cancelled by the paying customer or the network company:
 1. Date and time when the paying customer or the network company cancelled the offer;
 2. Date and time when the app-based worker was notified about the network company's or the paying customer's cancellation;
 3. Location of the app-based worker when the app-based worker was notified about the paying customer's or the network company's cancellation of the offer;
 4. Total compensation provided to app-based worker by the network company for canceled offer, if any; and
 5. Whether the paying customer paid a cancellation fee.
 - x. If following a cancellation, one or more app-based workers perform the same offer, the network company shall retain data for 1.e to i for these app-based workers.
- b. For each app-based worker account:

- i. A unique app-based worker identifier/account ID;
 - ii. Phone number registered with the app-based worker account;
 - iii. Email address registered with the app-based worker account;
 - iv. Residential address of the app-based worker ;
 - v. App-based worker self-reported preferred or primary language through app-based worker account registration or survey provided by the network company, if available;
 - vi. If the network company deducts any fee or cost from the app-based worker:
 - 1. Amount of each deduction;
 - 2. Date and time (where applicable) of each deduction; and
 - 3. Description or category for each deduction (e.g. equipment or insurance).
 - c. Written authorization for the deduction, if required under SHRR 240-120.6. For on-demand network companies, provide each time period that an app-based worker is logged on:
 - i. The unique identifier/account ID of the app-based worker;
 - ii. Date and time app-based worker logged on (became available); and
 - iii. Date and time app-based worker logged off (terminated availability, including instances when the network company logs off the app-based worker).
 - d. For Notice of Rights pursuant to SMC 8.37 that have been made available to the app-based worker via smartphone application, email, or online web portal:
 - i. Number of times the Notice of Rights pursuant to SMC 8.37 has been downloaded in each language provided on the network company website during the reporting period;
 - ii. Additional language(s) that has been requested by one or more app-based workers during the reporting period; and
 - iii. Additional language(s) created by the network company during the reporting period.
5. **All records required in SHRR 240.230.4 shall be retained at the following levels of precision or more:**
- a. All dates and times should be precise to one second (stored in ISO 8601 datetime format).
 - b. All locations should include precise longitude and latitude to the 5th decimal places (in WGS 1984 coordinate system), unless the network company does not track the app-based worker's longitude and latitude, in which case, the network company may retain the street address including ZIP code.
 - c. All mileage records should be precise to two decimal places.
 - d. All compensation and deductions should be in dollars, precise to two decimal places.