



# THE GIG ECONOMY AND ITS EFFECTS ON RACIALIZED AND IMMIGRANT POPULATIONS IN TORONTO

## LITERATURE AND JURISDICTIONAL REVIEW SUMMARY REPORT



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# Literature and Jurisdictional Review Summary

## Defining the Gig Economy

The gig economy is made up of three main components:

- The independent workers paid by the gig
- The consumers who need a specific service
- The companies that connect workers directly to consumers

The gig-economy is usually understood to include chiefly two forms of work:

- **Crowdwork:** Working activities that imply completing a series of tasks through online platforms
- **Work-on-demand via app:** Traditional working activities channelled through apps managed by firms that manage the workforce and set minimum quality standards.

A gig is a short-term, unpredictable and temporary work engagement, and the worker is paid only for that specific job. There is also no formal “employer-employee” type relationship between the company and independent worker.



## Defining who is a Gig Worker

Gig workers can generally be classified as labour or good providers

While there is currently no consensus on the definition of a gig economy worker, a range of measures have been used to identify workers taking on alternative work arrangements including the following:

- Independent contractors, consultants, and freelancers
- Temp agency workers and on-call workers
- Contract company workers

From an administrative perspective, a Statistics Canada paper identified gig workers as unincorporated self-employed workers who report self-employment income, and whose future business activity is uncertain or expected to be minor/occasional.



## Trends and Policy Impacts

- COVID-19 has increased the supply and demand for gig workers as consumers shift to home delivery services
- The pandemic has highlighted the lack of social supports for gig workers
- The gig economy encapsulates multiple industries, with worker distribution uneven
- Current labour laws are outdated, but there is momentum towards recognizing gig workers as dependant contractors, providing more rights
- The gig economy promotes inequality, as biases are embedded within technology platforms and consumers
- Opportunities to create Flexi or multi-employer gig worker benefit schemes



# Gig Economy Developments in Other Jurisdictions



## California, United States

Assembly Bill 5, which protected most gig workers under state labour law by recognizing them as employees, was replaced by Prop 22. The new legislation reclassified gig workers as independent contractors with some benefits, albeit fewer than workers recognized as employees. Threats to leave the state and funding for the “Yes on Prop 22” campaigns from gig employers were influential to new legislation.

New York, like other states, often looks to California for precedence. In September 2021, New York City passed six bills to set minimum pay and improve working conditions for food delivery workers while keeping them as independent contractors. Labour groups believe this is a minimum standard, and more needs to be done.

## New York, United States

## United Kingdom

The U.K. Supreme Court classified gig workers as “workers” instead of independent contractors. “Worker” is a hybrid classification that offers fewer job rights than employees but more benefits and protections than independent contractors. In response to new pension requirements, Uber called on rival operators to create a cross-industry pension scheme for gig workers.

The Australian government has developed a national definition of the gig economy, including ridesharing, delivery, and personal services. There are also definitions that help clarify whether a gig worker is recognized as an employee or an independent contractor. All information is available on the government website with clear descriptions and videos.

## Australia





# Appendix A: Full Literature Review

## Defining/Understanding the Gig Economy

Defining the gig economy starts with understanding the various components that comprise it. *The Gig Economy: Current Issues, the Debate, and the New Avenues of Research*,<sup>1</sup> is a strong body of research surrounding the literature on gig economy. The paper delineated the conceptual boundaries of both concepts to query the gig economy research included in the Web of Science database and mapped a sample of 378 papers dealing with the topic. Twenty themes were identified and mapped in gig economy research. The themes with the highest number of articles in gig economy research landscape are “employment”, “sharing economy” and “information”. The themes can be classified as follows: six motor themes (employment, organization, labour-standards, virtual work, consequence, home), four basic themes (sharing economy, social-media, information, flexibility), four emerging themes (culture, platform-capitalism, decision, migration), three specialized themes (governance, crowd working, UK), and two borderline themes (future and freelancing) between emerging and specialized and between specialized and motor themes, respectively.

The Great Recession of the late 2000s and early 2010s led to the rise of a new economy – one where people work as independent contractors or on temporary contracts. Since then this economy has grown, in part due to the fall of labour unions, restructuring of traditional industries and the move towards service jobs. Digital technology and the rise of millennials stimulated further growth – ‘giggers’ today include those that provide services such as driving for Uber or Lyft, providing food delivery, house cleaning, and dog walking as well as consultants, designers and creatives, and those who crave work/life balance.

