DOORDASH

25 March 2022

Natalia Kusendova, MPP
Chair
Standing Committee on Social Policy
Legislative Assembly of Ontario
99 Wellesley Street West
Room 1405, Whitney Block
Toronto, ON M7A 1A2

Via email and online submission: comm-socialpolicy@ola.org

Dear Chair Kusendova:

RE: Written Submission to the Standing Committee on Social Policy of the Legislative Assembly of Ontario: Bill 88, The Working for Workers Act, 2022

DoorDash welcomes the opportunity to submit our positions to the Standing Committee on Social Policy on the recently introduced Bill 88, The Working for Workers Act, which would enact the Digital Platform Workers' Rights Act (Schedule 1). DoorDash already operates our platform in line with many of these proposed requirements and would like to support the policy objectives of the Government of Ontario and Ministry of Labour to raise the standards across the gig industry and protect this valuable form of work.

As currently written, Bill 88 will lead to a number of unintended consequences negatively impacting not only Dashers, but the public, too, by presenting a number of new safety risks and burdening both the way this work is performed by Dashers and the way it is experienced by customers and merchants. We have also highlighted some important technical issues for your consideration. Amendments are urgently needed to achieve Bill 88's policy objectives and protect gig work and gig workers.

We appreciate the Committee taking time to review our submission, and we recommend amendments be made to avoid the unintended consequences we outline below. DoorDash will continue to engage with the government throughout the regulatory process to ensure we continue to raise standards across the gig industry.

The right to information (section 7): The Bill would rightly secure gig workers' rights to transparency around payments and ensure that a worker can see a detailed breakdown of their earnings separate from tips – something our platforms already provide.

Inadvertently, some of the Bill's specific requirements would bog down a worker's use of the platform with redundant information to swipe through in app. These details would be better left to address during the regulatory process with the benefit of stakeholder input. While the Ministry will have wide latitude to alter how the Bill works,[1] the regulatory process likely will be more efficient

[1] Section 66(i) would authorize the Ministry to specify that its regulations apply "in place of . . . one or more provisions of this Act."

and less prone to confusion if the Bill omits these details and leaves them to be addressed at first instance during the regulatory process. For example:

- **Section 7(4)2.-3. – which requires a written disclosure, before every offer of work, of how work is offered and any potential consequences of declining – should be removed.**

  These requirements are redundant of section 7(1)4.-5., which require comprehensive, up-front disclosures when workers first access a platform. Repeating that lengthy information with every order is largely unworkable for workers actively accepting orders.

  These disclosures create safety risks. Workers would be required to swipe through multiple app screens to read detailed, small-text disclosure in their vehicles prior to every delivery offer.

- **Section 7(5)3. – which requires a written disclosure, after every order, of any performance rating and a description of any potential consequences – should be removed.**

  This requirement also is redundant of the comprehensive, upfront disclosures required by section 7(1)5, which is burdensome for both platforms and workers alike.

  This disclosure may harm customers. Workers are often making deliveries to customers' homes and may pressure customers to provide a good rating or retaliate against them should the workers receive a poor rating.

- **Section 7(6) – which requires a written disclosure, after any order is not completed, of any potential consequences – should be removed**.

  This requirement also is redundant of the comprehensive, up-front disclosures required by section 7(1)5. and will bog down workers in the fast-paced gig environment.

The right to a recurring pay period and pay day (section 8): DoorDash already provides Dashers with a recurring pay period and supports securing a pay-period-based wage standard for all gig workers.

We welcome the opportunity to work with officials during the regulatory process to discuss and suggest best practices to operationalize this section.

The right to minimum wage (section 9): To align with section 8's requirement for a pay period, the minimum earnings requirement should likewise apply to active hours spent on delivery to be paid across a biweekly pay period and not per work assignment.

- **Section 9(1) – which requires a minimum wage – should be clarified.**

  Borrowing language from the Employment Standards Act (ESA) could have unintended legal consequences. Cross-referencing the wage figure in section 23.1(1)(iv) of the ESA makes sense for ease of administration. But the Bill goes further by borrowing phrases from the ESA like "minimum wage" and requiring workers to be paid as if they were a "class of employees" under the ESA. Borrowing those ESA phrases could inadvertently import older ESA legal standards and interpretations into this Bill. We understand that the

Assembly is presumed to use language in a consistent manner, so if the Assembly carries over terms of art from the ESA like these, they may bring ESA standards and interpretations with them.

