Ontario, Canada: Digital Platform Workers' Rights Act, 2022 Coming Into Force On July 1, 2025



On April 11, 2022, Bill 88, *Working for Workers Act, 2022* (Bill 88), received Royal Assent and became law. Among other things, Bill 88 enacted the new *Digital Platform Workers' Rights Act, 2022* (DPWRA).[1] The DWPRA did not come into force upon its enactment.

On September 5, 2024, however, the Ontario government proclaimed that the DPWRA will come into force on July 1, 2025. The Ontario Government also filed O Reg 344/24 under the DPWRA (Regulation), which contains further rules and obligations, and will also come into force on July 1, 2025.

Unlike the amendments to British Columbia's *Employment Standards Act* respecting online platform workers, which came into force on September 3, 2024 (discussed here), the DPWRA does not deem gig workers "employees." Instead, it sets out specific obligations similar in nature to some traditional employment obligations. There is also no equivalent to the British Columbia amendments that explicitly extended workers' compensation and occupational health and safety rights and obligations to gig workers.

The DPWRA establishes rights for gig workers who perform "digital platform work" (*i.e.*, "provision of for payment ride share, delivery, courier or other prescribed services by workers who are offered work assignments by an operator through the use of a digital platform" but not including taxicab or limousine services), and obligations for "operators" (*i.e.*, "a person that facilitates, through the use of a digital platform, the performance of digital platform work by workers").

Rights and Obligations

The key gig worker rights and operator obligations under the DPWRA and the Regulation are:

- Operators must establish a regular recurring pay period and pay day.
- Gig workers must receive minimum wage for all work assignments performed by a worker in a pay period (where the length of the work assignment is governed by

the Regulation, this period includes travel to a pickup location but does not include time waiting for the next assignment), before tips or gratuities, expenses, truly discretionary bonuses (consistent with regular employment law rules), and benefit plan contributions.
- Operators must not make withholdings, deductions, or clawbacks from gig worker pay unless authorized under the DPWRA.
- Operators must provide written reasons for suspending or banning gig workers from the digital platform.
- Permanent bans and suspensions longer than 24 hours require 2 weeks' written notice, unless the gig worker:
    - is suspended or banned due to public safety concerns;
    - is unable to legally perform the work or otherwise is removed as required by law; or
    - is guilty of wilful misconduct that is not trivial and has not been condoned (more on the standard of wilful misconduct below).
- If arbitration clauses in the agreement between the operator and gig worker are used, they must require arbitration in Ontario.
- Operators must provide specified information to gig workers within certain timeframes (*e.g.*, specific information about an assignment upon offering the assignment to a gig worker, and information about how wages will be calculated upon a gig worker first registering with the operator).
- Operators must record, maintain, and allow inspection by a Compliance Officer of prescribed information regarding gig workers as long as a worker has access to the digital platform and for three years thereafter.
- Operators and gig workers cannot contract out of the requirements of the DPWRA and Regulation, except to secure a greater benefit for the gig worker.
- Gig workers are protected from retaliation or reprisal for exercising or inquiring into their rights under the DPWRA and Regulation.

The standard of "wilful misconduct that is not trivial and has not been condoned by the operator" required to ban or suspend a gig worker for more than 24 hours without notice is similar, but not identical, to the standard in employment law in Ontario to dismiss an employee without notice of termination ("wilful misconduct, disobedience, or wilful neglect of duty that is not trivial and has not been condoned by the employer"). It is a high standard that generally requires intention. Unlike the standard for termination of employment, the standard for removal from a digital platform without notice does not reference "disobedience" or "wilful neglect of duty." We will watch closely to see whether courts interpret this to be an even higher standard than the already high standard for termination of employment without notice.

Enforcement

Enforcement of the DPWRA will be similar to enforcement of Ontario's *Employment Standards Act, 2000* in structure. Compliance officers will be appointed with the power to inspect places and documents without a warrant to ensure compliance with the DPWRA, subject to specified limitations.

The government will set up a complaint system for non-compliance with the DPWRA, which will be mutually exclusive with civil court actions with respect to the same subject matter. Compliance officers may order operators to pay gig workers amounts owed to them, or compensation for loss in cases of reprisal or retaliation, in addition to an administrative cost equal to the greater of $100 or 10% of the amount to be paid to the gig worker. Compliance officers may also order reinstatement to the digital platform.

The DPWRA and its Regulation provide for penalties for contraventions of $15,000 for a corporation for a first offence, and $50,000 for a corporation for a third or subsequent contravention in a three-year rolling period. The government may make contraventions public.

Finally, the DPWRA provides for quasi-criminal offences, punishable by a fine of up to $100,000 for a corporation for an offence, or up to $500,000 for a corporation for a third or subsequent offence, and up to $4,000 a day for continued failure to comply with a court order to comply with the DPWRA.

Bottom Line for Operators of Digital Platforms

Organizations in Ontario that fall within the DPWRA's definition of "operators" should become familiar with the worker rights and operator obligations that will become effective under the DPWRA and the Regulation on July 1, 2025. This would enable them to establish the necessary procedures; train their human resource professionals, payroll professionals, and managers and supervisors on applicable gig worker rights, operator obligations, and related procedures; and draft any arbitration clauses in accordance with applicable requirements, before the DPWRA and the Regulation come into force. By taking these proactive steps, "operators" within the meaning of the DPWRA will be able to immediately demonstrate their compliance with the DPWRA and the Regulation when they come into force on July 1, 2025.

Footnote

1. For more information about the DPWRA, *see* Rhonda B. Levy, Barry Kuretzky and George Vassos, *Ontario, Canada: Working for Workers Act, 2022 Introduced and Carried at First Reading*, Littler Insight (Mar. 2, 2022); Rhonda B. Levy, George Vassos and Monty Verlint, *Ontario, Canada: Bill 88, Working for Workers Act, 2022 Receives Royal Assent*, Littler ASAP (Apr. 19, 2022); Rhonda B. Levy and Monty Verlint, *Ontario, Canada: Bill 149, Working for Workers Four Act, 2023 Introduced for First Reading*, Littler ASAP (Nov. 16, 2023).

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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