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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.11] (*Heading of Division 3 added by Stats. 1939, Ch. 30.)*

CHAPTER 10.5. App-Based Drivers and Services [7448 - 7467] (*Chapter 10.5 added November 3, 2020, by initiative Proposition 22, Sec. 1.)*

ARTICLE 5. Antidiscrimination and Public Safety [7456 - 7462] (*Article 5 added November 3, 2020, by initiative Proposition 22, Sec. 1.)*

7456. Antidiscrimination. (a) It is an unlawful practice, unless based upon a bona fide occupational qualification or public or app-based driver safety need, for a network company to refuse to contract with, terminate the contract of, or deactivate from the network company's online-enabled application or platform, any app-based driver or prospective app-based driver based upon race, color, ancestry, national origin, religion, creed, age, physical or mental disability, sex, gender, sexual orientation, gender identity or expression, medical condition, genetic information, marital status, or military or veteran status.

(b) Claims brought pursuant to this section shall be brought solely under the procedures established by the Unruh Civil Rights Act (Section 51 of the Civil Code) and will be governed by its requirements and remedies.

(*Added November 3, 2020, by initiative Proposition 22, Sec. 1. Effective December 16, 2020.*)

7457. Sexual Harassment Prevention. (a) A network company shall develop a sexual harassment policy intended to protect app-based drivers and members of the public using rideshare services or delivery services. The policy shall be available on the network company's internet website. The policy shall, at a minimum, do all of the following:

- (1) Identify behaviors that may constitute sexual harassment, including the following: unwanted sexual advances; leering, gestures, or displaying sexually suggestive objects, pictures, cartoons, or posters; derogatory comments, epithets, slurs, or jokes; graphic comments, sexually degrading words, or suggestive or obscene messages or invitations; and physical touching or assault, as well as impeding or blocking movements.
- (2) Indicate that the network company, and in many instances the law, prohibits app-based drivers and customers utilizing rideshare services or delivery services from committing prohibited harassment.
- (3) Establish a process for app-based drivers, customers, and rideshare passengers to submit complaints that ensures confidentiality to the extent possible; an impartial and timely investigation; and remedial actions and resolutions based on the information collected during the investigation process.
- (4) Provide an opportunity for app-based drivers and customers utilizing rideshare services or delivery services to submit complaints electronically so complaints can be resolved quickly.
- (5) Indicate that when the network company receives allegations of misconduct, it will conduct a fair, timely, and thorough investigation to reach reasonable conclusions based on the information collected.
- (6) Make clear that neither app-based drivers nor customers utilizing rideshare services or delivery services shall be retaliated against as a result of making a good faith complaint or participating in an investigation against another app-based driver, customer, or rideshare passenger.

(b) Prior to providing rideshare services or delivery services through a network company's online-enabled application or platform, an app-based driver shall do both of the following:

- (1) Review the network company's sexual harassment policy.

(2) Confirm to the network company, for which electronic confirmation shall suffice, that the app-based driver has reviewed the network company's sexual harassment policy.

(c) Claims brought pursuant to this section shall be brought solely under the procedures established by the Unruh Civil Rights Act (Section 51 of the Civil Code) and will be governed by its requirements and remedies.

(Added November 3, 2020, by initiative Proposition 22, Sec. 1. Effective December 16, 2020.)

7458. Criminal Background Checks. (a) A network company shall conduct, or have a third party conduct, an initial local and national criminal background check for each app-based driver who uses the network company's online-enabled application or platform to provide rideshare services or delivery services. The background check shall be consistent with the standards contained in subdivision (a) of Section 5445.2 of the Public Utilities Code. Notwithstanding any other provision of law to the contrary, after an app-based driver's consent is obtained by a network company for an initial background check, no additional consent shall be required for the continual monitoring of that app-based driver's criminal history if the network company elects to undertake such continual monitoring.

(b) A network company shall complete the initial criminal background check as required by subdivision (a) prior to permitting an app-based driver to utilize the network company's online-enabled application or platform. The network company shall provide physical or electronic copies or summaries of the initial criminal background check to the app-based driver.

(c) An app-based driver shall not be permitted to utilize a network company's online-enabled application or platform if one of the following applies:

(1) The driver has ever been convicted of any crime listed in subparagraph (B) of paragraph (2) of subdivision (a) of Section 5445.2 of the Public Utilities Code, any serious felony as defined by subdivision (c) of Section 1192.7 of the Penal Code, or any hate crime as defined by Section 422.55 of the Penal Code.

(2) The driver has been convicted within the last seven years of any crime listed in paragraph (3) of subdivision (a) of Section 5445.2 of the Public Utilities Code.

(d) (1) The ability of an app-based driver to utilize a network company's online-enabled application or platform may be suspended if the network company learns the driver has been arrested for any crime listed in either of the following:

(A) Subparagraph (B) of paragraph (2), or paragraph (3), of subdivision (a) of Section 5445.2 of the Public Utilities Code.

(B) Subdivision (c) of this section.