That could tie the Ministry's hands during the regulatory process. If ESA legal standards are inadvertently imported into this Bill, that could reduce the Ministry's flexibility during the regulatory process to shape an earnings standard. While the Bill would give the Ministry substantial leeway during the regulatory process,[2] it's not clear that this authority would be broad enough to allow the Ministry to override settled ESA legal standards if those standards are inadvertently applied to this Bill.

We recommend revising Section 9(1) to eliminate the use of this ESA language. For example, ***Section 9(1) should be simplified to provide that workers shall be paid "minimum earnings equal to at least the amount specified under subparagraph 1 iv of section 23.1 of the Employment Standards Act, 2000."*** That achieves the goal of borrowing the figure from section 23.1(1)(iv), without carrying over other ESA language.

- **Section 9(2)1. – which introduces the concept of pay per work assignment – should be removed**.

  This approach increases the risk of fraud. Tying pay to work assignments can lead to fraudulent use of platform work – *e.g.*, purposefully idling, misreporting whether a delivery is ready for pickup, and so many others – the opportunities for which are exponentially higher when payment is made per delivery / work assignment.

  Such fraud causes delays for merchants and customers and robs the workers who use platforms properly of earning opportunities.

The right to amounts earned by the worker and to tips and other gratuities (section 10): DoorDash already guarantees that Dashers receive all of their tips, and we support the Government's and the Ministry's efforts to ensure all workers in the Province have that same right.

We welcome the opportunity to work with officials during the regulatory process to discuss and suggest best practices to operationalize this section.

The right to notice of removal from an operator's digital platform (section 11):

- **Section 11(1)(b)-(2) – requiring a two-week notice period before a worker is deactivated for more than a day, unless a worker is "guilty of wilful misconduct" – should be removed.**

  This restriction poses safety risks to customers, merchants, and the public. If workers cannot be suspended from the platform for longer than a day without being given a two-week notice period, operators will not be able to take prompt action when they learn that a worker may be a risk to others.

  An exception for workers "guilty of wilful misconduct" is too narrow. This exception is not broad enough to allow platforms to remove workers suspected of having physically or

[2] See note 1 above.

verbally harassed or attacked a customer or engaged in fraud or other misconduct while an investigation is pending. An exception cannot contemplate the myriad scenarios in which a platform will need to take immediate action to remove a worker's access to it.

Platforms also need to be able to react quickly to deactivate fraudulent workers – two-weeks' notice is simply two weeks of additional fraud, exponentially repeated as fraudsters open new accounts repeatedly throughout the two-week notice period that would essentially never end for a single fraudster.

Additionally, platform deactivation decisions are already subject to appeal through our online appeals process with an open feedback loop to correct in real time should someone be considered unfairly deactivated.

Sections 19-61 – which establish complaint investigation and resolution procedures – should be removed and left to the regulatory process.

These procedures are an awkward fit for app-based work. Section 12 already provides that disputes under the Act should be resolved in Ontario. These additional lengthy, elaborate investigation and adjudication provisions – copied directly from the ESA – are keyed to employees who work in traditional, physical workplaces and are an awkward fit for electronic, on-app gig work.

Developing these procedures is better left to the regulatory process. While the Ministry will have leeway to alter how the Bill works, incorporating twenty-year-old ESA procedures into the Bill will cloud the regulatory process and impede the Ministry's ability to develop a fresh approach to dispute resolution that fits the fluid nature of platform work. The regulatory process is the better place to devise new, streamlined procedures that match this new way of working, where workers start working quickly, come and go as they please, and interact with operators through an app (not at a workplace).

Thank you for taking the time to review DoorDash's position on Bill 88 as it relates to The Digital Platform Workers' Rights Act (Schedule 1). We appreciate the efforts by the Ministry of Labour that went into crafting this Bill and hope that your Committee will give the utmost attention to our suggested changes to improve the Bill to ensure a more streamlined and effective regulatory process prior to implementation.

Sincerely,

Brian Kaufmann

Senior Manager, Head of Canada Policy and Government Relations