



# Office of the City Clerk

City Hall  
121 N. LaSalle St.  
Room 107  
Chicago, IL 60602  
[www.chicityclerk.com](http://www.chicityclerk.com)

## Legislation Text

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### **Refer to Committee on License and Consumer Protection Chicago**

### **Municipal Code Title 9**

## **CHAPTER 9-116 Transportation Network Provider and Third-Party Delivery Service Network Worker Deactivation Rights**

### **9-116-010 Declaration of policy**

It is declared to be the policy of the City of Chicago, in the exercise of its police powers for the protection of the public health, safety, and general welfare, and for the maintenance of peace and good government, to ensure that Network Workers can perform their services in a safe and reliable manner, and be protected from unwarranted deactivation, and thereby promote the welfare of the people who rely on such services to meet their transportation needs.

### **9-116-020 Definitions**

For purposes of this chapter, the definitions in Chapter 9-115-010 are incorporated herein, and the following definitions shall also apply: i

"Compensation" means payment owed to a Network Worker by reason of providing services for or on behalf of a Network Entity.

"City" means the City of Chicago, Illinois.

"Deactivation" means blocking or restricting a Network Worker's access to the Network Entity driver platform, changing a Network Worker's status from eligible to provide Network Entity services to ineligible, or other material restriction in access to the Network Entity driver platform, food and beverage delivery, or rideshare opportunities that is effectuated by a Network Entity.

"Department" means the City of Chicago Department of Business Affairs and Consumer Protection.

"Director" means the Director of the Office of Labor Standards, City of Chicago Department of Business

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"Driver platform" means a driver or courier-facing application dispatch system software or online-enabled application service, website, or system, used by a Network Worker, that enables the prearrangement of passenger trips, or food and beverage delivery, for compensation.

"Network Worker Resolution Center" or "NWRC" means a non-profit organization registered with the Illinois Secretary of State that contracts with the Department to provide culturally competent Network Worker representation services, outreach, and education; and that is or is affiliated with an organization with experience advocating for the civil and economic rights of drivers, couriers, contractors, and workers from disadvantaged socioeconomic groups and representing workers in grievance proceedings. This organization shall have a proven commitment to worker rights and experience in providing resources, programs, and services to Network Workers, contractors, and workers that allow them to build sustainable economic opportunities while competing in a changing business environment. The Network Worker Resolution Center should consider contractual partnerships among entities to achieve the direct participation of organizations primarily focused on diversity and advocating for the civil and economic rights of Network Workers from disadvantaged socioeconomic groups.

"Network Worker" means a driver affiliated with a transportation network provider, or with a person who is affiliated with a transportation network provider, to transport passengers for compensation using a transportation network vehicle; and who is licensed to operate a transportation network vehicle. "Network Worker" also means a courier affiliated with a Third-party Food Delivery Service, or with a person who is affiliated with a Third-party Food Delivery Service, to transport food or beverages for compensation.

"Network Entity" means a transportation network provider as defined in Section 9-115-010, or a third-party food delivery service.

"Operating in the City" means, with respect to a Network Entity, providing application dispatch services to any affiliated driver or courier at any time for the transport of any passenger, or the transport of food and beverages, for compensation from or to a point within the geographic boundaries of the City of Chicago.

"Representative" means a person or entity providing advice or guidance and includes, but is not limited to, family members, friends, licensed professionals, attorneys, advocates, and Network Worker Resolution Center advocates.

"Network entity services" means services related to the transportation of passengers, or delivery of food and beverages, arranged using an internet-enabled application or digital platform provided by a Network Entity. Network entity services includes services provided during

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available platform time, dispatch platform time, delivery platform time, and passenger platform time.

"Network Worker" means a transportation network driver as defined in Section 9-115-010, or a courier, affiliated with and accepting trips from a Network Entity. For purposes of this chapter, at any time that a driver or courier is logged into the driver platform, the driver or courier is considered a Network Worker.

"Third-Party Food Delivery Service" means a person or entity that sponsors or operates any website, mobile application, or other internet service that offers or arranges for the sale of food and beverages prepared by, and/or the delivery or pick-up of food and beverages from, no fewer than twenty (20) Food Dispensing Establishments located in the City that are each owned and operated by different persons.

"Unwarranted deactivation" means the unjustified temporary or permanent deactivation of a Network Worker by a Network Entity.

"Written" or "writing" means a printed or printable communication in physical or electronic format including a communication that is transmitted through email, text message, or a computer system, or is otherwise sent and maintained electronically.

## **9-116-030 Network Worker coverage**

A Network Worker is covered by this chapter if the Network Worker provides network entity services within the geographic boundaries of the City of Chicago by picking up or dropping off passengers, or food and beverages, arranged through a Network Entity within the City of Chicago.

