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Instacart, biz group challenge Seattle law requiring hazard pay for gig workers

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(Reuters) - Grocery delivery service Instacart and a Washington food industry trade group filed a lawsuit on Tuesday claiming Seattle's new law requiring hazard pay for some gig workers during the coronavirus pandemic is unconstitutional and should be struck down.

Instacart owner Maplebear Inc and the Washington Food Industry Association (WFIA), represented by Orrick Herrington & Sutcliffe, in a complaint in state court in Seattle said the law signed last week effectively commandeers gig companies' business networks for the benefit of workers and consumers.

They said the law, which is the first of its kind in the country, violates businesses' rights under the Equal Protection and Takings clauses of the U.S. Constitution and a 2018 Washington law prohibiting local taxes on groceries.

"The ordinance effectively ... rewrites the businesses' independent contracts, and undermines their ability to profitably provide essential grocery-delivery services to consumers," Instacart and WFIA said.

The Seattle city attorney's office did not immediately respond to a request for comment.

The city's law temporarily requires a \$2.50 payment per delivery that cannot be passed onto customers or offset by lowering workers' wages. Mayor Jenny Durkan, a Democrat, signed the measure into law last week.

Supporters of the law have said that delivery workers are performing hazardous work amid the pandemic, and the additional pay is designed to reflect those risks and cover the costs of protective equipment such as masks.

But gig companies have said the proposal is misguided and could lead to them cutting back services in the city. Instacart earlier this month began a Facebook advertising campaign that called the bill unconstitutional and urged city residents to oppose it, saying it could force the company to pull out of Seattle.

On Thursday, the company and WFIA said the because of the pandemic, food delivery workers have seen a large spike in demand, and so are working and earning more. Instacart workers earned about \$30 an hour on average in May, compared with \$20 in February, according to the complaint.

The hazard pay requirement, they said, is an unlawful exercise of the city's police powers because it is not "reasonably necessary to the public health, welfare, or safety to require food delivery networks — and no other private businesses — to increase pay to their private contractors during the COVID-19 pandemic."

The hazard pay law expires when the state declares an end to the ongoing public health emergency. But Instacart and WFIA in Tuesday's complaint said the law improperly allows workers to sue for violations for up to three years after it expires.

Washington Governor Jay Inslee, a Democrat, first declared a public health emergency in March as the state became the first coronavirus hotspot in the U.S.

King County, which includes Seattle, has entered the third phase of a statewide reopening plan allowing for more outdoor recreation and larger group gatherings.

The case is Washington Food Industry Association v. City of Seattle, King County Superior Court, No. 20-2-10541-4.

For Instacart and WFIA: Robert McKenna of Orrick Herrington & Sutcliffe

For the city: Not available

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