Ontario Proposes A Minimum Wage And Other Work-Related Protections For Digital Platform Workers

On February 28, 2022, Bill 88, the *Working for Workers Act, 2022*, was introduced in the Legislative Assembly of Ontario. The Bill is omnibus legislation which proposes to enact the *Digital Platform Workers' Rights Act, 2022* (the "Act") and amend the *Employment Standards Act, 2000* (the "*ESA*"), the *Occupational Health and Safety Act*, and the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*.

This article reviews the proposed enactment of the Act and its impact on businesses that engage in digital platform work. The other proposals under Bill 88 were analyzed in our other recent updates (located here and here).

New Worker Rights Proposed in the Digital Platform Workers' Rights Act, 2022

If proclaimed into force, Bill 88 would create new rights and protections for digital platform workers.

Who Is Impacted?

Any individual who performs "digital platform work" in Ontario or as a continuation of Ontario-based work, regardless of whether they are an employee or contractor, would be entitled to the rights and protections proposed under the Act.

Digital platform work is defined as "the 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." This definition would appear to include most, if not all, popular ride-share and food delivery operations.

Right to Information

The Act would entitle a digital platform worker to receive various types of information relating to their work and working conditions, including:

- how pay is calculated, including whether and how tips are collected by the platform operator and the recurring pay period/day established by the operator;

- how work assignments are offered to workers and the factors used to determine the allocation of work; and
- whether the digital platform uses a performance rating system and, if so, the details of any rating given to a worker and the consequences, if any, that may flow from a worker's performance rating or failure to perform work assignments.

The Act sets out specific time periods when the above information must be provided by a digital platform operator to its workers. For instance, within 24 hours after a worker is granted access to the digital platform, the operator must provide the worker with information about pay calculations, pay periods/days, the collection of tips or other gratuities, the offering of work assignments, and performance rating systems. Similar information disclosure obligations are triggered when an operator offers a work assignment to the worker, within 24 hours of the worker's completion of a work assignment, and when a worker does not complete a work assignment that they previously accepted.

Right to Recurring Pay Period and Pay Day

The Act would require the operator of a digital platform to establish a recurring pay period and a recurring pay day. Each digital platform worker would be entitled to be paid all amounts, including tips or other gratuities, that they earned during each pay period. This payment must be made by no later than the pay day for the applicable pay period.

Right to Minimum Wage

Under the Act, the operator of a digital platform would be required to pay a worker at least the general minimum wage rate under the ESA for each work assignment that the worker performs. At the time of writing, the ESA general minimum wage rate is $15.00 per hour; this rate will be adjusted for inflation effective October 1, 2022.

Tips and other gratuities paid in respect of a work assignment will not be considered when the Government assesses an employer's compliance with the Act's minimum wage requirements.

Right to Amounts Earned and Tips and Other Gratuities

The operator of a digital platform will be prohibited from withholding, making deductions from, or causing the return of a worker's earnings (including any tips or other gratuities given to the worker). The sole exceptions to this prohibition arise where such withholding, deduction, or return is authorized under the Act, another statute of Ontario or Canada, or a court order.

Right to Notice of Removal from the Digital Platform

Under the Act, digital platform workers would have the right to be notified of their removal from a digital platform. The notice must be provided in writing and include a written explanation of why the operator is removing the worker's access. If the operator is removing a worker's access to the digital platform for a period of 24 hours or longer, the operator must provide the worker with at least two weeks' written notice of removal, unless the worker has been guilty of wilful misconduct. Other exceptions to this two-week notice requirement may be prescribed by legislation at a later date.

Rights Regarding Dispute Resolution

The Act entitles digital platform workers to have their work-related disputes

resolved in Ontario. This would be a significant change if Bill 88 is proclaimed into law, as many contracts in the digital sector typically state that any work-related disputes should be resolved in foreign jurisdictions, such as California or the Netherlands.

Rights Regarding Reprisals

Under the Act, no operator or person acting on an operator's behalf can reprise against a worker for exercising, inquiring about, or enforcing their rights under the Act.

Additional Technical and Administrative Requirements Under the Act

In addition to creating the foregoing substantive rights for digital platform workers, the Act establishes several requirements to facilitate the administration of its provisions.

Operators and workers cannot contract out of the rights under the Act. However, an operator may deviate from the strict requirements under the Act if a contractual or legislative provision directly relates to the same subject matter and provides a greater right or benefit to the worker.

Operators will be required to keep records pertaining to each worker who accesses their digital platforms. The records must be retained until three years after the termination of the worker's access to the digital platform. The records must include information about:

- the worker's name and address;
- any dates on which the worker was given access to the digital platform for the purposes of performing work;
- any dates on which the worker's access to the digital platform was removed or reinstated;
- the dates on which the worker performed work assignments, as well as the start and end times for each assignment; and
- details relating to amounts paid to the worker in respect of a work assignment, such as the dates when payments were made and a description of the payments.

The Government will appoint a Director of Digital Platform Work to administer the Act.

The Director can establish policies regarding the interpretation, administration, and enforcement of the Act. The Director can also assign compliance officers to enforce the Act and investigate possible contraventions of the Act.

Check the Box

If Bill 88 is passed, the Act will significantly change how digital platform work is performed in Ontario. Businesses that operate digital platforms will need to adjust their work practices to more closely resemble the typical employment relationship. This adjustment process may require operators to create standardized contracts and policies that govern the operator-worker relationship, implement centralized payroll and other administrative processes, and redesign their digital platform algorithms to ensure compliance with the Act.

We will continue to monitor Bill 88 as it continues through the legislative process.

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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