The gig economy is not just a buzzword anymore; it is a growing part of the modern labour market. The ‘gig/side hustle’ can mean that a person could be helping a small business grow their social media profile one day and be a personal shopper the next. While the gig economy is great in terms of the flexibility that it provides and could be viewed as the rise of the entrepreneurial generation and more efficient service delivery, little is known in terms of its actual benefits. Is the gig economy really efficient? Do gig economy workers make a decent living? What does the gig economy mean for a community? As per *The Future of Work: The Rise of the Gig Economy*,<sup>2</sup> the gig economy is made up of three main components:

- the independent workers paid by the gig (i.e., a task or a project) as opposed to those workers who receive a salary or hourly wage.
- the consumers who need a specific service, for example, a ride to their next destination, or a particular item delivered.
- and the companies that connect the worker to the consumer in a direct manner, including app-based technology platforms.

The paper further classifies gig workers into two broad categories:

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<sup>1</sup> Malik, R., Visvizi, A., & Skrzek-Lubasińska, M. (2021, April 29). The gig economy: Current issues, the debate, and the new avenues of research. MDPI. Retrieved from <https://www.mdpi.com/2071-1050/13/9/5023>

<sup>2</sup> Dr. Emilia Istrate, J. H. & N. 27, May. 2, 2022, Apr. 14, 2022, Apr. 13, 2022, Mar. 17, 2022, Mar. 3, 2022, & Feb. 15, 2022. (2022, May 2). The future of work: The rise of the gig economy. NACO. Retrieved from <https://www.naco.org/featured-resources/future-work-rise-gig-economy>



- Labour providers. For example – drivers, handymen, delivery men. Lower-income and less-educated workers who rely on gig work for their entire livelihood, often because they have trouble finding other job options.
- Goods providers. For example – artists, craftsmen, clothing retailers. Higher-income and more-educated workers who do not depend on their gig work income, often because they have another full-time job; their gig work generally provides supplemental income.

The 2017 *Rise of the Gig Economy* paper,<sup>3</sup> published by the Future of Work Initiative and American Action Forum provides the strongest definition of the gig economy and can be adapted as part of our work. The University of Chicago's National Opinion Research Center utilized a statistical survey to analyze gig economy work. There is no consensus definition of who is a "gig economy worker." Instead, they employed a range of measures to identify alternative work arrangements. Specifically, they constructed three measures:

- Gig 1. The narrowest definition: independent contractors, consultants, and freelancers
- Gig 2. The middle measure: Gig 1 plus temp agency workers and on-call workers
- Gig 3. The broadest definition: Gig 2 plus contract company workers

The American Life Panel<sup>4</sup> measures the number of workers who report being engaged in alternative work arrangements as their main job, including temp-agency, on-call, contract-company and freelancing work. In addition, the survey asks about online platform participation, industry, and income level. The original analysis estimated that 15.8 percent of the workforce held an independent work arrangement as their main job the prior week, including freelancing, temp-agency, contract-company, and on-call work. In 2019, the authors released a revised paper,<sup>5</sup> estimating that there likely has been a modest upward trend in the share of the U.S. workforce in alternative work arrangements.

The 2019 Statistics Canada paper series, *Measuring the Gig Economy in Canada Using Administrative Data*<sup>6</sup> identifies gig workers based on characteristics of their work arrangements and how these are reported in tax data. It introduces a definition of gig work specific to the way work arrangements are reported in the Canadian tax system and estimates the size of the gig economy in Canada using administrative data. This study introduces a clearly defined methodological framework for identifying gig workers in Canada based on various Canadian administrative sources, including individual and corporate income tax returns. This is the first Canadian study to systematically identify gig workers using administrative data and measure the share of gig workers among all Canadian workers. When the work arrangement typology developed in previous studies is applied, gig workers can be viewed as unincorporated self-employed workers (sole proprietors) who report business, professional or commission self-employment income, and whose future business activity is uncertain or expected to be minor or occasional.

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<sup>3</sup> Dr. Emilia Istrate, J. H. & N. 27, May. 2, 2022, Apr. 14, 2022, Apr. 13, 2022, Mar. 17, 2022, Mar. 3, 2022, & Feb. 15, 2022. (2022, May 2). The future of work: The rise of the gig economy. NACO. Retrieved from <https://www.naco.org/featured-resources/future-work-rise-gig-economy>

<sup>4</sup> Krueger, L. K. and A. (n.d.). American Life Panel. GigEconomyData.org. Retrieved from <https://www.gigeconomydata.org/research/data-sources/rand-alp-cws-replication>

<sup>5</sup> Katz, L. F., & Krueger, A. B. (2019, January 7). Understanding trends in alternative work arrangements in the United States. NBER. Retrieved from <https://www.nber.org/papers/w25425>

<sup>6</sup> Jeon, S.-H., Liu, H., & Ostrovsky, Y. (2019, December 16). Measuring the Gig Economy in Canada Using Administrative Data. Analytical Studies Branch Research Paper Series. Retrieved April 8, 2022, from <https://www150.statcan.gc.ca/n1/pub/11f0019m/11f0019m2019025-eng.htm>



## Nature of work in the gig economy

The gig-economy is usually understood to include chiefly two forms of work:<sup>7</sup>

- Crowdwork
- Work-on-demand via app

The first term is usually referred to working activities that imply completing a series of tasks through online platforms. Typically, these platforms put in contact an indefinite number of organizations and individuals through the internet, potentially allowing connecting clients, and workers on a global basis.

