Thank you **Madame** Chair and members of the committee. I appreciate the opportunity to present my views in this important review of Bill 88, the Digital Platform Workers' Rights Act.[1]

My name is Saurabh Sharma and I am a Digital Platform Worker. For over one year, I have been delivering food and groceries in downtown Toronto for Uber Eats.

I am here today to express my deep concerns about the extent to which Bill 88 fails to protect Digital Platform Workers – and especially food couriers working in this industry – from exploitation by Delivery App Giants.

My comments today result from my direct experience working in this industry as a gig worker, but also as someone who has had to avail myself of a legal process under the Employment Standard Act to challenge the contractual misclassification by my employer, who fails to see me as an employee entitled to all of the benefits under the Employment Standards Act.[2]

As you will see, when you review this decision, following a detailed investigation of various factors of my employment, the Ministry of Labour found that I was in an employee-employer relationship with Uber.

If Bill 88 is passed, it would reverse all of the protections conferred through this decision, and afforded under the Employment Standards Act, by introducing a special relationship between Delivery App Giants and their workers, which robs food delivery couriers of their designation as "employees".

Quite simply put, Bill 88 does **not** work for workers.

More specifically, there are four main problems with this bill, all of which function to legitimize exploitative practices of Delivery App Giants:

## I. Let's look first at the definition of "Operator" in section 1 of the Act.

According to this definition, my employer, Uber, would be considered an "Operator" because it is facilitating my work through the use of a digital platform.

Respectfully, I find this definition to mischaracterize the true nature of my relationship with Uber for the following reasons. And these can all be found articulated in the ruling by the Ministry of Labour:

1. I have no negotiation or bargaining power over my wages. They are fixed by Uber. I do not get directly paid by customers or the restaurant.

[1] While I appreciate the opportunity to provide my views to today's committee, I would like to note, for the record, that I was only told about my March 28, 2022 committee appearance on March 25. 2022. I believe the lack of meaningful notice in relation to this appearance raises important concerns around procedural fairness relating to the right to be heard.

[2] UBER PORTIER CANADA INC., Claim ID# 0014666-CL000, Order ID# 0014666-CO001

2. The single most important tool – The Uber App - to perform this work is provided by Uber – Uber is the sole source of my work. I cannot engage with customers or restaurants directly even if I wanted to.

3. Uber has disciplining authority over me. It has the authority to hire me, fire me at its own volition.

4. And lastly – Uber's workplace policies has a direct impact on my health and safety. For example, recently Uber changed its algorithm to reduce the pinging time for receiving orders. A time of 10 seconds to accept an order proved to be highly dangerous for workers working on roads on a bicycle. This is another reason why it is so important to give workers employee rights to have a say at the table.

While the designation of "Operator" may be more appropriate for digital marketplaces like Kijiji, Fiverr, Upwork, where workers can post their freelance services, and stipulate or control the costs of these services, this definition is entirely inappropriate for workers in the app-based food courier industry, for the reasons I've just outlined.

This is all to say that including specific reference to app-based rideshare drivers and food couriers in the definitions under the bill will make it very hard for them to prove their standing under ESA and OHSA.

The Bill should make it very clear that it does not impact Digital Worker's standing under ESA and OHSA if this Bill is to be the floor and not the ceiling.

**II. The second reason Bill 88 fails to protect workers relates to the application of minimum wages in section 9 of the Act.**

In section 9 of this bill, minimum wage applies only to each work assignment performed by a worker.

In other words, food app delivery couriers can only be paid when they are on an assignment. They are not compensated in their downtime waiting around between deliveries or for restroom breaks.

But under the Bill 88 model, compensation can be diluted down to as little as $5 an hour, or even less.

**III. The third problem associated with Bill 88 are the actions that can lead to the removal of a worker in section 11.**

Under section 11, a worker can be terminated at any time because of wilful misconduct. Willful misconduct is broadly defined under Uber's employment policies, over which workers have no control.

To provide a real-world example,

When workers are hired by Delivery App Employer they are made to sign a contract. These are contracts of adhesion and workers have no bargaining power to negotiate any contractual terms.

low ratings on the app are considered by Uber as "misconduct" worthy of termination. But given the limited ability of food couriers to control and/or contest the rating, this provision puts too much control in the hands of the Delivery App Employer, and limits doctrines of procedural fairness for workers, who can be denied due process protections before they are terminated.

The Bill should introduce guidelines for limiting the causes for willful misconduct. Additionally, the bill should call for severance pay for no-cause termination as that will restrict App-based giants from using such drastic measures for minor violations.

And these suggestions are already present in ESA. All these problems can be easily solved if we are included under ESA.

## IV. Finally, the last problem I will speak to today with Bill 88, concerns the need for transparency for payment calculations under the compensation algorithm

Currently, the right to information under section 7 of the Act is inadequate because it merely conforms to the standard of disclosure currently practiced by Delivery App Giants like Uber.

Workers must be entitled to information on how the Delivery App Giants' algorithms work. For instance:

- On what basis does the pay fluctuate from day to day?
- Why do some workers receive incentives while others do not?

I start working in a day anticipating higher wages due to a high supplement, but once I am outside the supplement reduces considerably impacting my earnings. The Bill should address the variations made by App giants in pay on day-to-day basis. The bill fails to address the issue of transparency.

****

In conclusion, I want to reiterate my remarks that Bill 88 does **not** work for workers. There is a common saying that justice hurried is justice buried. Bill 88 is being hurried through the legislative process without any thorough investigations into the workplaces that make up the gig economy, and without broad consultations with a wide array of gig workers from various sectors.

Every person living and working in Ontario, should have the right to dignity and respect at work. Bill 88, in its current form, is a threat to our dignity.

Thank you very much for allowing me to speak.

**Ministry of Labour, Training and Skills Development**
Provincial Claims Centre
70 Foster Drive, Suite 410
Sault Ste. Marie, ON P6A 6V4
Telephone: (705) 945-6389
Toll Free: 1-866-382-6274
Fax: 1-888-252-4684

**Ministère du Travail, de la Formation et du Développement des compétences**
Centre provincial de réception des réclamations
70, promenade Foster, bureau 410
Sault Ste. Marie ON P6A 6V4
Téléphone : (705) 945-6389
Sans frais : 1-866-382-6274
Télécopieur : 1-888-252-4684

Ontario

February 22, 2022

SAURABH SHARMA
300 - 474 BATHURST ST,
TORONTO, ON,
M5T 2S6

By email

Dear SAURABH SHARMA:

**Re: UBER PORTIER CANADA INC., Claim ID# 0014666-CL000, Order ID# 0014666-CO001**

I have completed my investigation and find that the employer has contravened the *Employment Standards Act, 2000*. Please be advised that I have issued an order against the business. A copy of the order(s) and the reasons for my decision are enclosed.

If you disagree with this decision, you may file an application for review with the Ontario Labour Relations Board (OLRB) within 30 days from the date this order was served. See the OLRB's Information Bulletin #24 at http://www.olrb.gov.on.ca/Forms/IB/InformationBulletin-24-EN.pdf for information on the application for review process. Please ensure that prior to filing with the OLRB, you consult the OLRB's **Notices to Community** at http://www.olrb.gov.on.ca/ to see if there have been any updates to service and filing requirements.

