



New York Taxi Workers Alliance

AFL-CIO, Int'l. Transport Workers' Federation

31-10 37th Avenue, Suite 300 LIC, New York 11101

Phone: 718-70-NYTWA (718-706-9892)

MEDIA@NYTWA.ORG / www.nytwa.org / Facebook/NYTWA

UNEMPLOYMENT RIGHTS CAMPAIGN UPDATE FOR APP DRIVERS

July 28th Preliminary Injunction Victory in *Islam v. Cuomo*

NYTWA and four NYTWA Uber and Lyft members won an order from a federal court to require the Dept. of Labor to pay Uber/Lyft drivers full unemployment benefits under the law as employees. This means the Dept. of Labor must pay you based on how much the company paid you, and not based on your net income from your tax filing. NYTWA's Uber/Lyft driver members first won a final decision on Unemployment rights in July 2018, after a three-year fight with the companies at the Dept. of Labor. But even during the pandemic, the Dept. of Labor did not process driver applications as quickly as required by federal law or pay the full amount drivers were owed. In April, we helped thousands of drivers file Reconsiderations to appeal the Dept. of Labor's actions, but they still did not follow the law. So, on May 25th, we sued. On July 28th, Federal Judge LaShann DeArcy Hall ordered the Dept. of Labor to assign 35 staff just to review the Reconsiderations already filed by drivers and pay drivers the right rate by September 11th; and to start evaluating the rate for all Uber/Lyft drivers who submit the Reconsideration now.

What New York State App-based Drivers Should Expect:

1. **If you already submitted a Request for Reconsideration: the DOL is required to process your application by September 11th.** The Court instructed the DOL to create a team of DOL staff members to process Requests for Reconsideration. The Court also instructed the team to prioritize app-based FHV drivers.
2. **If you are not receiving your full benefit rate and have not submitted a Request for Reconsideration: complete and submit a Request for Reconsideration as soon as possible.** Refer to this [step-by-step guide](#) to help you complete your application. **After September 11th, the DOL will have to process all new Reconsiderations in 14 days.**
3. The Court will continue to review how the DOL is processing app-based drivers' applications and requests for reconsideration to make sure that the DOL is following the order.

Questions and Answers

Who can file a request for reconsideration?

All drivers who have filed for unemployment in New York State or may file for unemployment insurance in New York State.

Drivers Serve The World. We Serve The Drivers.

www.nytwa.org

You will likely get a higher benefit rate if you are:

- An app-based driver who has received a UI Monetary Benefit Determination (MBD) of \$0.
- An app driver who received PUA at a rate that is lower than what you are entitled to base on your gross pay. Use this [calculator](#) to get an estimate of your correct benefit rate. If you grossed \$53,000 or more, you should be eligible for a benefit rate of \$504 per week. Even if you didn't, you still may be eligible for the full rate, based on your high quarter pay.
- Someone who worked full-time for an app at any point over last 18 months or if you had a W2 job during any of the past 18 months along with driving for an app-based company, use the [DOL calculator](#) to see if your benefit rate would increase.

Why does this matter?

If you are an app-based driver, you will likely receive more money for unemployment benefits as a result of this ruling. As an Uber/Lyft driver, the DOL has already decided that you are an employee for the purposes of unemployment insurance. As an employee, your benefit rate should be based on your total pay from these companies.

If you are currently receiving Pandemic Unemployment Assistance (PUA) benefits, they are likely based on your net income, which the DOL uses when it views a worker as self-employed. As a result, your benefit rate is likely much lower than it will be when you are correctly considered an employee, because then your benefit rate will be based on your gross pay.

For example, many drivers who receive a PUA rate of around \$182/week based on their net income would qualify for a UI benefit rate of \$504/week based on their gross income.

How do I know if I am eligible to receive more money for my unemployment?