## **9-116-040 Network Entity coverage**

a) A Network Entity is covered by this chapter if it arranges through network entity services 200,000 or more trips during the current or prior calendar year where the pick-up or drop-off locations for passengers, or food and beverages, are within the City of Chicago.

b) Separate entities that form an integrated enterprise shall be considered a single Network' Entity under this chapter.

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### **9-116-050 Protection from unwarranted deactivation**

a) A Network Workers may challenge their temporary or permanent deactivation under this chapter if, during the 180 days before the Network Entity's initial notice of deactivation to the Network Worker, ten percent (10%) or more of the Network Worker's trips for the Network Entity seeking deactivation had a pick-up or drop off location within the City.. There is a rebuttable presumption that a Network Workers are eligible to challenge their deactivations, which the Network Entity may rebut with a preponderance of the evidence that the Network Worker does not meet eligibility standards.

b) Eligible Network Workers shall have the following deactivation rights:

- 1) No Network Entity shall subject a Network Worker to unwarranted deactivation or fail to provide fair notice thereof.
- 2) Network Workers shall have a right to challenge their temporary or permanent deactivations.
- 3) Subject to the provisions of this chapter and rules issued by the Director, a Network Entity may immediately deactivate a Network Worker if such action is required to comply with any applicable local, state, or federal laws or regulations or where a Network Worker has engaged in egregious misconduct. The Director's rules shall define egregious misconduct to include, at minimum, sexual or physical assault of a passenger. Deactivations under this subsection (b)(3) shall nevertheless be subject to challenge by the Network Worker.
- 4) For deactivations not described above in subsection (b)(3), the Network Entity shall provide the Network Worker with fourteen (14) days' prior written notice of the impending deactivation. The notice, in a form and manner designated by the Director, shall include a clear and concise written statement of the reasons for and effective date of deactivation, and shall further provide notice of the Network Worker's right to challenge such deactivation under this chapter, and the Network Worker's right to be represented by the NWRC at no charge to the Network Worker. The Network Entity shall take reasonable steps to maintain the confidentiality of the deactivation notice, subject to disclosure requirements under this chapter. A copy of all notices of deactivation under this Section shall be submitted to the Director.
- 5) Network Workers who challenge a temporary or permanent deactivation may elect to represent themselves, or to be represented by a representative, including an advocate from the NWRC, during any deactivation challenge proceeding. The NWRC may decline to represent a Network Worker, as

determined by the Director's rule.

- 6) Upon application from the Network Worker and for good cause shown, the Director may stay a Network Worker's deactivation pending conclusion of the appeals process.

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c) If the Network Worker and the Network Entity are parties to an agreement establishing private arbitration as the exclusive means to appeal challenges to temporary or permanent deactivations ("private arbitration agreement"), the Network Worker and Network Entity may by mutual agreement proceed to arbitration under the Deactivation Appeals Panel process under this chapter. In the absence of a private arbitration agreement, the Network Worker shall have the right to challenge the deactivation under this chapter. Upon the effective date of this chapter, no Network Entity may enter into an agreement with a Network Worker that limits or restricts the Network Worker's right to appeal a temporary or permanent deactivation under this chapter, and such agreements shall be void and without effect with respect to Network Worker challenges to temporary or permanent deactivation under this chapter.

d) Deactivation Appeals Panel process

- 1) If a Network Workers challenge a deactivation, the Network Workers or their representatives must, no later than sixty (60) days after receipt of a complete and timely notice of deactivation, submit to the Network Entity and the Director written notice of intent to challenge the deactivation. If a Network Entity fails to provide complete or timely notice to a Network Worker as required under this chapter, the Network Entity shall not deactivate the Network Worker until fourteen (14) days after it provides complete and timely notice of deactivation.
- 2) The Network Entity and the Network Worker and/or the Network Worker's representative shall attempt to resolve the challenge informally no later than fifteen (15) days after the notice of intent to challenge has been provided to the Network Entity, or within a time frame mutually, agreed by the parties.
- 3) Agreements resolving Network Worker challenges pursuant to this subsection shall be written and executed by the Network Entity and Network Worker.
- 4) If no written agreement resolving the Network Worker challenge is timely concluded, the Network Worker may by written notice proceed to arbitration. Such written notice must be submitted to the Network Entity and the Director no later than ninety (90) days after receipt of a complete and timely notice of deactivation.
- 5) If a Network Worker demonstrates that a Network Entity failed to engage in good faith in the informal resolution process under subsection (d)(2), there shall be a presumption before the Deactivation Appeals Panel, rebuttable by clear and convincing evidence, that the deactivation is unwarranted.
- 6) For good cause shown, the Director may extend the time limits set forth in this Section.