The business to whom the order(s) was issued against has 30 days from the date the order was served to either comply or to apply to the OLRB to review this decision. You will be contacted if the business exercises this right.

Please inform our office immediately if your address, phone number or email changes at any time, in order to ensure prompt receipt of any monies paid pursuant to the above mentioned order(s).

Yours truly,

Katherine Haire

Katherine Haire
Employment Standards Officer #1514
Telephone: 905-715-4023

Enclosures: Copy of Order(s) and Reasons for Decision

**Help us improve…**

As part of our commitment to continuous improvement, we are interested in your feedback. Please take a few minutes to complete this short, anonymous survey within the next 10 days: https://survey.alchemer-ca.com/s3/50070379/Post-Claim-Survey. Your voluntary participation will assist us in providing inclusive and equitable services.

Ontario

**Ministry of Labour, Training and Skills Development**
**Employment Standards Program**

# Compliance Order

***Employment Standards Act, 2000***
**Statutes of Ontario, 2000, Chapter 41**

| **ORDER ID#** | **Date Issued** |
|---|---|
| 0014666-CO001 | February 22, 2022 |

**Issued To:**
UBER PORTIER CANADA INC.

I find that you have contravened the Limits on Hours of Work provisions of the *Employment Standards Act, 2000*.

Pursuant to section 108 of the Act, you are ordered to provide all employees with a period free from the performance of work equal to at least twenty- four (24) consecutive hours in every work week in accordance with section 18(4)(a) , or at least forty- eight (48) consecutive hours in every two consecutive work weeks in accordance with section 18(4)(b) of the Employment Standards Act, 2000 by February 22, 2022.

I find that you have contravened the Limits on Hours of Work provisions of the *Employment Standards Act, 2000*.

Pursuant to section 108 of the Act, you are ordered to provide all employees with an eating period of at least thirty (30) minutes at intervals that will result in the employee working no more than five (5) consecutive hours without an eating period in accordance with section 20 of the Employment Standards Act, 2000 by February 22, 2022.

I find that you have contravened the Record Keeping provisions of the *Employment Standards Act, 2000*.

Pursuant to section 108 of the Act, you are ordered to cease contravening Part VI-Records of the Employment Standards Act, 2000.  You are ordered to record for each employee, the information required by section 15 of the Employment Standards Act, 2000 by February 22, 2022.

I find that you have contravened the Payment of Wages provisions of the *Employment Standards Act, 2000*.

Pursuant to section 108 of the Act, you are ordered to establish a recurring pay period and a recurring pay day as required by section 11(1) of the Employment Standards Act, 2000 by February 22, 2022.

Katherine Haire

Katherine Haire
Employer Standards Officer #1514

**Posting Requirement**

Pursuant to section 93 of the Act, you are required to post this order in or upon your premises in a conspicuous place or places where it is likely to come to the attention of employees, for a period of 30 days from the date of issue.

V.07/2020

**Ministry of Labour, Training and Skills Development**
Provincial Claims Centre
70 Foster Drive, Suite 410
Sault Ste. Marie, ON P6A 6V4
Telephone: (705) 945-6389
Toll Free: 1-866-382-6274
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February 22, 2022

SAURABH SHARMA
300 - 474 BATHURST ST,
TORONTO, ON,
M5T 2S6

By email

Dear SAURABH SHARMA:

**Re: UBER PORTIER CANADA INC., Claim ID# 0014666-CL000, Order ID# 0014666-OP001**

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If you disagree with this decision, you may file an application for review with the Ontario Labour Relations Board (OLRB) within 30 days from the date this order was served. See the OLRB's Information Bulletin #24 at http://www.olrb.gov.on.ca/Forms/IB/InformationBulletin-24-EN.pdf for information on the application for review process. Please ensure that prior to filing with the OLRB, you consult the OLRB's **Notices to Community** at http://www.olrb.gov.on.ca/ to see if there have been any updates to service and filing requirements.

The business to whom the order(s) was issued against has 30 days from the date the order was served to either pay the amount owing to the Director of Employment Standards in Trust or to apply to the OLRB to review this decision. You will be contacted if the business exercises this right.

Please inform our office immediately if your address, phone number or email changes at any time, in order to ensure prompt receipt of any monies paid pursuant to the above mentioned order(s).

Yours truly,

Katherine Haire
Employment Standards Officer #1514
Telephone: 905-715-4023

Enclosures: Copy of Order(s) and Reasons for Decision

**Help us improve…**

As part of our commitment to continuous improvement, we are interested in your feedback. Please take a few minutes to complete this short, anonymous survey within the next 10 days: https://survey.alchemer-ca.com/s3/50070379/Post-Claim-Survey. Your voluntary participation will assist us in providing inclusive and equitable services.

V.10/2021

Ontario

# Order to Pay Wages

***Employment Standards Act, 2000***

**Statutes of Ontario 2000, Chapter 41**

**Ministry of Labour, Training and Skills Development**
**Employment Standards Program**

| **Order ID#** | **Date Issued:** |
| --- | --- |
| 0014666-OP001 | February 22, 2022 |

**Issued To:**

UBER PORTIER CANADA INC.

Pursuant to section 103, you are ordered to pay the following amounts to the Director of Employment Standards in Trust:

| | | | |
| --- | --- | --- | --- |
| Wages | $919.37 | For Claim ID# | 0014666-CL000 |
| Administration Costs | $100.00 | | |
| **Total Amount of Order** | **$1,019.37** | | |

Katherine Haire
Employment Standards Officer #1514

You are required to pay the total amount indicated to the Director of Employment Standards if you are not applying for a review of the order. Payments are to be made in Canadian funds. Failure to pay the order within 30 days of the date of service may result in further enforcement action, including referral of this matter to a collector whose fee will be added to the amount of the order.

**Retain this order for your records.**

**See the instructions on the next page for payment options and applying for a review of the order.**

Ontario

# Payment Form

| Order ID# | Order Amount | Claim ID# |
|---|---|---|
| 0014666-OP001 | $1,019.37 | 0014666-CL000 |

## Important – Instructions for Payment

### Step 1: Select one of the following options and check the box that applies:

☐ **I am paying this order**

- I am including a cheque or money order for the **total** amount of the order
  - o The payment is made in Canadian funds, and
  - o The cheque or money order is made payable to the "Director of Employment Standards in Trust"
- I understand that my payment will be released to the employee(s)

☐ **I am applying for a review of this order within 30 days of receiving this order**

- I have completed and filed the Ontario Labour Relations Board's (OLRB) "Application for Review (*Employment Standards Act, 2000*)" form directly with the OLRB.
  - o See the OLRB's Information Bulletin #24 at http://www.olrb.gov.on.ca/Forms/IB/InformationBulletin-24-EN.pdf for information on the application for review process. Please ensure that prior to filing with the OLRB, you consult the OLRB's **Notices to Community** at http://www.olrb.gov.on.ca/ to see if there have been any updates to service and filing requirements.
- I am including my payment for the **total** amount of the order by either (*choose a or b*):
  - a) Cheque or money order
    - ▪ The payment is made in Canadian funds, and
    - ▪ The cheque or money order is made payable to the "Director of Employment Standards in Trust"
  - b) A letter of credit
    - ▪ Using the approved template: https://www.labour.gov.on.ca/english/es/pubs/letterofcredit.php