1. Calculate your estimated weekly benefits using the DOL's [Benefit Calculator](#). Be sure to enter your gross income, meaning the amount of money you earn before your expenses. This information can be found in your earnings statements. Click [here](#) for a guide about how to find your earning statements on each app.
2. Compare your estimated weekly benefit amount from the Benefit Calculator to the weekly benefit rate that you are currently receiving.
3. If your estimated weekly amount from the calculator is higher than the weekly amount you are receiving, then the DOL owes you the difference. You will be entitled to that weekly amount going back to the effective date of your claim, meaning the last day that you worked.
4. If you are not receiving your full benefit rate and have not filed a Request for Reconsideration, you should do so immediately in order to receive your full benefit rate.

I already submitted my reconsideration, but never heard back from the DOL. Should I submit it again?

No. If you already submitted a request for reconsideration, do not submit a new one. The DOL is required to process all requests for reconsideration applications by September 11th. Stay in touch with the Union as we make sure all drivers get the benefits they are owed. Click [here](#) for the NYTWA intake form.

I already submitted a reconsideration. Do I need to do anything else?

If you already submitted your request for reconsideration along with supporting documents, you do not have to do anything at this point. The DOL will process your application and issue your backpay within 45 days. If the DOL needs more information, they will reach out to you. If you do not hear back by September 11th, let the Union know. Click [here](#) for the NYTWA intake form.

I already received backpay for past weeks that I was owed. Am I still entitled to more money?

The ruling in this case entitles you to your full benefits going back to your first week of benefits. Although you may have received back pay for missing weeks, it may have been at a lower benefit rates than you were entitled to. By filing a reconsideration, you will get additional back pay if the DOL determines that your benefit rate should have been higher.

Should I use gross or net income when filling out the reconsideration form?

Uber/Lyft drivers should use their gross income when filing their requests for reconsideration. App-based drivers are considered employees for purposes of unemployment, so their unemployment benefit rate should be based on their gross income. See our [guide](#) on where to find this information from each company.

What are the quarters? How do I calculate my quarterly earnings?

A quarter is the combination of three months. When you divide the full year, 12 months, into quarters, you will get four quarters. Quarter 1 or Q1 is January, February and March; Quarter 2 or Q2 is April, May and June; Quarter 3 or Q3 is July, August and September; and Quarter 4 or Q4 is October, November and December.

I received two reconsideration forms, one from UI and one from PUA. Which should I use?

Drivers who have worked for an App company at any time over the past 18 months should use the Unemployment Insurance or UI form.

I haven't submitted a reconsideration form yet. Is it too late?

No, it is not too late to submit a request for reconsideration. If you need a request for reconsideration form, click [here](#) to download a fillable form. Come to office for full assistance. You can get started with this [guide](#).

Will I get paid for past weeks, or just get the weeks after I get approved for the new amount?

You will get paid your full benefits going back to the first week you started receiving unemployment benefits. *For example: Let's say you started receiving benefits the week ending in March 15 at weekly benefit rate of \$182. After processing your reconsideration, the DOL determine that your full rate should have been \$504. The DOL will then pay you back the \$322 difference for each week, going back to March 14.*

How do I know if I am eligible for the full \$504?

You can calculate your estimated weekly benefits using the DOL's [Benefit Calculator](#). Be sure to enter your gross income, meaning the amount of money you earn before your expenses. This information can be found on your earning statements from the apps you work for.

Why do I need to provide the DOL more information? Shouldn't the companies do that?

Short answer: Yes, the App companies are legally responsible for providing drivers' earnings data to the DOL so that the DOL can process drivers' unemployment applications without delay. Because the companies have not provided the DOL with your earnings as they should, you will have to provide the DOL with that information so you can get the proper benefit rate; the Request for Reconsideration Form is the way to get that information to the DOL. Join the union's ongoing fight to hold Uber and Lyft accountable! Sign our members' [petition](#) to Uber CEO Dara Koshrawshai, and fill out our NYTWA intake/campaign form to stay in touch and organized.