e) Deactivation Appeals Panel

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- 1) The Director shall establish a Deactivation Appeals Panel ("Panel"), which shall have jurisdiction to mediate and arbitrate all eligible Network Workers' challenges to temporary and permanent deactivations. The Director shall contract with one or more persons or entities ("neutral arbitrators") to serve on the Panel to conduct mediation and arbitration proceedings to hear deactivation challenges.
- 2) The utilization of the Panel arbitration proceeding created by this chapter shall be at no cost to the Network Worker. If utilized, the Deactivation Appeals procedure shall be the sole proceeding for challenging a deactivation under this chapter.
- 3) The cost of arbitration, including any fee charged by a neutral arbitrator, will be shared equally by the Network Entity and the NWRC. If the Network Worker is not represented by the NWRC, the Network Entity shall be solely responsible for the fee charged by the neutral arbitrator.
- 4) The arbitration shall be conducted no later than thirty (30) days after the notice of intent to arbitrate has been submitted to the Network Entity and Director under this subsection, or within a time frame mutually agreed by the parties and the neutral arbitrator.
- 5) The neutral arbitrator may conduct pre-hearing procedures, including issuing subpoenas for the production of documents and witnesses, and to conduct an evidentiary hearing at which the parties shall be entitled to present witnesses and evidence relevant to the dispute, and to cross-examine witnesses.
- 6) The Network Entity bears the burden of proof by a preponderance of the evidence that the Network Worker's deactivation is warranted.
- 7) The neutral arbitrator may attempt to mediate the dispute, if both parties agree.
- 8) If the dispute is not resolved by mediation, the neutral arbitrator shall issue a written decision and, if appropriate, award relief. The neutral arbitrator shall endeavor to issue the written decision within 48 hours after conclusion of the evidentiary hearing.
- 9) Upon a decision concluding that an unwarranted deactivation occurred, the neutral arbitrator may order such relief as may be appropriate to remedy the violation including, without limitation, all remedies provided in this section. Should the neutral arbitrator order that the Network Worker be reinstated, such order shall be limited to reinstatement to provide Network Entity services from a pick-up or drop-off location in the City, and shall further require that the Network Worker suffers no reduction in access to the Network Entity platform or rideshare and delivery opportunities in the City.
- 10) The decision of the neutral arbitrator shall be final and binding upon the parties with respect to a Network Worker's appeal under this chapter.
- 11) Except as provided in this chapter, nothing in this section shall be construed as restricting a Network Worker's right to pursue any remedy at law or equity for an unwarranted deactivation.

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f) It is a criminal act to "tamper with a witness" by attempting to inducing the Network Worker or a witness to testify falsely, withhold testimony, or to absent themselves from the arbitration proceedings. The Network Entity, the Network Worker, and their representatives shall not tamper with a witness. If the Network Entity or its representative engages in witness tampering, the deactivation will be presumed unwarranted. If the Network Worker or the Network Worker's representative engages in witness tampering, the Network Worker's deactivation appeal will be dismissed.

g) In computing any period of time prescribed or allowed by this section, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a federal, state or City holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a federal, state or City holiday.

## **9-116-060 Network Worker Resolution Center**

a) The Department shall contract with an entity to operate the NWRC to provide Network Worker resolution services. Those services shall include but not be limited to the following activities, which shall be fully funded as necessary to fulfill all of the following duties:

- 1) Consultation with and/or representation of Network Workers facing deactivation;
- 2) Other support for Network Workers to ensure compliance with professional regulations, applicable labor standards and/or to support their ability to perform Network Entity services;
- 3) Outreach and education to Network Workers regarding their rights under this chapter and other applicable federal, state, and local laws and regulations, and improving working conditions for Network Workers;
- 4) pay all expenses necessary to fulfill its obligations under this chapter; and
- 5) Safety and consumer service training designed to help Network Workers avoid deactivation and, in consultation with the Network Entities, to be used as a path for Network Worker reactivation when appropriate.

b) No entity may be contracted to operate the NWRC unless it:

- 1) Has a physical presence in the City of Chicago;
- 2) Is a not-for-profit entity; and
- 3) Has at least five (5) years of demonstrated continuous experience: assisting and advising Network

Workers with respect to their working conditions; and resolving disputes between transportation network companies and their Network Workers.