“Work-on-demand via app,” instead, is a form of work in which the execution of traditional working activities such as transport, cleaning, and running errands, but also forms of clerical work, is channeled through apps managed by firms that also intervene in setting minimum quality standards of service and in the selection and management of the workforce.

## Short-term and unpredictable work arrangements

The ‘gig economy’, which comprises of short-term and unpredictable work arrangements negotiated on online peer-to-peer marketplaces, raises a number of interesting questions about the future direction of employment law.<sup>8</sup> One of the main differences between a gig and traditional work arrangements, is that a gig is a temporary work engagement, and the worker is paid only for that specific job.<sup>9</sup>

Gig workers are usually not employed on a long-term basis by a single firm; instead, they enter into various contracts with firms or individuals (task requesters) to complete a specific task or to work for a specific period of time for which they are paid a negotiated sum. This includes independent contractors or freelancers with particular qualifications and on-demand workers hired for jobs that are mediated through the growing number of online platforms and crowdsourcing marketplaces, such as Uber, Lyft, TaskRabbit, Upwork, Guru, Fiverr and Freelancer.<sup>10</sup>

## Rethink definitions based on technology & skill advancement

Advanced technological solutions, involving blockchain, smart contract, and A.I., suggests new fields, domains, and modes of collaboration will be possible, defined as the digital-platform-based gig economy+. In contrast to the traditional meaning of gig economy, gig economy+, requires a specific set of skills, notably digital literacy, ability to work in geographically distributed virtual teams, etc., and on the other, suggests that high-value-added jobs, or gigs, will also be feasible. In brief, gig economy requires a serious reconsideration.<sup>11</sup>

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<sup>7</sup> The rise of the “just-in-time workforce”: on-demand work, Crowdwork, and labour protection in the “gig-economy”: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/cllpj37&div=34&id=&page=>

<sup>8</sup> LexisNexis. <https://www.lexisnexis.com/uk/lexispsl/employment/document/412012/5KX9-X191-DYW7-W269-00000-00/The%20gig%20economy%E2%80%94the%20definition%20of%20employee>

<sup>9</sup> Dr. Emilia Istrate, J. H. &nbsp; N. 27, May. 2, 2022, Apr. 14, 2022, Apr. 13, 2022, Mar. 17, 2022, Mar. 3, 2022, & Feb. 15, 2022. (2022, May 2). The future of work: The rise of the gig economy. NACO. Retrieved from <https://www.naco.org/featured-resources/future-work-rise-gig-economy>

<sup>10</sup> Jeon, S.-H., Liu, H., & Ostrovsky, Y. (2019, December 16). Measuring the Gig Economy in Canada Using Administrative Data. Analytical Studies Branch Research Paper Series. Retrieved April 8, 2022, from <https://www150.statcan.gc.ca/n1/pub/11f0019m/11f0019m2019025-eng.htm>

<sup>11</sup> Malik, R., Visvizi, A., & Skrzek-Lubasińska, M. (2021, April 29). The gig economy: Current issues, the debate, and the new avenues of research. MDPI. Retrieved from <https://www.mdpi.com/2071-1050/13/9/5023>



## Technology-enabled kinds of work

The gig economy is not new – people have always worked gigs, but today when most people refer to the “gig economy,” they’re specifically talking about new technology-enabled kinds of work.<sup>12</sup>

## No formal employer-employee relationship

A gig worker is not paid a wage or salary, does not have an implicit or explicit contract for a continuing work relationship, and does not have a predictable work schedule or predictable earnings when working. Applying this definition to the characteristics of the range of alternative work arrangements, we would consider independent contractors and freelancers, day labourers, and on-demand or platform workers to be gig workers.<sup>13</sup> The National Bureau Of Economic Research (NBER) working paper series<sup>14</sup> defines gig economy two ways:

- Less structured work arrangements
- Flexible jobs mediated through various online platforms

The latter have been viewed as yielding an increasingly “on demand” economy where goods and services can be acquired through apps on smartphones and other web-based applications.

## Online platforms are central to the definition

The Gig Economy: Current Issues, the Debate, and the New Avenues of Research<sup>15</sup> paper identifies that in contrast to the traditional definition of gig economy that used to denote short-term contracts and freelance work, as opposed to permanent jobs, the onset of platform economy redefines the very concept of the gig economy.