(2) The suspension described in paragraph (1) may be lifted upon the disposition of an arrest for any crime listed in subparagraph (B) of paragraph (2), or paragraph (3), of subdivision (a) of Section 5445.2 of the Public Utilities Code that does not result in a conviction. Such disposition includes a finding of factual innocence from any relevant charge, an acquittal at trial, an affidavit indicating the prosecuting attorney with jurisdiction over the alleged offense has declined to file a criminal complaint, or an affidavit indicating all relevant time periods described in Chapter 2 (commencing with Section 799) of Title 3 of Part 2 of the Penal Code have expired.

(e) Nothing in this section shall be interpreted to prevent a network company from imposing additional standards relating to criminal history.

(f) Notwithstanding Section 1786.12 of the Civil Code, an investigative consumer reporting agency may furnish an investigative consumer report to a network company about a person seeking to become an app-based driver, regardless of whether the app-based driver is to be an employee or an independent contractor of the network company.

(Added November 3, 2020, by initiative Proposition 22, Sec. 1. Effective December 16, 2020.)

7459. Safety Training. (a) A network company shall require an app-based driver to complete the training described in this section prior to allowing the app-based driver to utilize the network company's online-enabled application or platform.

(b) A network company shall provide each app-based driver safety training. The safety training required by this section shall include the following subjects:

(1) Collision avoidance and defensive driving techniques.

(2) Identification of collision-causing elements such as excessive speed, DUI, and distracted driving.

(3) Recognition and reporting of sexual assault and misconduct.

(4) For app-based drivers delivering prepared food or groceries, food safety information relevant to the delivery of food, including temperature control.

(c) The training may, at the discretion of the network company, be provided via online, video, or in-person training.

(d) Notwithstanding subdivision (a), any app-based driver that has entered into a contract with a network company prior to January 1, 2021, to provide rideshare services or delivery services shall have until July 1, 2021, to complete the safety training required by this section, and may continue to provide rideshare services or delivery services through the network company's online-enabled application or platform until that date. On and after July 1, 2021, app-based drivers described in this subdivision must complete the training required by this section in order to continue providing rideshare services and delivery services.

(e) Any safety product, feature, process, policy, standard, or other effort undertaken by a network company, or the provision of equipment by a network company, to further public safety is not an indicia of an employment or agency relationship with an app-based driver.

(Added November 3, 2020, by initiative Proposition 22, Sec. 1. Effective December 16, 2020.)

7460. Zero Tolerance Policies. (a) A network company shall institute a "zero tolerance policy" that mandates prompt suspension of an app-based driver's access to the network company's online-enabled application or platform in any instance in which the network company receives a report through its online-enabled application or platform, or by any other company-approved method, from any person who reasonably suspects the app-based driver is under the influence of drugs or alcohol while providing rideshare services or delivery services.

(b) Upon receiving a report described in subdivision (a), a network company shall promptly suspend the app-based driver from the company's online-enabled application or platform for further investigation.

(c) A network company may suspend access to the network company's online-enabled application or platform for any app-based driver or customer found to be reporting an alleged violation of a zero tolerance policy as described in subdivision (a) where that driver or customer knows the report to be unfounded or based the report on an intent to inappropriately deny a driver access to the online-enabled application or platform.

(Added November 3, 2020, by initiative Proposition 22, Sec. 1. Effective December 16, 2020.)

7460.5. A network company shall make continuously and exclusively available to law enforcement a mechanism to submit requests for information to aid in investigations related to emergency situations, exigent circumstances, and critical incidents.

(Added November 3, 2020, by initiative Proposition 22, Sec. 1. Effective December 16, 2020.)

7461. App-based Driver Rest. An app-based driver shall not be logged in and driving on a network company's online-enabled application or platform for more than a cumulative total of 12 hours in any 24-hour period, unless that driver has already logged off for an uninterrupted period of 6 hours. If an app-based driver has been logged on and driving for more than a cumulative total of 12 hours in any 24-hour period, without logging off for an uninterrupted period of 6 hours, the driver shall be prohibited from logging back into the network company's online-enabled application or platform for an uninterrupted period of at least 6 hours.

(Added November 3, 2020, by initiative Proposition 22, Sec. 1. Effective December 16, 2020.)

7462. Impersonating an App-Based Driver. Any person who fraudulently impersonates an app-based driver while providing or attempting to provide rideshare or delivery services shall be guilty of a misdemeanor, and is punishable by imprisonment in a county jail for up to six months, or a fine of up to ten thousand dollars (\$10,000), or both. Nothing in this subdivision precludes prosecution under any other law.

(b) In addition to any other penalty provided by law, any person who fraudulently impersonates an app-based driver while providing or attempting to provide rideshare services or delivery services in the commission or attempted commission of an offense described in Section 207, 209, 220, 261, 264.1, 286, 287, 288, or 289 of the Penal Code shall be sentenced to an additional term of five years.

(c) In addition to any other penalty provided by law, any person who fraudulently impersonates an app-based driver while providing or attempting to provide rideshare services or delivery services in the commission of a felony or attempted felony and in so doing personally inflicts great bodily injury to another person other than an accomplice shall be sentenced to an additional term of five years.

(d) In addition to any other penalty provided by law, any person who fraudulently impersonates an app-based driver while providing or attempting to provide rideshare services or delivery services in the commission of a felony or attempted felony and in so doing causes the death of another person other than an accomplice shall be sentenced to an additional term of 10 years.

(Added November 3, 2020, by initiative Proposition 22, Sec. 1. Effective December 16, 2020.)