### Step 2: Return this completed form along with payment or letter of credit to:

Director of Employment Standards
Ontario Ministry of Labour, Training and Skills Development
400 University Avenue, 9th Floor
Toronto, ON M7A 1T7

**Ministry of Labour, Training and Skills Development**

**Ministère du Travail, de la Formation et du Développement des compétences**

Ontario

# REASONS FOR DECISION

***Employment Standards Act, 2000 (ESA)***

**Claim Number:** 0014666-CL000

**Business Name:** UBER PORTIER CANADA INC

**Related Employers:** UBER PORTIER B.V**.**
UBER TECHNOLOGIES, INC.

**Claimant Name:** Saurabh Sharma

**Date Claim Filed:** October 21, 2021

**Standard(s) At Issue:**
- Misclassification – Section 5.1
- Payment of Wages –Section 11
- Wage Statements – Section 12
- Unauthorized Deductions – Section 13
- Record Keeping –Section 15
- Hours of Work – Section 17, Section 18, Section 20
- Overtime Pay – Section 22
- Minimum Wage– Section 23
- Public Holiday Pay– Section 26
- Vacation Pay– Section 35.2

**Background:**
The claimant, Saurabh Sharma, has worked for Uber Eats as a delivery provider since December 2020. During this period, the claimant has entered into agreements with three separate legal entities.

- The Technology Services Agreement entered on December 09, 2020 existed between the claimant and Uber Portier B.V.

- The Delivery Agreement signed in July 2021 is between the claimant, Uber Portier Canada Inc. and Uber Technologies, Inc.

Uber Technologies,Inc. is a corporate entity registered in Delaware, USA and is the parent corporation of all Uber entities, including Uber Portier Canada Inc. Uber Portier B.V. sells digital services worldwide and incorporated in the Netherlands with no role in

Canada since July 2021, where the company on shored the business and incorporated Uber Portier Canada Inc.

**Determination of the Legal Name of the Business:**
Based on the Certificates of Incorporation, Delivery & Technology Services Agreements provided as well as the federal corporation search, I am satisfied that the legal names of the businesses are UBER PORTIER CANADA INC., UBER TECHNOLOGIES, INC. and UBER PORTIER B.V.

**Evidence, Decision and Reason(s) With Respect to Each Standard at Issue:**

**<u>Position of the Claimant:</u>**
The claimant's position was provided by his legal representatives Ryan White and Cole Eisen.

The claimant has performed work as a delivery driver with Uber Eats since December 2020. He states that he works an average of 5-6 days a week earning between $400.00 and $800.00 a week.

The claimant alleges that he has been misclassified as an independent contractor. The claimant's position is that he is an employee of Uber Eats. During the claim investigation, the claimant and his legal representatives clarified that should a misclassification contravention be found, that they wished all other applicable standards be addressed.

The claimant alleges that an unauthorized deduction was made from his wages. The claimant explains that he made two deliveries in the evening of August 25, 2021, one for $22.50, displayed as 253.4kms and one for $265.26, displayed as 970.6 kms. The claimant indicates he believed that the fees provided were higher based on trip supplements being offered. He states that after these deliveries; his account was suspended due to suspicious activity and he was not able to reach the customer service line until the following morning. The claimant says at this time his account was re-activated and he received payment for the orders that afternoon. He was then notified that evening that there had been a technical issue with the App and the fare was adjusted to $45.00 to any affected deliveries, resulting in a negative balance of $195.22 in his account. The claimant alleges that the application of this negative balance is an unauthorized deduction from his wages.

**<u>Evidence provided by the claimant:</u>**
- Written submission on claim form
- Additional written submissions in response to questions/respondent's position
- Copies of screenshots taken from the Uber App for deliveries on August 25, 2021
- Copies of screenshots taken from the Uber App
- Copy of the Delivery Agreement and Pricing Addendum drafted in July 2021
- Copy of Uber Agreement drafted in April 2017
- Copy of the amendments to Uber Agreements drafted in July & August 2020

- Copy of Uber instructions regarding deactivation
- Copy of the User Community Guidelines
- Copies of Warning Emails and Messages from Uber to Couriers
- Copies of Weekly Earnings Statements
- Copies of Weekly Statistics from the App
- Copy of a written statement of position related to standards and breakdown of entitlements

**<u>Position of the Respondent:</u>**
During the investigation, evidence was provided by Uber's Senior Legal Director in Canada, Jeremy Millard. The respondent disputes the claimant's allegations, alleging that the claimant is an independent contractor. The respondent indicates that the claimant initially entered into an agreement with Uber Portier B.V. where Uber provided digital services to the claimant and he paid a service fee for these services. Subsequently, the claimant entered into an agreement with Uber Technologies, Inc. and Uber Portier Canada Inc. under which the claimant sells delivery services to Uber and Uber resells to the delivery recipients and merchants. The respondent explains that Uber provides technology services to its customers, which include the merchants and the delivery providers.

In response to the unauthorized deduction allegation, the respondent confirms that $195.22 was withdrawn from the claimant's account. The company explains that on August 25, 2021 the App was not displaying accurate distances and this affects the fees that were being displayed. Due to the technical issues, any fees that were over $45.00 were temporarily withheld while they were resolving the issue and the fees were adjusted to $45.00 for those orders as a goodwill gesture. As a result of the technical issue, some accounts were also suspended for the day. The respondent adds that the Delivery Agreement permits Uber to correct payments that were made in error and that they do not guarantee uninterrupted or error free access to the Driver App. They take the position that the money withdrawn from the claimant's account was a correction of a payment made in error.

**<u>Evidence provided by the respondent:</u>**
- Certificates of Incorporation and filings for Uber Portier Canada Inc. and Uber Technologies, Inc. and Uber Portier B.V
- Copy of intercompany and funding agreements between the Uber entities
- Copy of the organizational chart for the Uber entities
- Copy of written narratives in response to allegations and questions
- Copy of Log of in-app communications
- Copies of support inquiries
- Copy of the Delivery Agreement and Pricing Addendum
- Copies of weekly earnings statements
- Copy of Technology Services agreement
- Copy of the Arbitration Provision agreement
- Copy of the Portier B.V Agreement

- Copy of Uber Eats Delegation Process
- Copy of timekeeping records demonstrating online & offline status changes
- Copies of earning statements

**Decision:**

This decision is based on the best available evidence, having weighed the balance of probabilities when necessary.

To Whom the Act Applies:

The primary issue to be determined is whether the claimant is working as an independent contractor or as an employee for the corporation, as the ESA only applies where there is an employment relationship between parties. Section 5.1 (1) of the ESA states that it is a contravention to treat a person, for the purposes of the Act, who is an employee of the employer, as if the person were not an employee under the Act.

In order to determine whether an employee-employer relationship exists, I will be applying the definition in section 1 of the ESA and relevant common law factors, accepted by the Employment Standards Program, to establish whether an individual is an employee, as follows:

Organization Test/ Integration Test:

The Supreme Court of Canada in *671122 Ontario Ltd. v Sagaz* considered the organization test or integration test, which was approved by that Court in *Co-operators Insurance Association v. Kearney*, [1965] SCR 106, 1964 CanLII 21 (SCC) and followed in *Mayer v J. Conrad Lavigne Ltd.,* 1979 CanLII 2088 (ON CA). This test examines whether the alleged employee is an integral part of the employer's organization, in which case the individual is an employee, or a mere accessory to it, in which case they are an independent contractor.