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c) The Director shall approve in advance the provision of any services by an NWRC pursuant to contract other than those identified in this chapter. Any additional services provided must be consistent with this chapter.

d) The Network Entity shall make available a system for the NWRC, which shall include Network Worker email addresses known to the Network Entity, to directly contact all Network Workers who have completed at least five rides or deliveries on the network provider's platform in the previous twelve (12) months. This communication system shall be within the NWRC's control. The NWRC shall not disclose contact information received from the Network Entity to any other person. Every email sent by the NWRC pursuant to the process described herein shall allow recipients to opt out of future emails, and the NWRC shall ensure that all opt-out requests are honored in a timely fashion.

e) Each Network Entity shall remit a fee of ten cents (\$0.10) per trip with a pick-up or dropoff location in the City of Chicago performed by a Network Worker, which shall be utilized exclusively for implementation of the requirements under this chapter. The Network Entity may add this fee to the cost of rides or deliveries. Effective January 1, 2023 and each January 1 thereafter, the fee shall be adjusted annually to reflect any increase in the Chicago-area Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Bureau of Labor Statistics. Such fees shall be remitted to the Department of Business Affairs and Consumer Protection on a monthly basis, together with an accounting of all rides for which the fee is collected, in a manner specified by the Director, no more than thirty (30) days following the end of each calendar month. The Director shall be authorized to audit Network Entity remittances to ensure compliance with this Section.

## **9-116-070 Rulemaking authority**

The Director of the Office of Labor Standards, Department of Business Affairs and Consumer Protection ("Director") shall administer and enforce this chapter. The Director shall exercise all responsibilities under this chapter. The Director is authorized to promulgate, revise, or rescind rules and regulations deemed necessary, appropriate, or convenient to implement and administer the provisions of this chapter, providing affected entities with due process of law and in conformity with the intent and purpose of this chapter. The Director shall develop such rules and regulations through an inclusive stakeholder engagement process, which shall include the participation of Network Workers and their representatives. The Director's rules and regulations shall have the force and effect of law.



## **Refer to Committee on License and Consumer Protection 9-116-080**

### **Violations**

The failure of any Network Entity or Network Worker to comply with any requirement imposed by this chapter or the rules and regulations established by the Director shall be deemed a violation of this chapter.

### **9-116-090 Remedies for Unwarranted Deactivations**

Remedies for unwarranted deactivations shall include, but not be limited to, reinstatement of the Network Worker, other equitable relief, recovery of lost compensation, consequential damages, and interest provided under this chapter.

- a) Interest shall accrue from the date the unpaid compensation was first due at nine percent (9%) per annum.
- b) When determining the amount of compensation and damages payable to aggrieved parties, the neutral arbitrator shall consider:
  - 1) The amount of unpaid compensation during the period of unwarranted deactivation and interest due thereon;
  - 2) Other damages suffered by the Network Worker resulting from the unwarranted deactivation;
  - 3) Front pay for the Network Worker where reinstatement cannot reasonably be achieved;
  - 4) The circumstances of each situation; and
  - 5) Other factors pursuant to rules issued by the Director.

### **9-116-100 Private right of action**

(a) Any person or class of persons that suffers financial injury as a result of a violation of this chapter may bring a civil action in a court of competent jurisdiction against the Network Entity for violating this chapter and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any unpaid compensation plus interest due, consequential damages, and punitive damages in an additional amount of up to three times the unpaid compensation. Interest shall accrue from the date the unpaid compensation was first due at nine percent per annum.

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b) For purposes of this subsection, "person" includes any entity a member of which has suffered financial injury, or any other individual or entity acting on behalf of an aggrieved party that has suffered financial injury.

c) For purposes of determining membership within a class of persons entitled to bring an action under this subsection, two or more Network Workers are similarly situated if they:

- 1) Are or were contracted to perform Network Entity services by the same Network Entity or Network Entities, whether concurrently or otherwise, at some point during the applicable statute of limitations period;
- 2) Allege one or more violations that raise similar questions as to liability; and
- 3) Seek similar forms of relief.

d) For purposes of subsection, Network Workers shall not be considered dissimilar solely because their:

- 1) Claims seek damages that differ in amount; or
- 2) Job titles or other means of classifying Network Workers differ in ways that are unrelated to their claims.

e) Nothing contained in this chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, or its officers, employees, or agents, for any injury or damage resulting from or by reason of any act or omission in connection with the implementation or administration of this chapter on the part of the City by its officers, employees, or agents.

## **9-116-110 Other legal requirements**

This chapter defines requirements for Network Worker deactivation protections and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater requirements; and nothing in this chapter shall be interpreted or applied so as to create any power or duty in conflict with federal or state law.

## **9-116-120 Severability**

The provisions of this chapter are declared to be separate and severable. If any clause, sentence, paragraph,

subdivision, section, subsection, or portion of this chapter, or the application thereof

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to any Network Entity, Network Worker, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

Ward 10

