

# New Ontario Law Gives Gig Workers Employment Standards Rights

written by Tina Tsonis | June 24, 2022



**Bill 88 provides new employment protections for “digital platform workers”.**

As many as 20% to 30% of all Canadian workers engage in some form of “gig work,” like driving, freelance writing, developing websites and even pet-sitting. So, it’s only a matter of time before your company partakes in the new gig economy, if it doesn’t already. A key challenge will be to ensure that your own arrangements with gig workers comply with applicable legal standards. In Ontario, the first step will be to deal with Bill 88, the *Digital Platform Workers’ Rights Act, 2022*, passed by the Assembly on April 11. Here’s what you need to know about the law to ensure compliance.

## **Whom & What Bill 88 Covers**

Bill 88 covers a particular kind of gig worker, i.e., one that provides services via a “digital platform,” defined as “an online platform that allows workers to choose to accept or decline digital platform work.” Such work is defined to include “provision of for payment ride share, delivery, courier or other services [to be listed in the regulations] by workers who are offered work assignments by an operator through the use of a digital platform.”

Responsibility for ensuring compliance with Bill 88 falls to the digital platform “operator,” or “person that facilitates, through the use of a digital platform, the performance of digital platform work,” not including a temporary health agency regulated by the *Employment Standards Act* (ESA) (which we’ll refer to as “operators”).

## **What the Law Requires**

Bill 88 covers all digital platform workers, regardless of whether they’re employees or independent contractors. In other words, framing arrangements as independent contractor agreements won’t get enable you to get around the new protections the way it might with certain ESA protections. There are 9 key provisions:

### **1. Minimum Wage**

The operator must pay covered workers at least the current minimum wage, not counting tips and gratuities.

## **2. Recurring Pay Period**

Digital platform workers are entitled to a recurring pay period and pay day, with all amounts earned during the pay period, including tips and gratuities, paid by the period's pay day.

## **3. No Unauthorized Deductions**

Operators can't make deductions or withholdings from a digital platform worker's earnings, unless authorized by statute (e.g., income tax laws) or court order.

## **4. Right to Information**

The operator must give workers the following information in writing within 24 hours after giving them access to the digital platform:

- A description of how pay for digital platform work is calculated;
- Whether the operator collects tips or other gratuities and, if so, when and how;
- The recurring pay period and recurring pay day;
- The factors used to determine whether to offer work assignments and how those factors are applied; and
- Whether the digital platform uses a performance rating system and, if so, any consequences based on performance rating or failure to perform a work assignment.

Operators must also provide digital platform workers specific written information:

- When offering work assignments;
- Within 24 hours after a worker completes a work assignment; and
- With regard to performance ratings, depending on the number of ratings provided.

## **5. Notice of Removal**

To remove a worker's access to the digital platform, the operator must provide the worker:

- A written explanation of the reasons for removal; and
- 2 weeks' written notice of removal, unless the worker is guilty of "willful misconduct."

## **6. Disputes to Be Resolved in Ontario**

To prevent tactics used by Uber and others requiring resolution of disputes in the jurisdiction where the company is headquartered or another inconvenient location, all employment-related disputes between the worker and operator must be resolved in Ontario.

## **7. Protection from Reprisal**

Operators aren't allowed to intimidate, penalize or otherwise take reprisals against workers for exercising their rights under the law.

## **8. Recordkeeping Requirements**

Operators must keep, ensure the availability of and retain for 3 years written records for each worker that accesses the digital platform for purposes of accepting or declining digital platform work listing:

- The worker's name and address;
- Dates worker was given access to the digital platform for purposes of performing work;
- Dates access was removed or reinstated;
- Dates on which the worker performed work assignments and start and end times of each assignment; and
- Any amounts paid to the worker for a work assignment, dates the amounts were paid and a description of the payments, including tips or other amounts included in the payment.

## **9. Liability of Corporate Directors**

Corporate directors of the operator are jointly and severally liable for amounts owed to digital platform workers. **Translation:** The worker could collect some or all of the owed amount from any one or combination of the directors, depending on their financial solvency.