The Organisation for Economic Co-operation and Development (OECD) Working Paper, Gig economy platforms: Boon or Bane?<sup>16</sup> defines gig economy platforms as two-sided digital platforms that match workers on one side of the market to customers (final consumers or businesses) on the other side on a per-service (“gig”) basis. This definition excludes one-sided business to-consumer platforms such as Amazon (trading of goods) and two-sided platforms that do not intermediate labour such as Airbnb (intermediation of accommodation services). As such, gig economy platforms are a subset of the “platform economy” (encompassing any type of one-sided or multi-sided digital platform) and the “sharing economy” (encompassing any type of multi-sided peer-to-peer platform).

## Trust-building between workers & customers a central characteristic

A common feature of gig economy platforms is that they resort to trust-building mechanisms to promote an environment that facilitates direct transactions between workers and customers. Trust-building mechanisms include:

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<sup>12</sup> Bhatia, R (2020, September 23). Future of work curations from [https://issuu.com/ruchibhatia0/docs/futureofwork\\_curations\\_](https://issuu.com/ruchibhatia0/docs/futureofwork_curations_)

<sup>13</sup> Abraham, K. G., Haltiwanger, J., Sandusky, K., & Spletzer, J. (n.d.). The rise of the Gig Economy: Fact or Fiction? AEA Papers and Proceedings. Retrieved from <https://www.aeaweb.org/articles?id=10.1257%2Fpandp.20191039>

<sup>14</sup> Abraham, K. G., Haltiwanger, J. C., Sandusky, K., & Spletzer, J. R. (2018, September 3). Measuring the gig economy: Current knowledge and open issues. NBER. Retrieved from <https://www.nber.org/papers/w24950>

<sup>15</sup> Malik, R., Visvizi, A., & Skrzek-Lubasińska, M. (2021, April 29). The gig economy: Current issues, the debate, and the new avenues of research. MDPI. Retrieved from <https://www.mdpi.com/2071-1050/13/9/5023>

<sup>16</sup> Schweltnus, C., Geva, A., Pak, M., & Veiel, R. (2019, May 21). Gig economy platforms: Boon or Bane? OECD iLibrary. Retrieved May 12, 2022, from [https://www.oecd-ilibrary.org/economics/gig-economy-platforms-boon-or-bane\\_fdb0570b-en](https://www.oecd-ilibrary.org/economics/gig-economy-platforms-boon-or-bane_fdb0570b-en)





- Reputation rating mechanisms
- Setting of basic requirements for workers to enter the platform
- The intermediation of payments
- Centralised customer support and the provision of insurance to customers.

## Trends Impacting Gig Employment

The gig economy is constantly evolving and being disrupted as new technologies and consumer trends occur. The following section summarises some of these trends:

### Coronavirus disease (COVID-19)

#### Financial and Social Supports

Insights from Brookfield Institute, Yesterday's Gone: Exploring possible futures of Canada's labour market in a post-COVID world report,<sup>17</sup> discusses the impact of COVID-19 on the gig economy. The report highlights that COVID-19 has disproportionately impacted gig economy workers with the pandemic highlighting the lack of social supports for this worker category. The impact of COVID-19 on the gig economy: Short- and long-term concerns report,<sup>18</sup> measured the impact of the pandemic on gig workers found that the financial impact was highly variable depending on their ability to access other income sources. For example, pension age gig workers saw less financial impact due to receipt of pension benefits. Conversely, about half of gig workers classified as self-employed are ineligible for Employment Insurance (E.I.). However, the report notes that those gig workers who earned \$5,000 or more in 2019 should have been eligible for Canada Emergency Response Benefits (\$500 a week). Overall, the pandemic increases pressure for firms and governments to improve working conditions, compensation and worker legislation to protect gig workers and restructure how society and governments view essential work.

#### Increased Gig Economy Demand Driven by E-Commerce Adoption

The pandemic has also seen a surge in demand for gig economy workers due partly to the increased reliance on gig workers to home deliver necessities to consumers and a disruption of the traditional 9-5 workweek. For example, research from Statistics Canada found that retail e-commerce sales reached a record high in December 2020, increasing by over two-thirds (+69.3%) year-over-year to \$4.7 billion.<sup>19</sup> Within the food delivery sector – a sector dominated by gig workers – research by McKinsey estimates that the food delivery markets has more than tripled since 2017, valued at more than \$150 billion.<sup>20</sup> As

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<sup>17</sup> Yesterday's gone: Exploring the future of Canada's labour market in a post-COVID world. Brookfield Institute for Innovation + Entrepreneurship. (n.d.). Retrieved from <https://brookfieldinstitute.ca/future-of-work-in-post-covid-canada/>