The claimant alleges as a delivery driver he is fully integrated into the Uber Eats' business model and dependent on Uber Eats to provide work to his driver account. The claimant explains that Uber Eats' provides food delivery services to customers, indicating that as a driver he is an integral part of the transaction between the customer and the restaurant, which Uber Eats oversees through the App. The claimant maintains that Uber Eats business could not be offered without the delivery couriers.

The respondent contends that the claimant is not integrated to Uber's business, as there is no requirement for him to use the Uber platform as opposed to another platform which offer similar services. The respondent explains that Uber technology services can be provided without a delivery provider, as the delivery recipient can elect to pick up their order. The respondent adds that delivery services are only one portion of the Uber Technologies Inc.'s business ventures or operations, which include freight, e-commerce payments, self-driving vehicles, delivery, public transit, mobility, software-as-a-service, vehicle rental, and electric bikes and scooters, as well as holding investments in other entities.

In determining the matter of integration, I will be looking at the duties the claimant performs in his role as a delivery provider in relation to the part of the business for which he provides services. Uber Eats delivery service is composed of the following parties: the merchant, the delivery recipient and the delivery providers, all of which is orchestrated through the App. It can be held that the claimant is an integral part of the Uber Eats business line as without the delivery providers, Uber Eats delivery services could not be offered. The delivery providers equally rely on Uber Eats to provide the App in order to perform their deliveries with the company.

The App provides the claimant the deliveries to perform, the fees that he will be paid for each delivery without any negotiation and oversight on how these deliveries are completed. As mentioned above, Uber delivery providers are subject to de-activation and suspension, in various scenarios that relate to the service delivery and company requirements. The level of involvement that Uber Eats maintains would suggest that the claimant's work is an integral part of the business and Uber Eats has a vested interest in how it is performed.

From the review of facts on file, based on the organization test it has been determined the claimant as a delivery provider is an integral part of the business and that his work is subject to coordinated control by Uber through the App.

Four-Fold Test:
The four-fold test examines factors to provide a means of distinguishing between an employee and an independent contractor. The test involves four elements which will be highlighted below.

Control:
The claimant indicates that Uber exercised control through the written agreements, which outlined the terms and conditions of work. In order to become a driver with Uber Eats, the claimant explains that he had to provide photo identification, proof of eligibility to work in Canada and consent to a criminal background check. He adds that drivers are required to complete mandatory training sessions. The claimant expresses that he was required to send photos proving that he was wearing a mask in line with safety protocols dictated by the company when signing in or proving his identify throughout his shift.

The claimant states that the fee and pay structures are determined by Uber and that they can offer incentives to the drivers based on supply and demand of orders. The claimant argues that though he is able to set his own hours of work, in order to earn sufficient wages, he primarily works during the times where incentives are offered. The claimant states that he cannot subcontract his work, unless to an authorized delegate for which he would need to obtain prior approval.

The claimant alleges that Uber Eats uses the App to oversee issues that come up between parties and tracks the driver location through the GPS technology during the shift. He indicates that the App provides routes and timeframes to the customer, who then rely on this information for their rating.

The claimant says that complaints were handled by Uber Eats, who investigate and determine the appropriate response. The claimant explains that Uber had the ability to put him offline or suspend him through the App. He provided scenarios in which these actions would be taken:

1) If the claimant cancelled a delivery, he would need to justify this by calling the support line, and if the reason was not considered justified or too many cancellations occurred, he could be de-activated.
2) If numerous offers were declined or ignored in a row, then he could be taken offline.
3) If there was suspicious activity on his account, similar to the issue related to his unauthorized deductions allegation, then a driver's account could be suspended.
4) If the driver fails to send a photo of himself wearing a mask or fails to prove identity, he may be suspended.
5) If the drivers rating went below 80%, they could be subject to de-activation.
6) If mandatory online training is not completed, he could be subject to de-activation.

Additionally, the claimant has provided copies of warnings notifications and emails received by delivery providers pertaining to delivery delays, cancellations, low driver ratings, masking requirements and complaints from customers.

The respondent states that for each completed delivery Uber pays a fee to the claimant as per their agreement and confirms that these fees fluctuate based on multiple factors related to distance, estimated time, supply and demand. The respondent adds that the claimant exercises the discretion to accept an order if incentives are being offered.

The respondent states that it is the claimant who exercises control over whether he uses the app, accept requests, or provides any delivery services. He explains that the claimant can choose when to "go online or offline" for any reason and is not required to report for any shifts or schedules. The respondent says that the claimant can cancel requests before or after he collects the items to be delivered, however he may be required to return the items. The respondent maintains that the claimant controlled how he carried out his services by determining the method, routes of delivery and communication with the parties regarding the services. He adds that the routes and timeframes provided through the App are estimates based on factors like distance and traffic.

The respondent indicates that merchants and delivery recipients will communicate specific instructions to the drivers about pick up or delivery. Some examples of these requirements are where to enter, where to park, if a heated bag is required,whether to call upon arrival.

The respondent expresses the claimant has the ability to work anywhere that Uber Eats offers services and is not restricted from working for other delivery apps or other lines of work simultaneously. The respondent adds that the claimant can subcontract work to another delivery driver account holder.

The respondent confirms that Uber instituted a mask policy for drivers, delivery people, and riders, and that users may be required to take a selfie to confirm mask usage. Uber may terminate the Agreement if the policy is not followed. In regard to any suspension or de-activation of accounts, Uber will suspend someone's access to the app to investigate a breach, explaining that the same applies to merchants and delivery recipients. Additionally, after repeated cancellations a delivery driver may be logged off for Uber to determine whether the delivery person still wants to be receiving requests and knows how to log off. The respondent argues that this is not a penalty, as the delivery person can log back on immediately and receive requests again.

From a review of the information presented, it is acknowledged that the claimant did exercise control over when to utilize the App in order to perform work and that there are no exclusivity requirements. It was found that the claimant can indeed subcontract work to an authorized delegate, however that this delegation process and approval process is governed by Uber Eats.

In order to perform work for Uber, the claimant is required to go through a specific hiring process, attend mandatory training and demonstrate that he is adhering to Covid-19 safety protocols. When working online it can be held that the respondent has a considerable amount of control that is exercised through the App. The App informs the claimant the details of the delivery, the routes/timeframes, fees and handles the complaints process. In addition, Uber Eats reserves the right to de-activate and suspend accounts for breaches of their agreements and guidelines in place. The claimant has provided detailed evidence demonstrating scenarios where warnings and disciplinary actions were taken.

Based on a review of the evidence on file, I find the element of control to be indicative of an employment relationship.

<u>Materials/Tools:</u>
The claimant states that the App is the most integral tool for performing his position and this is provided to him by Uber. He explains that the App is essential for the orders, structuring the deliveries and provides timing as well as routes for deliveries. The claimant indicates that he uses his own bicycle and cell phone, which he purchased for personal use and not for his employment.

