

**Testimony of Assistant Commissioner Carlos A. Ortiz
New York City Department of Consumer and Worker Protection**

**Before the Committee on
Consumer and Worker Protection**

Hearing on Introductions 30-A, 715, 737, 738, 762, 859, and 972

June 21, 2024

Introduction

Good morning, Chair Menin and the members of the Committee on Consumer and Worker Protection. My name is Carlos Ortiz, and I am the Assistant Commissioner for External Affairs at the Department of Consumer and Worker Protection (DCWP). I am joined by Elizabeth Wagoner, our Deputy Commissioner for the Office of Labor Policy & Standards, and Andrew Schwenk, our Associate General Counsel. Thank you for the opportunity to testify today on Introductions 30-A, 715, 737, 738, 762, 859, and 972, relating to delivery worker gratuities and pay transparency, delivery fee caps, and ensuring app responsibility with respect to street safety.

Since the start of the Adams Administration, DCWP has helped deliver more than \$600 million into the pockets of New Yorkers. We provide fundamental consumer and worker protections, and financial empowerment programming to New Yorkers. We strive to ensure that consumers who have been deceived or exploited have recourse, that workers have a passionate defender of their rights, and that all New Yorkers have the support they need to improve their financial health.

Delivery Workers and the Minimum Pay Rate

Just over a year ago, Mayor Adams announced the nation's first of its kind Minimum Pay Rate (MPR) for app-based restaurant delivery workers, the most significant advancements of workers' rights in New York City in the 21st Century. Ahead of implementation, DCWP conducted a comprehensive study of the industry, and considered thousands of comments received from food delivery workers, apps, advocates, restaurants, researchers, elected officials and members of the public when setting this historic rate. We continue to collaborate closely with key advocates and stakeholders across this space.

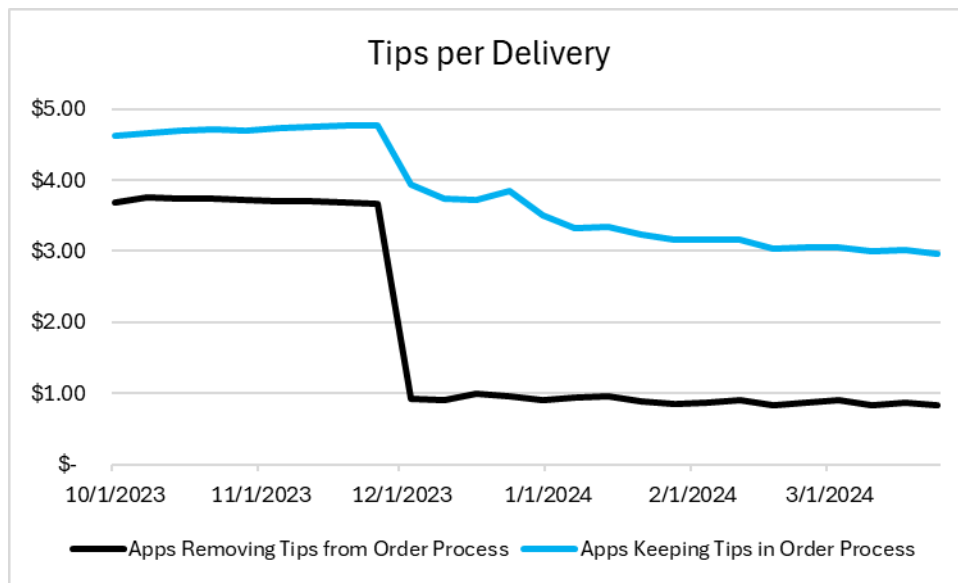
Delivery workers are essential workers for New York City. They have braved harsh weather conditions, harmful wildfire smoke and even the pandemic to ensure New Yorkers are fed. Thanks to their incredible organizing and determination, tens of thousands of workers have now seen their weekly earnings double, with their combined annual pay on track to increase by over \$775 million this year. This Administration will continue to stand shoulder to shoulder with delivery workers and ensure their fundamental rights to fair and dignified pay are protected.

Introductions 737 and 738

Moving to today’s bills, I would like to start off by commending the Council, and specifically Councilmember Abreu, for recognizing a key issue that delivery workers are facing since certain major apps made changes to make it harder to tip delivery workers. We strongly support Introductions 737 and 738, which would require third-party food delivery service apps to give customers the option to leave a gratuity during an order transaction and include a suggested gratuity option of 10%.