<sup>18</sup> Statistics Canada, May 2020 The impact of COVID-19 on the gig economy: Short- and long-term concerns: <https://www150.statcan.gc.ca/n1/pub/45-28-0001/2020001/article/00021-eng.htm>

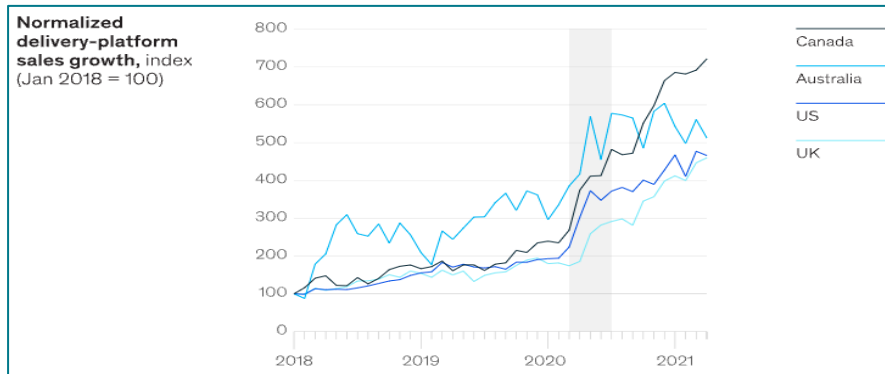
<sup>19</sup> Statistics Canada, Retail trade, December 2020. Source: <https://www150.statcan.gc.ca/n1/en/daily-quotidien/210219/dq210219a-eng.pdf?st=Vj6QuvQt>

<sup>20</sup> Ahuja, K., Chandra, V., Lord, V., & Peens, C. (2022, February 18). Ordering in: The rapid evolution of Food Delivery. McKinsey & Company. Retrieved from <https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/ordering-in-the-rapid-evolution-of-food-delivery>



is illustrated in Figure 1. This shift in consumer demand is resulting in increased competition for gig workers. Furthermore, many full-time workers who lost employment during the pandemic have shifted to on-demand gig work due to increased lifestyle appeal or necessity, which has increased the supply of labour. If the supply of labour outpaces future expansion of gig work available, then gig workers may need to strengthen their C.V.s and expand their skill sets to continue to secure viable employment opportunities.

**Figure 1: Growth of Food Delivery Market across Select Countries, (2018 to 2021)**



Source: McKinsey & Company, *Ordering in: The rapid evolution of food delivery*, 2021

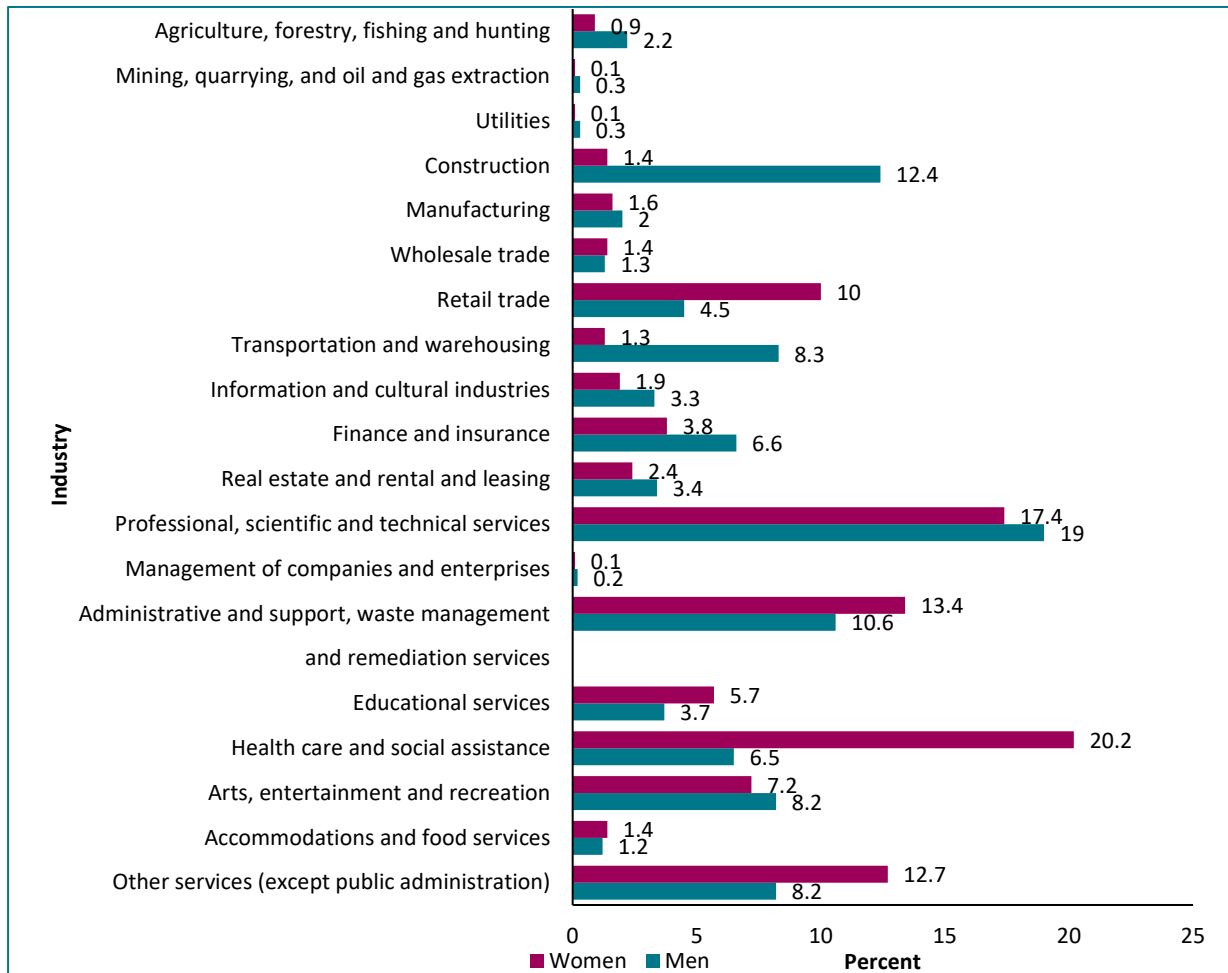
### Distribution of Gig Workers by Industry is not even