The respondent indicates that the claimant provides his own tools for performing delivery services, such as his bicycle, smartphone, data plan and delivery bag. He adds that no expenses are reimbursed to the claimant. The respondent explains that the claimant chooses to use the app for his delivery services and there is no requirement to use Uber's app over another platform. The respondent's position is that though the claimant may use the app to review, accept and reject requests, the use off the app is incidental in comparison to his mode of transportation. He confirms that the app provides directions between the pickup and delivery location but argues that these routes are not required to be taken.

Though it is recognized that the claimant does provide his own mode of transportation, cell phone and delivery bag. There is significant consideration given to the fact that the respondent provides use of the App to the claimant for his employment through their agreements. The App is arguably the most important tool for performing his deliveries. Without the App, there is no connection between the customer, the restaurant, and the claimant to provide the service. There is also no alternative to using the App. As such, I have found the element of ownership of tools is indicative of employee status.

Chance of Profit:

The claimant alleges that his only means of increasing profit are working more and working faster. The claimant explains he does not have the ability to negotiate compensation, as the fee structure is set. The claimant says he does not have the ability to work directly with the customers or the restaurants to structure fees or offer incentives. The claimant argues that Uber Eats is able to make unilateral changes to the business strategies which can impact the drivers' wages. He says that he does not have his own registered business, and though he can perform work elsewhere, he works exclusively for Uber Eats.

The respondent position is that the claimant exercised control over his chance of profit and risk of loss, as he exercised the decision to use the App, which deliveries he chooses to accept, and the geographic area that he chose to work within. For example, choosing more densely populated or wealthier areas to work within. The respondent indicates that the claimant was free to develop business relationships with merchants or provide services elsewhere.

Regarding chance of profit, the claimant is provided with a fee for each completed delivery. The fees are determined by the agreements signed between parties. The claimant is not able to negotiate fees. The claimant also has no ability to negotiate directly with the merchant or customer about the Uber deliveries he is performing. His compensation is primarily related to his productivity, in terms of how many deliveries he performs and how quickly he can complete them. Consequently, I find this indicator reflects an employee- employer relationship.

Risk of Loss:

The claimant indicates that through the compensation structure offered by Uber, he is paid regardless of any issues with the restaurant, customer or delivery. The respondent states that the claimant is responsible for costs and expenses related to providing delivery services, such as his mode of transportation and maintenance.

As the risk of loss was assumed by both parties, I do not find this indicator determinative of the employment relationship.

Given the elements examined, I have found that claimant had limited control in comparison to the respondent, that the respondent provided the most vital tool required to perform the work and that the claimant did not have significant opportunity to increase his chance of profit. The review of the four-fold test has demonstrated that an employment relationship existed between parties.

Therefore, based on the four-fold and organization tests, it can be determined that the claimant as a delivery provider is an employee and the protections of the *Employment Standards Act, 2000* (*ESA)* apply. I find that the employer has contravened section 5.1(1) of the ESA.

**Related Employer Investigation:**
According to the information on file, the claimant entered into agreements with three legal entities while performing work for Uber Eats. A determination will be required regarding whether the following entities are associated or related for the purpose of the ESA:

- Uber Portier B.V.
- Uber Technologies, Inc.
- Uber Portier Canada Inc.

As per section 4(2) of the ESA, separate persons shall be treated as one employer, if associated or related activities or businesses are or were carried on by or through an employer and one or more other persons. Section 4(5) provides that persons treated as one employer will be jointly and severally liable for any contravention of the ESA and any wages owing to the employee.

During the investigation, the respondent did not provide a formal position as to whether the entities were considered related. The respondent provided detailed information and records requested in order for the Officer to make the assessment.

In order to make a determination as to whether section 4 of the ESA applies to these entities, several elements must be taken into consideration:

<u>Common Management & Ownership</u>
Uber Technologies, Inc. is the parent corporation of Uber Portier B.V. and Uber Portier Canada Inc. According to the submissions provided, Uber Technologies, Inc. owns both Uber Porter B. V. and Uber Portier Canada, through their subsidiaries. The corporate entities do not have common directors, shareholders or partners.

<u>Common Financial Control</u>
The Uber entities use common legal services. As the respondent has explained that Uber's internal legal group can handle legal matters for all of the entities, while also using external law firms within the country where the legal matter is being reviewed. It should be noted that counsel for the corporation, Jeremy Millard, provided submissions for the purposes of the section 4 investigation for all the corporate entities.

<u>Common Logo/ Trade Style</u>
The Uber Eats Logo and website is the same for all corporate entities mentioned. These entities share common handbooks, business contact guides, guidelines and policies.

Movement of Employees Between Two or More Entities

From the review of the agreements on file, the initial agreement existed between delivery providers and Uber Portier B.V. As of July 01, 2021, the agreements were replaced, and the new agreements presented were between the delivery providers, Uber Technologies, Inc. and Uber Portier Canada Inc. This demonstrates a movement of delivery providers between the listed entities. The claimant himself moved from the different entities not because he sought work elsewhere, but due to the fact that Uber provided him a new contract to sign, and he chose to continue working.

Use of the Same of Assets by Two or More Entities, or Transfer of Assets Between Them

For the purposes of the investigation, the respondent provided existing agreements between corporate entities. This included an Omnibus funding agreement existing between Uber Technologies, Inc. and Uber Portier B.V for tax-related purposes. In addition, an intercompany agreement exists between Uber Technologies, Inc. and Uber Portier Canada Inc. which designates Uber Portier Canada as a distributor of services.

Common Market or Customers Served by Two or More Entities

All of the entities appeal to a common customer market through the Uber Eats brand name. Additionally, the entities all use the same digital technology, the App, to provide these services to their customers.

**Conclusion of Section 4 Investigation**

From a review of the elements above, it has been found that the entities share a common trade name, use the same company related materials and appeal to the same customer markets. The entities share ownership as well as common legal services. The agreements show that the entities transfer assets between them and that there is movement of delivery providers among the different entities.

Based on the totality of evidence received, the three corporate entities are found to meet the definition of related under section 4(1) of the ESA. All entities will be treated as one employer for the purposes of the application of the ESA and as such, will be jointly and severally liable for any contravention of the Act and the regulations found and for any wages found to be owing.

As the claimant had previously been classified as an independent contractor by Uber Eats, certain entitlements under the ESA were not provided to him during his period of employment. Based on the finding previously outlined, the claimant is considered to meet the criteria of an employee and assessments will be made for the following:

**Payment of Wages**

As per section 11(1) of the ESA employers are required to have consistent pay periods and pay days. Wages are to be paid no later than the corresponding pay day.

According to the information presented on file, namely the earning statements and the agreements between parties, it appears that the claimant would receive payment for his deliveries on "at least a weekly basis". The weekly earnings statements received demonstrate that generally payments for deliveries were processed on the same date the delivery was completed. The claimant was able to then transfer the funds available in his Uber account to his personal bank account. While it appears that the claimant received his payments for deliveries within each weekly earnings statement period, there was no established pay day as the claimant was considered to be an independent contractor. Given the findings that the claimant is considered to be an employee under the ESA, a contravention of section 11(1) is found.

**Wage Statements**
As per s. 12(1) of the ESA, an employer is required to give an employee a written statement setting out the pay periods, wage rate, gross amount of wages on or before their pay day, amount and purpose of deductions and net wages that are being paid.

