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# Gig Workers Consultation

## Proposing Employment Standards and Other Protections for App-Based Ride-Hail and Food-Delivery Workers in British Columbia

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**Restaurants  
Canada**

The voice of foodservice | La voix des services alimentaires

On behalf of Restaurants Canada and British Columbia's hospitality industry, we appreciate the opportunity to provide feedback on proposed protections for App-Based Ride-Hail and Food-Delivery Workers in British Columbia. We provide the following feedback in the context of British Columbia's hospitality industry continuing to struggle to regain profitability as result of soaring input cost increases, pandemic related debt, and acute labour shortages. Any protections implemented should not increase costs for already struggling restaurants and delivery customers.

## Post Pandemic State of the Hospitality Industry

British Columbia's nearly 15,000 foodservice and hospitality industry businesses continue to struggle due the impact of the pandemic and post pandemic challenges with half of our British Columbia hospitality businesses still losing money or barely breaking even. The industry is struggling to return to profitability due to the combination of higher costs due to inflation, and supply chain challenges, government policies, significant pandemic related debt, and an acute labour shortage enabling businesses to operate at only an average of 80% of their normal capacity.

### **Cost increases**

Recent Restaurants Canada survey data demonstrate the significant double digit increases in food and labour costs on top of significant energy, insurance, municipal tax, and other input cost increases. At the same time menu inflation in British Columbia is only 6.1% as restaurants cannot pass along all these cost increases to value conscious guests.

Adding to these costs are several mandatory policy changes that BC's hospitality businesses have been forced to absorb such as the employer health tax, five paid sick days, a new statutory holiday, WorkSafe BC premium increases, and significant minimum wage increases in recent years that have significantly increased labour and operating costs. BC's hospitality industry cannot afford to absorb additional policy related costs which is why we are advocating for the British Columbia government to commit to doing no further harm to our industry by implementing new policies that will further increase operating costs and increase prices to consumers who are already reducing their discretionary spending due to inflationary cost increases and higher interest rates.

### **Lower Restaurant Traffic**

While we appreciated many British Columbians returning to restaurants post-pandemic, it is important to note that restaurant guest traffic has remained below pre-pandemic levels for several reasons including many British Columbians continuing to work from home. Members are concerned that the current economic slowdown will further reduce restaurant traffic. In fact, a just completed June 2023 Angus Reid survey indicated that 69% of Canadian table service restaurant guests and 54% of quick service restaurant guests stated that they are not dining out as much because it has become too expensive. Adding new costs to consumers at this time will result in further reductions to discretionary spending resulting in further declines in restaurant sales and traffic.

## Shift to Takeout and Delivery

Since the pandemic there has also been a significant shift in restaurant sales from on-premise sales to less profitable takeout and delivery sales with full service restaurants reporting a 23% decline in on-premise sales and a 62% increase in off-premise sales since 2019 for the dinner segment. In 2022 off-premises sales accounted for 37% of an average full service restaurants sales compared to 18% in 2019.

We appreciated the government's third-party delivery fee cap as a mitigation tool to help cap delivery fees, but we understand the majority of restaurateurs are still paying delivery fees above the 20% cap as they see a need for the additional delivery support offered by these third-party delivery companies at a higher rate. While the industry is working hard to make off-premise delivery sales more profitable most restaurants still do not make a profit on these sales but are increasingly reliant on delivery sales to continue to service the increasing demand for off-premise takeout and delivery sales.

Given the fragile state of BC's hospitality industry as with half of BC restaurants remaining unprofitable and a 116% increase in restaurant bankruptcies over the past year, restaurateurs are very concerned about the potential delivery cost increase implications of some the discussion paper proposals to increase protections for app-based and food delivery drivers.

## Discussion Paper Feedback

It must be recognized that delivery drivers, restaurants, customers, and online takeout & delivery platforms are all integral stakeholders needed to ensure the continued success of the growing takeout and delivery market. Major new regulations targeting one group, in this case food delivery drivers, will impact all takeout & delivery stakeholders. Some of the discussion paper's proposals could lead to labour cost increases that will drive up prices for customers, resulting in a reduction in demand for delivery. Many customers who do not order delivery will not drive in for pick up: they'll just do without. That will hurt restaurants, which are already struggling to return to profitability and do not have the margins to spare.