It is also important to recognize growth within the gig economy is not equally distributed across all industry sectors or by sex. As illustrated in Figure 2, industries such as Professional, Scientific and Technical Services (PSTS) account for nearly one-fifth of gig economy workers, estimated at 19.0% for males and 17.4% for females. With the advent of COVID-19, workers within sectors such as PSTS were more able to continue operating remotely, whereas gig workers within the arts and entertainment, estimated at 8.2% for male gig workers and 7.2% for female gig workers, would have faced increased barriers to continue working. These discrepancies illustrate the complexities of regulating the gig economy. Blanket changes in legislation are unlikely to address individual sector and worker needs adequately. In-depth consultation with specific industry bodies about their needs and requirements is needed before policymakers can enact meaningful change.<sup>21</sup>

<sup>21</sup> Government of Canada, Statistics Canada. (2020, May 20). The impact of COVID-19 on the gig economy: Short- and long-term concerns. Government of Canada, Statistics Canada. from <https://www150.statcan.gc.ca/n1/pub/45-28-0001/2020001/article/00021-eng.htm>



**Figure 2: Statistics Canada Industrial Distribution of Gig Workers**

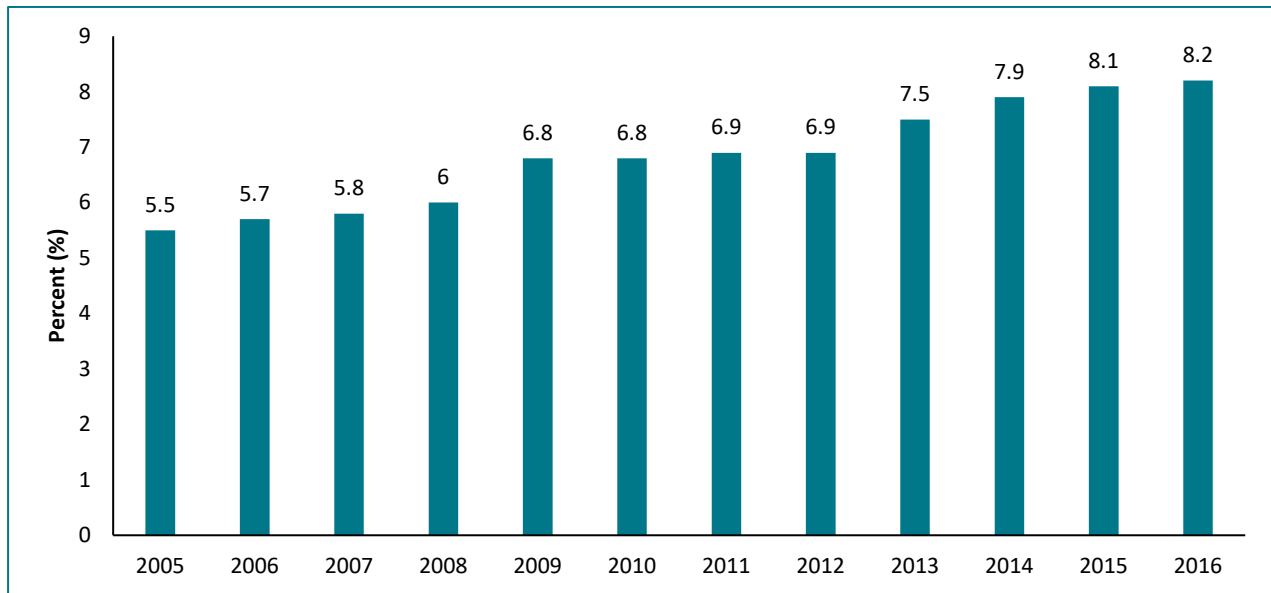


Source: [Statistics Canada](#), Based on Table 3 in Jeon et al. (2019).