From a review of the weekly earnings statements provided by both parties, it can be determined that all of the required information is provided to the claimant through this record. As the claimant does not have a set wage rate, the earning statement offers a breakdown of the specific delivery fees that were awarded each week. There is no contravention of section 12(1) of the ESA found.

**Deductions from Wages**
As per section 13(1) of the ESA, an employer is not permitted to withhold wages that are payable to an employee unless they are required by statute, court order or employee authorization.

The claimant alleges that $195.22 was deducted from his wages for deliveries which he had completed. The employer indicates that a technical difficulty in the App caused the fee amounts to be incorrect and the affected orders were adjusted to $45.00.

From of review of the evidence on file, namely the customer support inquiries and the screenshots of the App notifications, it is evident that the distances from the pickup to delivery location were not being reflected accurately on the App notifications. The issue at hand, is whether the employer was authorized in making a deduction from these wages due to an alleged overpayment of wages.

The App notification screenshots provided by the claimant demonstrate that on August 25, 2021, he received delivery notifications for these orders and with the amounts he would be receiving for each delivery. The weekly earnings statements show that the claimant received payment for both orders, then later at 6:26pm on August 26, 2021, the fee for the second order was adjusted to $45.00 and which resulted in a deduction of $195.22.

As previously discussed, the payment regime is established by the employer in the agreements signed between parties. Uber determines the fees offered and paid for each of the delivery orders and the claimant does not have the ability to negotiate these amounts. From the review of the evidence, it is clear that the claimant chose to accept these deliveries based on the information presented and subsequently received payment for these deliveries.

It can therefore be determined that the amount deducted is not considered to be an overpayment, but rather a payment that the claimant was contractually entitled to based on the delivery offer he received. There was no written authorization presented during the course of the investigation to authorize the deduction from wages which was made. A contravention of section 13(1) of the ESA is found and $195.22 is owed the claimant.

**Record Keeping**

As per section 15(1) of the ESA, an employer is required to retain particular records pertaining to an employee's personal information, dates/ times an employee has worked, the number of hours worked in a day or week, the employee's rate of pay and information contained on the wage statement.

During the course of the claim investigation, records reflecting the claimant's hours of work were requested. The records provided by the employer demonstrated the claimant's online and offline status changes, but these records failed to demonstrate the claimant's daily hours of work. Therefore, a contravention of section 15(1) of the ESA is found.

**Hours of Work- Daily, Weekly, Eating & Rest Periods**

As per section 17 (1) of the ESA, employers shall not require their employees to work more than eight hours a day, unless there is another regular work day established, or 48 hours a in a work week, unless there is a written agreement signed between parties.

As per section 18(1) and (3) of the ESA, an employee is entitled to 11 hours free from performing work in each day and at least eight hours free from work between shifts, unless the total time of the shifts does not exceed 13 hours or there is an agreement between parties. Section 18(4) provides that an employer must provide an employee a period free from work for a period of at least 24 hours in every work week or 48 hours in every period of two consecutive work weeks.

As per section 20 (1) of the ESA, an employer shall give an employee an eating period of at least 30 minutes timed so that no employee works five consecutive hours without receiving their eating period.

The claimant's submissions regarding his hours of work, present the position that 15 percent should be added to the weekly "online hours" statistics he received through the App. The claimant argues that he can be placed offline involuntarily in different situations and therefore this record does not demonstrate all of his actual hours worked.

For the purposes of the hours of work review and determination of entitlements attributable to hours of work, only the best available evidence can be used. A detailed review of the records provided by the employer demonstrating the claimant's online and offline status changes was performed for the purposes of determining compliance with the hours of work provisions.

This review demonstrates that the claimant did not exceed the daily hours of work provisions. On any date the claimant's start and end time exceeded 8 hours, there was a lengthy break taken during the middle of the day. For example, the claimant most often worked hours surrounding the mealtimes, starting around lunchtime and taking a break to then resume working around the dinner hours. No contravention of section 17(1) of the ESA is found.

Based on a review of the records in relation to rest periods provided, it can be determined that the claimant was provided with eleven hours free from performing work each day and received eight hours free from work between shifts. However, there was a contravention rest period provisions found during the January 18 to 24, 2021 work week. The claimant did not receive twenty-four hours free from work during this week and had not received at least forty-eight hours free from work during the two-week period from January 11 to 24, 2021. As such, a contravention of section 18(4) is found.

Lastly, it was revealed that the claimant did not receive proper eating periods on January 18, January 20, January 22 and February 02, 2021. For example, on January 20, 2021, the claimant came online at 4:08pm, and went offline at 21:51pm, during this workday his status changes did not reflect a 30 minute "offline" period. Given the review of the evidence on file, I have found a contravention of section 20(1) of the ESA.

It should be noted that these assessments were determined based on the evidence available regarding weekly hours spent online. These records did not properly reflect the party who initiated the offline status at any given time. Deemed working hours include time spent waiting or holding oneself ready to work.

**Overtime Pay**
As per section 22(1) of the ESA an employer shall pay overtime at a rate of one and half times the employee's regular rate for each hour that is worked over 44 hours a week.

From a review of the evidence on file, namely the records provided by the claimant summarizing weekly App activity and the employer's app status records, there was no contravention of section 22 of the ESA found as the claimant did not exceed 44 hours in any of the weeks reviewed.

**Minimum Wage**
As per section 23(1) of the ESA an employer is required to pay employees at least minimum wage. During the claimant's period of employment reviewed from December 2020 to December 2021, the minimum wage changed from $14.25 an hour to $14.35 an hour as of October 01, 2021.

An audit was performed using the weekly earnings statements as well as the weekly summarized reports the claimant received through the App. For the purposes of determining compliance, the fare, trip supplement, surge and boost payments were considered to be wages paid to the claimant. From a review of the weekly earnings statements, these amounts are reflected in the delivery fee which the claimant accepts and then is paid upon completion of the delivery. The amount received as tips were not included, as they do not meet the definition of wages under section 1 of the ESA.

During the audit, it was revealed that the claimant did not consistently receive minimum wage for his hours worked. Minimum wage violations were found in 16 pay weeks between December 2020 to December 2021. The lowest hourly wage rate paid was $3.41 during the December 27, 2021, to January 02, 2022 pay week. Assessments to determine compliance with minimum wage must be completed on a pay period basis. In this case, since the records indicate that pay day was intended to be weekly, I have determined that the pay period was weekly and completed my assessment on this basis.

Based on the evidence reviewed, I have determined a contravention of section 23(1) of the ESA. A total of $325.07 was found owing for regular wages due to minimum wage discrepancies.

**Public Holiday Pay**

As per section 24(1), the employee's public holiday pay is equal to the total amount of regular wages payable in the four weeks before the work week of that holiday divided by 20.

As per section 26(1) if a public holiday falls on a day which would ordinarily be a working day for an employee, they shall receive the day off work and public holiday pay. There is an exception to the above provision when the employee does not without reasonable cause work their regularly scheduled shift before or after the holiday.

As per section 28(1) of the Act, an employer shall (a) pay the employee their regular rate for hours worked on the public holiday and provided a substitute day off with public holiday pay, or (b) pay the employee public holiday pay for the day plus premium pay for each hour worked on that day.

The timekeeping and earning statements on file showed that the claimant did not receive any public holiday pay between December 2020 and January 2022. The claimant is entitled to public holiday pay for twelve public holidays that fell during this period of time.

