Employment Law Protections for Gig Worker – Know The Laws Of Your Province



The current laws that regulate employment were first enacted decades before gig employment was a thing. Back in those days, there were 2 basic kinds of work arrangements: employment and independent contracting. Gig work falls somewhere in the middle of these classifications. Like independent contractors, gig workers have the freedom to make their own schedules or even decide not to work at all; but they're also financially dependent on their employers the way employees are.

The unfortunate consequence of relying on 20th century laws to regulate 21st century employment is that gig workers fall through the cracks. Luckily, the laws are slowly starting to catch up. But it's been a slow process that's still in its infancy stage. Progress varies by both jurisdiction and type of law involved. Here's a look at the current state of gig worker regulation in each province under the 3 key types of employment law:

- Labour relations laws governing trade unions and collective bargaining;
- Employment standards laws regulating wages, hours, and other employment terms for non-union workers; and
- Occupational health and safety laws.

Notice that Ontario and BC are currently the only 2 provinces that provide protection for gig workers, aka online/digital platform workers.

FEDERAL

1. Labour Relations Laws: Protect "employees," including "dependent contractors," defined as:
    - The owner, purchaser, or lessee of a vehicle used for hauling, other than on rails or tracks, livestock, liquids, goods, merchandise, or other materials, who is a party to a contract, oral or in writing, under the terms of which they're:
        - Required to provide the vehicle by means of which they perform the contract and to operate the vehicle in accordance with the contract, and
        - Entitled to retain for their own use from time to time any sum of

money that remains after the cost of their performance of the contract is deducted from the amount they are paid, in accordance with the contract, for that performance.
    - A fisher who, under an arrangement to which the fisher is a party, is entitled to a percentage or other part of the proceeds of a joint fishing venture in which the fisher participates with other persons.
    - Any other person who, whether or not employed under a contract of employment, performs work or services for another person on such terms and conditions that they are, in relation to that other person, in a position of economic dependence on, and under an obligation to perform duties for that other person (*Canada Labour Code*, Sec. 3(1)).
2. **Employment Standards Laws:** Don't cover gig workers.
3. **OHS Laws:** Don't cover gig workers.

ALBERTA

1. **Labour Relations Laws:** Protect "employees," including a "dependent contractor," defined as a person, whether or not employed under a contract of employment, and whether or not furnishing tools, vehicles, equipment, machinery, materials, or any other thing owned by the dependent contractor, who performs work or services for another person for compensation or reward on such terms and conditions that the dependent contractor is in a position of economic dependence on, and under an obligation to perform duties for that person which more closely resembles the relationship of an employee than that of an independent contractor (*Labour Rels Code*, Sec. 1(1)(h.01)); (Section 35.01 provides for union certification by dependent contractors).
2. **Employment Standards Code:** Doesn't cover gig workers.
3. **OHS Laws:** Don't cover gig workers.

BRITISH COLUMBIA

Labour Relations Laws

1. Protect "employees," including a "dependent contractor," defined as a person, whether or not employed by a contract of employment or furnishing his or her own tools, vehicles, equipment, machinery, material or any other thing, who performs work or services for another person for compensation or reward on such terms and conditions that he or she is in relation to that person in a position of economic dependence on, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor (*Labour Rels Code,* 1(1)); Section 28 provides for union certification by dependent contractors.

Employment Standards Laws

2. "Online platform workers," defined as persons who perform prescribed work that they accept through an online platform, count as "employees" protected by the Act (*Employment Standards Act*, Sec. 1.1) and the operator of the online platform through which an online platform worker accepts prescribed work is considered the employer of the online platform worker (*Employment Standards Act*, Sec. 3.1).
3. "Prescribed work" for online platform workers that's subject to ESA protections includes:
    - Work performed for the purpose of picking up and delivering an applicable online order.