One of the most prevalent questions facing policymakers is understanding the gig economy's current size and forecasted growth. Research by Statistic Canada estimated the sector grew substantially in the early 2000s, alongside the adoption of digital platforms. The number of gig workers increased from 5.5% as a share of all workers in 2005 to 8.2% in 2016. An interesting observation was that the size of the gig economy increased after the 2008 global financial crisis as many workers who lost their jobs were pushed into gig work. For example, the sector grew from 6.0% in 2008 to an estimated 6.8% in 2009. Policymakers will be challenged to predict if the ongoing implications of COVID-19 will see a similar or greater influx of gig workers. At the same time, a national standard definition of gig economy workers must be agreed to ensure future data analysis of the gig economy is consistent and accurate to inform better decision-making.



Figure 3: Share of Gig Worker's Among all Workers



Source: [Statistics Canada](#), Based on Chart 2 in Jeon et al. (2019).

In 2019, Statistics Canada conducted further research, which found that self-employed temporary workers now constitute more than 20% of the labour force and are by far the fastest-growing labour group in Canada.<sup>22</sup> Another 2018 survey of the digital economy within Canada found that 28% of Canadians aged 18 years or older were making money via online platforms. The most common platforms used included Kijiji, eBay and Etsy, with \$4.9 billion in earnings or \$722 per person. Other freelance platforms such as YouTube, ridesharing or Fiverr also have seen sustained growth.<sup>23</sup>

### Diversity, Equity, and Inclusion within the Gig Economy

When analyzing the gig economy, it is also important to examine current trends related to Diversity, Equity and Inclusion. A growing body of evidence suggests that not all workers within the gig economy participate out of free will, with many forced to join out of necessity. For example, the 2019 size and characteristics of informal (“gig”) work in Canada Bank of Canada paper,<sup>24</sup> found that participation in informal activities is higher in provinces where unemployment rates are above pre-crisis averages, and wage growth is weaker. Furthermore, earnings were the primary motive for engaging in gig work, with income tending to be lower than income earned via a formal job for the equivalent amount of time. From a psychological perspective, the paper suggests that participation in the gig economy likely reflects “precautionary motives”: those who did participate in gig work had a higher perceived probability of job loss within the coming 12 months and more irregular job schedules.

<sup>22</sup> Understanding the nature and experience of gig work in Canada. (July 2020). Future Skills Centre • Centre des Compétences futures. Retrieved April 1, 2022, from <https://fsc-ccf.ca/research/understanding-the-nature-and-experience-of-gig-work-in-canada>.

<sup>23</sup> *ibid.*

<sup>24</sup> The size and characteristics of informal (“gig”) work in Canada. Bank of Canada. (n.d.). Retrieved May 12, 2022, from <https://www.bankofcanada.ca/wp-content/uploads/2019/02/san2019-6.pdf>



From a discrimination perspective, research indicates that the gig economy promotes inequality. Discrimination does not only occur when firms hire employees, as bias towards certain population groups can be unintentionally built into the algorithms that power the gig economy platforms. For example, some gig economy platforms require consumers to choose individual service providers instead of being allocated to them. This environment facilitates consumers to unconsciously discriminate against gig workers, with the problem further compounded in reviews. Reviews serve as an important trust establishment metric within the gig economy and can determine where gig workers rank in user searches. A study conducted on Online Freelance Marketplaces,<sup>25</sup> found evidence of bias, as perceived gender and race significantly correlated with worker evaluations. This bias could harm the employment opportunities afforded to the workers. Workers perceived to be Black receive fewer reviews than workers perceived to be White, especially so in the case of men. Furthermore, being female was found to be a disadvantage.