The records provided demonstrate that the claimant worked on Family Day, Good Friday and Canada Day in the 2021 year. Since the claimant works for an industry which is characterized as a continuous operation, section 28 of the ESA would apply, and he would be awarded premium pay for each hour worked on the holiday.

A contravention of section 26(1) and 28(1) of the ESA is found. A total of $351.56 was found owing for public holiday pay and $47.52 for premium pay.

**Vacation Pay**

Section 35.2(a) of the ESA states if an employee's period of employment is less than five years, that an employer shall pay vacation pay to an employee who is entitled to vacation, equal to at least four per cent of wages, excluding vacation pay.

The weekly earnings statements received from both parties demonstrate that the claimant did not receive any vacation pay during his period of employment. As the claimant started his employment in December 2020 and continues to be employed, his accrued vacation pay has not yet become due. The employer has ten months from the completion of the vacation entitlement year (December 2020 to December 2021) to schedule vacation and pay the amount accrued. During the audit, calculations for accrued vacation pay were included and the claimant must receive payment by October 09, 2022, or when his employment relationship ends. Accordingly, no contravention of section 35.2 of the ESA is found.

**Calculations of Entitlement:**

An Officer Audit was performed from December 14, 2020, to January 02, 2022

A total of $919.37 was found owing for monetary contraventions.

Reference to entitlement breakdown and method of calculation can be found in Appendix A.

**Action(s) Taken by Officer:**

As previously established in the related employer investigation, all entities have been found to be jointly and severally liable for the contraventions of the ESA.

For non-monetary contraventions found during the claim investigation:

Pursuant to section 108, Compliance Order # 0014666-CO001 was issued to UBER PORTIER CANADA INC. for failing to comply with Section 11(1),15(1), 18(4) and 20(1) of the *Employment Standards Act, 2000*.

Pursuant to section 108, Compliance Order #0014666-CO002 was issued to UBER PORTIER B.V. for failing to comply with Section 11(1),15(1), 18(4) and 20(1) of the *Employment Standards Act, 2000*.

Pursuant to section 108, Compliance Order # 0014666-CO003 was issued to UBER TECHNOLOGIES, INC. for failing to comply with Section 11(1),15(1), 18(4) and 20(1) of the *Employment Standards Act, 2000*.

For all monetary contraventions found during the claim investigation:

Pursuant to section 103, Order to pay wages (0014666-OP001) in the amount of $919.37, plus a $100.00 administration fee, for a total of **$1019.37** has been issued to the employer UBER PORTIER CANADA INC.

Pursuant to section 103, Order to pay wages (0014666-OPR001) in the amount of $919.37, plus a $100.00 administration fee, for a total of **$1019.37** has been issued to the employer UBER TECHNOLOGIES, INC.

Pursuant to section 103, Order to pay wages (0014666-OPR002) in the amount of $919.37, plus a $100.00 administration fee, for a total of **$1019.37** has been issued to the employer UBER PORTIER B.V.

The claimant and employer have been provided with a copy of this decision and information on the Application for Review.

This 'Reasons for Decision' was completed on February 22, 2022. The claim investigation is complete, the file is now closed.

Katherine Haire
Employment Standards Officer #1514
Telephone: 905-715-4023
Toll Free: 1-888-299-3138