Before apps began paying the Minimum Pay Rate in early December 2023, they generally made tipping a delivery worker a simple process, giving consumers the option to tip during the order transaction. However, after they began paying the Minimum Pay Rate, two of the three most-used apps removed the option for a consumer to add a tip when placing their order. As a result, delivery workers’ tips received on those apps have decreased dramatically, by \$85 million in total, since the apps changed their tipping options. Conversely, other apps, including one of the three most-used apps, continued to allow tipping when placing an order, and while the average tip on orders placed at those apps did decrease slightly, workers are receiving substantially higher tips on those apps. To us, this speaks to the fact that New Yorkers, when given an option, recognize the incredibly difficult jobs these workers perform and choose to tip them.

As we understand the intent of these bills, they would require apps to restore to consumers the option they previously had to tip workers when placing an order. We recommend changes to the bill text to make clear that apps must offer consumers these tipping options. We are eager to engage in the legislative process as soon as possible to finalize this legislation to best support delivery workers in our city.



Introduction 859

Introduction 859 would require third-party food delivery services and third-party courier services to provide delivery workers with sufficient information on their pay calculations. We are fully supportive of clear pay transparency for workers and this legislation. The apps are required to report aggregate monthly pay information to DCWP so that we can monitor compliance, but apps have not been transparent with workers themselves about their individual pay calculations. Workers should have full information about how their pay is calculated so they are not left with questions about an app's pay structure. We believe this legislation will help ensure this happens and will make it easier for advocates to educate workers on the Minimum Pay Rate.

Introduction 762

Council Member Salamanca's bill, Introduction 762, would amend the current fee caps for third-party food delivery services. The caps on fees that delivery apps can charge restaurants were first created by the City Council during the COVID-19 pandemic and were later made permanent under Local Law 103 of 2021. Currently, delivery apps can only charge a restaurant a total of 23% of an order in fees, broken down as follows: up to 15% for delivery fees; up to 3% for transaction fees; and up to 5% for other fees. Introduction 762 would increase the cap on other fees from 5% to 25%, potentially allowing delivery apps to charge restaurants up to 43% of an order in fees.

As the enforcement agency, DCWP will enforce the fee caps at the limits mandated by local law. I would like to note that the current fee caps are subject to ongoing litigation.

Introductions 30-A, 715, and 972

Lastly, Introduction 715 would require food delivery companies to be responsible for ensuring that their workers who use micromobility devices follow appropriate traffic laws. Introduction 30-A, which the Department of Transportation (DOT) previously testified on in January, would establish new requirements for businesses using a bicycle for commercial purposes, such as third-party food delivery, grocery delivery, and courier services, including the requirement that any powered mobility device, such as an e-bike, used by a worker on behalf of such businesses meet certain safety certification standards. Introduction 972 would require third-party food delivery services to verify the registration of mopeds used by delivery workers.

The Administration is committed to ensuring that micromobility devices are used safely on our streets. Along with our colleagues at DOT, we are working on a comprehensive policy review of how micromobility delivery is regulated in New York City. We believe it is vital to address the current situation, holistically, with an approach that tackles both street safety priorities and workers' rights. Each of these three bills addresses issues that will inform vital components of that unified approach.

A key point that DOT and DCWP would like to stress is that delivery apps have a responsibility to ensure that workers have access to and use safe equipment, and that workers are not compelled into unsafe riding practices because of dangerous demands made of them by those same apps. For example, we have heard reports from workers that apps may penalize or deactivate them if they do not deliver orders within a delivery app's mandated timeframe, despite there being obstacles such as traffic, restaurant delays, or route issues that are outside a worker's control. The perverse incentives flowing from apps' unrealistic delivery times could be a major contributing factor to some of the unsafe practices we are observing in our city today. And, workers are compelled into these situations, because a deactivation can be financially devastating for them and their families.

One final point underscores DOT and DCWP's holistic approach. Introduction 30-A would bring street and device safety protections to grocery delivery workers, in addition to restaurant delivery workers. That is an important step in the right direction, from a street safety perspective, but it should go even further for the issues DCWP enforces. As discussed in the Administration's Blueprint for Economic Recovery, workers who deliver all types of consumer goods would benefit significantly from minimum pay and other protections¹. So, as we work on all this legislation together, the Administration wants to ensure it addresses the root causes of unsafe riding, that it does not have any unintended consequences on workers, and that each bill works in concert to develop better policy outcomes for New Yorkers.

Conclusion

Thank you for the opportunity to testify on these bills, and for your collaboration with our efforts to support working New Yorkers. We look forward to answering any questions you may have.

¹ [Mayor-Adams-Economic-Recovery-Blueprint.pdf \(nyc.gov\)](#)