    - Work performed for the purpose of transporting one or more passengers whose transportation is ordered through a ride-hail online platform (*Employment Standards Regulations*, Sec. 1.1).
4. The minimum hourly wage for a delivery services worker or ride-hail services worker is $20.88, which applies only to engaged time, subject to annual inflation adjustments in June (*Employment Standards Regulations*, Secs. 18.2(1)+(2)).
5. For the purpose of applying Item #4 above to a delivery services worker or ride-hail services worker, the employer must pay to the worker any shortfall that arises if the worker's total online work earnings in a pay period are less than the minimum hourly wage multiplied by the number of hours of engaged time for that pay period (*Employment Standards Regulations*, Sec. 18.2(3)).
6. A platform work offer must specify at least the following information:
    - The anticipated location at which the passenger or applicable online order is to be picked up.
    - The anticipated location at which the passenger or applicable online order is to be dropped off.
    - An estimate of the amount that will be payable if the platform work offer is accepted and the platform work assignment completed, which amount is to be the sum of the estimated online work earnings and distance expense allowance that will be payable.
    - The location described in Items a and b above must be no more than 300 m from the actual location (*Employment Standards Regulations*, Sec. 45.30).
7. On every payday, the employer of a delivery services worker or ride-hail services worker must give the worker a wage statement for the pay period that includes at least the information required by Section 45.31(2) of the Regs. (*Employment Standards Regulations*, Secs. 45.31(1) +(2)).
8. The employer may give the wage statement required under Item #7 electronically, as long as it's in a form that enables the worker to make a paper copy (*Employment Standards Regulations*, Sec. 45.31(3)).
9. The employer of a delivery services worker or ride-hail services worker must give written notice to the worker at least 72 hours before removing the worker's ability to accept platform work offers, unless an exception applies (*Employment Standards Regulations*, Sec. 45.32).
10. If the ability of a delivery services worker or ride-hail services worker to accept platform work offers is temporarily removed, the employer must restore it by no later than 14 days after the removal takes effect, unless an exception applies (*Employment Standards Regulations*, Sec. 45.32).
11. If the employer permanently removes a delivery services worker's access to an online platform, it must give the worker written reasons for the removal as soon as practicable (*Employment Standards Regulations*, Sec. 45.32).

OHS Laws

12. "Online platform workers," defined as persons who perform prescribed work that they accept through an online platform, count as "workers" protected by the Act (*Workers' Comp Act*, Sec. 1) and the operator of the online platform through which an online platform worker accepts prescribed work is considered the employer of the online platform worker (*Workers' Comp Act*, Sec. 1.1).
13. "Prescribed work" for online platform workers to which OHS protections applies includes:
    - Work performed for the purpose of picking up and delivering an applicable online order.
    - Work performed for the purpose of transporting one or more passengers whose transportation is ordered through a ride-hail online platform (*Online Platform Workers Regulations*, Sec. 2).

MANITOBA

1. **Labour Relations Laws:** Don't cover gig workers.
2. **Employment Standards Laws:** Don't cover gig workers.
3. **OHS Laws:** Don't cover gig workers.

NEW BRUNSWICK

1. **Labour Relations Laws:** Don't cover gig workers.
2. **Employment Standards Laws:** Don't cover gig workers.
3. **OHS Laws:** Don't cover gig workers.

NEWFOUNDLAND & LABRADOR

1. **Labour Relations Laws:** Protect "employees," including a "dependent contractor," defined as an individual, whether or not he or she is employed by a contract of employment or provides his or her own tools, vehicles, equipment, machinery, materials, or other thing, who performs work or services for another person for compensation or reward on those terms and conditions that he or she is in a position of economic dependence upon and under an obligation to perform duties for that person more closely resembling the relationship of an employee than that of an independent contractor (*Labour Rels Code*, Sec. 2(1)(k)).
2. **Labour Standards Laws:** Don't cover gig workers.
3. **OHS Laws:** Don't cover gig workers.

NOVA SCOTIA

1. **Standards Laws:** Don't cover gig workers.
2. **OHS Laws:** Act protects "employees," including a "dependent contractor," defined as a person, whether or not employed under a contract of employment and whether or not furnishing the person's own tools, vehicles, equipment, machinery, materials, or any other thing, who performs work or services for another on such terms and conditions that the person is:
    - In a position of economic dependence upon the other.
    - Under an obligation to perform duties mainly for the other.
    - In a relationship with the other more closely resembling that of an employee than an independent contractor (*OHS Act*, Sec. 3(j)).