**APPENDIX A**

**Calculation of Entitlement: Saurabh Sharma**

| Work Week | Rate | Hours Online | Total Wages Paid | Hourly Wage Provided | Regular Wages Earned | Min. Wage | Public Holiday Pay | Premium Pay | Accrued Vacation Pay |
|---|---|---|---|---|---|---|---|---|---|
| December 14 to 20, 2020 | $ 14.25 | 14.58 | $ 213.59 | $ 14.65 | $ 213.59 | | | | $ 8.54 |
| December 21 to 27, 2020 | $ 14.25 | 8.07 | $ 99.59 | $ 12.34 | $ 115.00 | $ 15.41 | $ 21.36 | | $ 5.45 |
| December 28 to January 03, 2020 | $ 14.25 | 12.02 | $ 165.27 | $ 13.75 | $ 171.29 | $ 6.01 | $ 16.43 | | $ 7.51 |
| January 04 to 10, 2021 | $ 14.25 | 14.45 | $ 168.46 | $ 11.66 | $ 205.91 | $ 37.45 | | | $ 8.24 |
| January 11 to 17, 2021 | $ 14.25 | 25.67 | $ 372.15 | $ 14.50 | $ 372.15 | | | | $ 14.89 |
| January 18 to 24, 2021 | $ 14.25 | 31.22 | $ 486.26 | $ 15.58 | $ 486.26 | | | | $ 19.45 |
| January 25 to to January 31, 2021 | $ 14.25 | 8.72 | $ 126.33 | $ 14.49 | $ 126.33 | | | | $ 5.05 |
| February 01 to 07, 2021 | $ 14.25 | 28.22 | $ 481.14 | $ 17.05 | $ 481.14 | | | | $ 19.25 |
| February 08 to 14, 2021 | $ 14.25 | 18.27 | $ 309.05 | $ 16.92 | $ 309.05 | | | | $ 12.36 |
| February 15 to 21, 2021 | $ 14.25 | 6.70 | $ 86.45 | $ 12.90 | $ 95.48 | $ 9.03 | $ 70.14 | 8.77 | $ 6.98 |
| February 22 to 28, 2021 | $ 14.25 | 21.72 | $ 350.68 | $ 16.15 | $ 350.68 | | | | $ 14.03 |
| March 01 to 07, 2021 | $ 14.25 | 4.40 | $ 88.42 | $ 20.10 | $ 88.42 | | | | $ 3.54 |
| March 08 to 14, 2021 | $ 14.25 | 22.42 | $ 382.66 | $ 17.07 | $ 382.66 | | | | $ 15.31 |
| March 15 to 21, 2021 | $ 14.25 | 23.00 | $ 411.22 | $ 17.88 | $ 411.22 | | | | $ 16.45 |
| March 22 to 28, 2021 | $ 14.25 | 17.58 | $ 303.01 | $ 17.24 | $ 303.01 | | | | $ 12.12 |
| March 29 to April 04, 2021 | $ 14.25 | 16.80 | $ 242.49 | $ 14.43 | $ 242.49 | | $ 59.27 | 23.74 | $ 13.02 |
| April 05 to 11, 2021 | $ 14.25 | 16.77 | $ 278.48 | $ 16.61 | $ 278.48 | | | | $ 11.14 |
| April 12 to 18, 2021 | $ 14.25 | 19.02 | $ 357.14 | $ 18.78 | $ 357.14 | | | | $ 14.29 |
| April 19 to 25, 2021 | $ 14.25 | 2.47 | $ 59.14 | $ 23.94 | $ 59.14 | | | | $ 2.37 |
| April 26 to May 02, 2021 | $ 14.25 | 4.22 | $ 85.93 | $ 20.36 | $ 85.93 | | | | $ 3.44 |
| May 03 to May 09, 2021 | $ 14.25 | 6.42 | $ 111.39 | $ 17.35 | $ 111.39 | | | | $ 4.46 |
| May 10 to 16, 2021 | $ 14.25 | 8.38 | $ 160.29 | $ 19.13 | $ 160.29 | | | | $ 6.41 |
| May 17 to 23, 2021 | $ 14.25 | 17.15 | $ 261.41 | $ 15.24 | $ 261.41 | | | | $ 10.46 |
| May 24 to 30, 2021 | $ 14.25 | 7.00 | $ 141.56 | $ 20.22 | $ 141.56 | | $ 30.95 | | $ 6.90 |
| May 31 to June 06, 2021 | $ 14.25 | 22.87 | $ 364.24 | $ 15.93 | $ 364.24 | | | | $ 14.57 |
| June 07 to 13, 2021 | $ 14.25 | 15.25 | $ 243.56 | $ 15.97 | $ 243.56 | | | | $ 9.74 |
| June 14 to 20, 2021 | $ 14.25 | 23.23 | $ 403.86 | $ 17.39 | $ 403.86 | | | | $ 16.15 |
| June 21 to 27, 2021 | $ 14.25 | 13.25 | $ 236.92 | $ 17.88 | $ 236.92 | | | | $ 9.48 |
| June 28 to July 04, 2021 | $ 14.25 | 11.42 | $ 249.61 | $ 21.86 | $ 249.61 | | $ 62.43 | | $ 12.48 |
| July 05 to 11, 2021 | $ 14.25 | 14.67 | $ 284.67 | $ 19.40 | $ 284.67 | | | | $ 11.39 |
| July 12 to 18, 2021 | $ 14.25 | 18.87 | $ 302.87 | $ 16.05 | $ 302.87 | | | | $ 12.11 |
| July 19 to 25, 2021 | $ 14.25 | 13.17 | $ 279.87 | $ 21.25 | $ 279.87 | | | | $ 11.19 |
| July 26 to Aug 01, 2021 | $ 14.25 | 6.97 | $ 134.33 | $ 19.27 | $ 134.33 | | | | $ 5.37 |
| August 02 to 08, 2021 | $ 14.25 | - | | - | - | | | | - |
| August 09 to 16, 2021 | $ 14.25 | 15.92 | $ 306.73 | $ 19.27 | $ 306.73 | | | | $ 12.27 |
| August 17 to 22, 2021 | $ 14.25 | 11.65 | $ 221.02 | $ 18.97 | $ 221.02 | | | | $ 8.84 |
| August 23 to 29, 2021 | $ 14.25 | 9.38 | $ 252.15 | $ 26.88 | $ 252.15 | | | | $ 10.09 |
| August 30 to September 05, 2021 | $ 14.25 | 1.22 | $ 11.00 | $ 9.02 | $ 17.39 | $ 6.39 | | | $ 0.70 |
| September 06 to 12, 2021 | $ 14.25 | 4.22 | $ 59.50 | $ 14.10 | $ 60.14 | $ 0.63 | $ 39.86 | | $ 4.00 |
| September 13 to 19, 2021 | $ 14.25 | 14.88 | $ 114.55 | $ 7.70 | $ 212.04 | $ 97.49 | | | $ 8.48 |
| September 20 to 26, 2021 | $ 14.25 | 4.18 | $ 45.65 | $ 10.92 | $ 59.57 | $ 59.57 | | | $ 2.38 |
| September 27 to October 3, 2021 | 14.25/14.35 | - | | - | - | | | | - |
| October 04 to 10, 2021 | $ 14.35 | 3.25 | $ 26.11 | $ 8.03 | $ 46.64 | $ 20.53 | | | $ 1.87 |
| October 11 to 17, 2021 | $ 14.35 | 10.62 | $ 204.18 | $ 19.23 | $ 204.18 | | $ 15.91 | 15.01 | $ 9.40 |
| October 18 to 24, 2021 | $ 14.35 | 7.62 | $ 104.68 | $ 13.74 | $ 109.35 | $ 4.67 | | | $ 4.37 |
| October 25 to 31, 2021 | $ 14.35 | 4.62 | $ 62.58 | $ 13.55 | $ 66.30 | $ 3.72 | | | $ 2.65 |
| November 01 to 07, 2021 | $ 14.35 | 2.12 | $ 21.76 | $ 10.26 | $ 30.42 | $ 8.66 | | | $ 1.22 |
| November 08 to 14, 2021 | $ 14.35 | - | | - | - | | | | |
| November 15 to 21, 2021 | $ 14.35 | 3.15 | $ 64.90 | $ 20.60 | $ 64.90 | | | | $ 2.60 |
| November 22 to 28, 2021 | $ 14.35 | 5.75 | $ 81.03 | $ 14.09 | $ 82.51 | $ 1.48 | | | $ 3.30 |
| November 29 toDecember 05, 2021 | $ 14.35 | 7.92 | $ 116.70 | $ 14.73 | $ 113.65 | -$ 3.05 | | | $ 4.55 |
| December 06 to 12, 2021 | $ 14.35 | 6.52 | $ 83.17 | $ 12.76 | $ 93.56 | $ 10.39 | | | $ 3.74 |
| December 13 to 19, 2021 | $ 14.35 | - | | - | - | | | | - |
| December 20 to 26, 2021 | $ 14.35 | - | | - | - | - | $ 14.49 | | - |
| December 27, 2021 to January 02, 2022 | $ 14.35 | 4.27 | $ 14.58 | $ 3.41 | $ 61.27 | $ 46.69 | $ 20.72 | | $ 3.28 |
| Total Wages: | | | | | | **$ 325.07** | **$ 351.56** | **47.52** | **$ 427.85** |

| **Summary of Entitlements** | **Wages Owed** |
|---|---|
| **Minimum Wage** | **$ 325.07** |
| **Public Holiday Pay** | **$ 351.56** |
| **Premium Pay** | **$ 47.52** |
| **Deductions from Wages** | **$ 195.22** |
| **Total Wages Owed:** | **$ 919.37** |

Legend:
Minimum Wage Violations
Public Holiday

**Description of Methodology for Calculations of Entitlements:**

**Pay period/ Work week:** Standard work week was determined to be Monday to Sunday as the weekly earnings statements provided overlapping timeframes from Monday at 4:00AM to Monday at 4:00AM. As the claimant did not work on any Monday from 12:00AM to 4:00AM the above mentioned default work week was applied.

**Hours of Work:** A weekly summary of hours spent online generated through the App was used in order to determine the claimant's weekly hours of work.

**Regular Wages:** Tip amounts were not included in the wages paid. Boost promotions listed on the weekly earnings statements were included as they reflect earnings multipliers for deliveries within specific areas. Boost information is made available to the driver at the time they accept their delivery.

**Minimum Wage:** Minimum wage rate of $14.35 was used for the week of December 27, 2021 to January 02, 2022 as the claimant did not work any days in January 2022 during this work week.

**Public Holiday Pay (PHP):** Public holiday pay was calculated in accordance with section 24(1)of the ESA, by taking the total amount of regular wages and vacation pay payable in the four weeks before the holiday, divided by 20. For the pay weeks which included both Christmas Day and Boxing Day, the sum owing for PHP was doubled as the same entitlement exists for both holidays.

**Premium Pay:** Premium Pay was calculated at 0.5 of the regular hourly rate of pay, as the calculations and entitlements awarded under Minimum Wage reflect the proper hourly wage for every hour worked during the claimant's work week. Hours worked on the public holiday were determined by a review of the records demonstrating online and offline status changes.