## Fair Compensation Standards

A new minimum wage category specifically designed for app-based delivery drivers that would be higher than the general minimum wage will likely result in higher food delivery costs for both restaurants and their customers. In the current challenging business environment, any drop in demand threatens the viability of the many restaurants already struggling to survive. Higher food delivery costs for restaurant customers who are already dealing with excessive inflationary costs will lead to a drop in the demand for delivery, sapping restaurants of a crucial source of revenue. Additionally, we are concerned that a higher premium wage for one class of workers will set a precedent that will put upward pressure on wages and raise labour costs beyond what is affordable for restaurant operators. Platform companies can certainly negotiate driver compensation that is higher than minimum wage to attract drivers (ie. Uber agreement with UFCW at 120% of minimum wage during engaged time) but the policy rationale should be minimum wage equivalency.

Restaurants Canada supports the approach of treating delivery drivers the same as taxi drivers with respect to minimum wage ensuring that total wages a driver receives over the course of a month are at least equivalent to the wages the driver would receive if they had been paid minimum wage for every active hour worked in the month.

Restaurants Canada believes that app-based delivery drivers should continue to be classified as independent contractors to maintain the current business modal which provides delivery drivers the flexibility to work only those hours that best suit their individual schedules and circumstances. With respect to work-related expenses these drivers should be paid at least the minimum wage over the course of a month after work-related expenses are factored in. This would ensure that drivers are compensated at a minimum of minimum wage after work related expenses without having to implement new policies to reimburse drivers for these expenses.

Gratuities are an important part of the compensation delivery drivers earn. Like restaurant servers, when factoring in their gratuities these delivery drivers generally earn well above minimum wage. Restaurants Canada supports delivery drivers having the same tip protection as restaurant employees which prohibits an employer from withholding tips from an employee, making deductions from an employee's tips, or requiring an employee to return tips to the employer. We understand that in practice platform companies already ensure that deliver drivers receive 100% of their tips so there is no need to implement a separate tip portion policy for delivery drivers.

## **Pay and Destination Transparency**

Restaurants Canada supports pay transparency to show workers the minimum they will be paid prior to accepting an assignment and that platform companies verify that drivers be paid correctly based on the minimum they are anticipating receiving prior to accepting an assignment. Restaurants Canada supports the transparency approaches outlined in the discussion paper.

## **Account Suspensions, Deactivations, and Terminations**

In general Restaurants Canada supports minimum standards regarding suspensions and deactivations that promotes fairness and transparency for drivers as independent contractors. However, the Ministry must be careful to ensure that these are balanced and do not restrict the ability of platform companies to suspend or deactivate drivers for fraud (ie. theft or not delivering orders) and safety risks (ie, harassment or tampering with food orders) that put customers or restaurant staff at risk.

Restaurants Canada also supports a requirement to give notice of termination or compensation in lieu of notice, unless there is just cause for the termination similar to employees under the Employment Standards Act.

## **Workers' Compensation and Occupational Health and Safety Coverage**

Restaurants Canada supports requiring platform companies to cover delivery drivers for on-the-job injuries through private sector insurance purchased by the delivery companies recognizing that drivers are independent contractors and not employees. We believe that platform companies should ensure similar Occupational Health and Safety (OHS) protections and workplace injury compensation similar to the protections employees receive through OHS and WorkSafe BC but the Ministry should be careful not to confuse the distinction between independent contractors and employees and alter the current delivery business modal.

Adding the large number of independent contractor delivery drivers, who often work very occasionally a few hours a week to supplement their income, to the worker's compensation system will substantially increase labour costs and drive-up prices for restaurants and delivery customers and drive down demand for delivery at time when they can least afford it.

## Conclusion

Restaurants are a key economic driver in every BC community as the third largest private sector employer in the province and the demand for app-based food delivery is becoming and increasingly important component of restaurant sales. With restaurant business bankruptcies up 116% in 2022 and a record 51% of foodservice businesses being unprofitable, restaurateurs and their customers can not afford to absorb additional costs that could come from some of the proposals outlined in the discussion paper. Restaurants Canada believes that any changes to provide additional protections for app-based delivery drivers must recognize the reality that app-based work is fundamentally different from traditional employment allowing for greater flexibility and independence for app-based delivery drivers. The focus of any changes should be on supporting greater protections for delivery drivers as independent contractors while also protecting the business modal of app-based delivery platforms in British Columbia as many communities and restaurants in these communities rely on these app-based platforms for mobility and delivery.

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