NORTHWEST TERRITORIES

1. Labour Relations Laws: Protect "employees," including "dependent contractors," defined as:
    - The owner, purchaser, or lessee of a vehicle used for hauling, other than on rails or tracks, livestock, liquids, goods, merchandise, or other materials, who is a party to a contract, oral or in writing, under the terms of which they're:
        - Required to provide the vehicle by means of which they perform the contract and to operate the vehicle in accordance with the contract.
        - Entitled to retain for their own use from time to time any sum of money that remains after the cost of their performance of the contract is deducted from the amount they are paid, in accordance with the contract, for that performance.

    - A fisher who, under an arrangement to which the fisher is a party, is entitled to a percentage or other part of the proceeds of a joint fishing venture in which the fisher participates with other persons.
    - Any other person who, whether or not employed under a contract of employment, performs work or services for another person on such terms and conditions that they are, in relation to that other person, in a position of economic dependence on, and under an obligation to perform duties for, that other person (*Canada Labour Code*, Sec. 3(1)).
2. **Employment Standards Laws:** Don't cover gig workers.
3. **OHS Laws:** Don't cover gig workers.

NUNAVUT

1. Labour Relations Laws: Protect "employees," including "dependent contractors," defined as:
    - The owner, purchaser, or lessee of a vehicle used for hauling, other than on rails or tracks, livestock, liquids, goods, merchandise, or other materials, who is a party to a contract, oral or in writing, under the terms of which they're:
        - Required to provide the vehicle by means of which they perform the contract and to operate the vehicle in accordance with the contract.
        - Entitled to retain for their own use from time to time any sum of money that remains after the cost of their performance of the contract is deducted from the amount they are paid, in accordance with the contract, for that performance.
    - A fisher who, under an arrangement to which the fisher is a party, is entitled to a percentage or other part of the proceeds of a joint fishing venture in which the fisher participates with other persons.
    - Any other person who, whether or not employed under a contract of employment, performs work or services for another person on such terms and conditions that they are, in relation to that other person, in a position of economic dependence on, and under an obligation to perform duties for, that other person (*Canada Labour Code*, Sec. 3(1)).
2. **Employment Standards Laws:** Don't cover gig workers.
3. **OHS Laws:** Don't cover gig workers.

ONTARIO

1. **Labour Relations Laws:** Protect "employees," including a "dependent contractor," defined as a person, whether or not employed under a contract of employment, and whether or not furnishing tools, vehicles, equipment, machinery, material, or any other thing owned by the dependent contractor, who performs work or services for another person for compensation or reward on such terms and conditions that the dependent contractor is in a position of economic dependence upon, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor (*Labour Rels Act*, Sec. 1(1)); Section 9(5) provides for union certification by dependent contractors.
2. **Employment Standards Laws:** Don't cover gig workers.
3. **Digital Platform Workers' Rights Act:** Requires "operators" of "digital platforms" to take measures to protect workers who perform "digital platform work":
    - "Digital platform" means an online platform that allows workers to choose to accept or decline digital platform work.

    - “Operators” means individuals or companies that use a digital platform to facilitate the performance of digital platform work by workers.
    - “Digital platform work” means providing for payment ride share, delivery, courier, or other prescribed services other than taxicab or limousine services by workers who are offered “work assignments” by an operator through the use of a digital platform (*DPWRA*, Sec. 1.1).
4. Operators/Employers must establish a recurring pay period and recurring pay day on which they must pay digital platform workers (whom we’ll refer to as “workers”) all amounts earned during the pay period, including tips and other gratuities (*DPWRA*, Sec. 8).
5. Operators must pay workers at least the minimum wage rate payable under the Ontario *Employment Standards Act* (*DPWRA*, Sec. 9).
6. Operators may not withhold or make deductions from any amounts earned by workers, including tips or gratuities, unless the DPWRA or Regulations authorize such withholdings or deductions (*DPWRA*, Sec. 10).
7. Once a worker is first given access to the digital platform, operators have 24 hours to provide the worker information, in writing, about:
    - The worker’s recurring pay period and pay day.
    - How the worker’s pay will be calculated.
    - The factors, if any, used to determine whether work assignments are offered to workers and how those factors are applied.
    - Whether the digital platform uses a performance rating system and a description of the consequences of a worker’s performance rating or failure to perform a work assignment (*DPWRA*, Sec. 7(1)).
8. Operators must provide the following information, in writing, when offering workers work assignments:
    - The estimated amount the worker will be paid for the work and a description of how that amount was calculated.
    - Any factors used in determining to offer the worker the assignment.
    - The consequences, if any, of the worker’s performance rating for or failure to perform the work assignment (*DPWRA*, Sec. 7(4)).
9. Operators must provide the following information, in writing, to workers within 24 hours of their completing a work assignment:
    - The actual amount the worker will be paid for the work, a description of how that amount was calculated and when the amount will be paid.
    - The amount of any tips or other gratuities collected by the operator for the work assignment, the amount of tip or other gratuity that to be paid and when it will be paid.
    - Any calculations used to determine travel distances or mileage when calculating the amount of pay for the work assignment.
    - A description of any amounts paid to the worker for expenses.
    - The amount and method of calculating any premium paid to the worker for working at a specified time or performing a specified task.
    - The times that the work assignment started and finished (*DPWRA*, Sec. 7(5)).
10. Operators must keep, retain for at least 3 years and make available for government inspection records containing the following information for each worker who accesses its digital platform for purposes of accepting or declining digital platform work:
    - The worker’s name and address.
    - The dates on which the worker was given access to the digital platform for performing work.
    - The dates on which the worker’s access was removed or reinstated.
    - The dates the worker performed work assignments and the start and end times of each assignment.
    - Any amounts paid to the worker in connection with a work assignment, the dates the amounts were paid and a description of the payments, including

any tips or other amounts included in the payment.
    - Whether the digital platform uses a performance rating system and a description of the consequences of a worker's performance rating (*DPWRA*, Sec. 14).
11. Operators may not remove a worker's access to the digital platform without first providing a written explanation of the reasons for removal (*DPWRA*, Sec. 11(1)(a)).
12. Operators must furnish 2-weeks written notice to workers whose access is removed for a period of 24 hours or longer, subject to exceptions (*DPWRA*, Sec. 11(1)(b)).
13. Operators and workers must resolve all of their disputes in Ontario (*DPWRA*, Sec. 12).
14. Operators may not take reprisals against, intimidate, or penalize workers for asking about or asserting their rights under the law (*DPWRA*, Sec. 13).
15. **OHS Laws:** Don't cover gig workers.

PRINCE EDWARD ISLAND

1. **Labour Relations Laws:** Don't cover gig workers.
2. **Employment Standards Laws:** Don't cover gig workers.
3. **OHS Laws:** Don't cover gig workers.

QUÉBEC

1. **Labour Relations Laws:** Don't cover gig workers.
2. **Labour Standards Laws:** Act protects "employees," defined broadly as a person who works for an employer and who's entitled to a wage, including a worker who's a party to a contract, under which he or she:
    - Undertakes to perform specified work for a person within the scope and in accordance with the methods and means determined by that person.
    - Undertakes to furnish, for the carrying out of the contract, the material, equipment, raw materials, or merchandise chosen by that person and to use them in the manner indicated by him or her.
    - Keeps, as remuneration, the amount remaining to him or her from the sum he has received in conformity with the contract, after deducting the expenses entailed in the performance of that contract (*Labour Standards Act*, Sec. 1(10)).
3. **OHS Laws:** Don't cover gig workers.

SASKATCHEWAN

1. **Labour Relations Laws:** Don't cover gig workers.
2. **Employment Standards Laws:** Don't cover gig workers.
3. **OHS Laws:** Protections against and duty to refrain from committing workplace harassment apply to workers and "independent and dependent contractors" (Sask. Emp. Act, Sec. 3-1(6)(b)).

YUKON TERRITORY

Employer must, no later than 10 days after the expiration of each pay period, pay to the employee all wages, other than vacation pay, owing to the employee in respect of that pay period (*Employment Standards Act*, Sec. 65(1)).