Structural gender disparities also impact earnings potential for gig economy workers. Research suggests that female Uber drivers within the United States earn 34% less than their male counterparts. Although users cannot select a driver, a study finds that as women are disproportionately responsible for home and child-related caring responsibilities, they are limited in their ability to earn the highest wage opportunities. For example, Uber's surge fare pricing often occurs late at night within drinking hot spots, contributing to an expansion in the gender pay gap within the gig economy.<sup>26</sup>

## Policy Considerations

### Flexible Work+

At a time when COVID-19 is highlighting the disparities between industries with strong labour protection laws and those which don't (e.g., within the gig economy), Canada's Uber subsidiary is mounting the charge for policymakers to enact reforms. Under their new "Flexible Work+" proposal, Uber urges Canadian Federal and Provincial governments to renew outdated labour laws to protect gig economy workers. Under Ontario laws, they have no legal right to a minimum wage, sick days, collective bargaining rights, or breaks.<sup>27</sup>

According to Uber, their proposed Flexible Work+ plan has two key components. Firstly, it would allow for "self-directed benefits," which would mean drivers can accrue benefit funds that could be used for health insurance, RRSPs and tuition, based on the number of hours worked. Secondly, the plan promotes enhanced worker protections, described vaguely as "training and tools." Uber cited an internal survey of 23,000 people in October of 2020 that found that 85% of drivers could not work for Uber without flexible arrangements, with 60% of workers strongly or somewhat preferring to be independent contractors and 65% preferring the Flexible Work+ platform over their current role or traditional employment with Uber.<sup>28</sup>

However, there has been broad skepticism about Uber's proposal. According to Labour lawyer Joshua

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<sup>25</sup> Hannak, Wagner, Garcia, Strohmaier, Wilson, Bias in Online Freelance Marketplaces: Evidence from TaskRabbit

<sup>26</sup> Stanford, The Gender Earnings Gap in the Gig Economy: Evidence from over a Million Rideshare Drivers, 2020

<sup>27</sup> Uber Reinvent Work Together: <https://www.uber.com/ca/en/u/reinvent-work-together/>

<sup>28</sup> Uber Canada (2021, February 24). Raising the voices of drivers and delivery people in Canada. Uber Newsroom. Retrieved May 12, 2022, from <https://www.uber.com/en-CA/newsroom/raising-the-voices-of-drivers-and-delivery-people-in-canada/>



Mandryk, under the terms of Flexible Work+, gig workers “would be excluded from minimum employment standards and they would be excluded from [Canada Pension Plan] contributions and excluded from eligibility from Employment Insurance”.<sup>29</sup>

### Potential Policy Implications

Canada’s labour laws are outdated and currently exclude gig economy workers. Labour standards must be updated regularly as ways of doing businesses shift due to innovations and styles of work. However, policymakers must be careful not to blindly follow the plans proposed by the lobbying of large gig economy employers (e.g., Uber) and rush reforms. Broad consultation must occur with policies adjusted for individual sector needs.

## Report of the Expert Panel on Modern Federal Labour Standards

The Government of Canada created the independent Expert Panel on Modern Federal Labour Standards in February 2019 to examine the following 5 issues related to the changing nature of work:<sup>30</sup>

- Federal minimum wage
- Labour standards protections for non-standard workers
- Disconnecting from work-related e-communications outside of work hours (sometimes known as the “right to disconnect”)
- Access and portability of benefits
- Collective voice for non-unionized workers

The report addresses some factors that influence gig workers and their working conditions and outlines the urgency in introducing strong legislative protections for gig economy workers.

### Background and Findings

- **Consultation Scope** – Consultation covered 140 individuals and organizations across Canada.
- **Overarching finding** – from the Panel’s consultation efforts was that the way Canadians work has changed, but federal labour standards have not. The report notes that while the individuals and organizations heard differed on how best to modernize federal labour standards in the context of this change, they demonstrated a shared interest in exploring the issues further and sharing their views and experiences.

### Recommendations Related to Gig Workers

- **Federal minimum wage:** the Panel recommends that a freestanding federal minimum wage be established based on 60% of the median hourly wage of full-time workers either in Canada or in each province and territory.
- **Labour standards protections for workers in non-standard work (e.g., gig economy):**

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<sup>29</sup> Thompson, M., Thompson, M., Hudson, M., Corbyn, J., Day, M., Stipe, M., Press, A. N., Marx, P., & Carbonell, J. S. (n.d.). Uber's flexible work+ campaign is a scam to evade Canada's labor laws. Jacobin. Retrieved from <https://www.jacobinmag.com/2021/03/uber-flexible-work-plus-canada-labor-law-workers-rights>

<sup>30</sup> Report of the Expert Panel on Modern Federal Labour Standards. (2019). Employment and Social Development Canada. Source: <https://www.canada.ca/en/employment-social-development/corporate/portfolio/labour/programs/labour-standards/reports/what-we-heard-expert-panel-modern-federal.html>



- i) The Panel recommends that Part III of the Canada Labour Code (Code), which sets out minimum labour standards for workplaces in the federally regulated private sector (FRPS) define the concept of "employee". This definition would include a clear statutory definition of "independent contractor" and "dependent contractor". To be classified as a dependent contractor, the contractor must be "economically dependent" on a particular client. Dependent contractor status may be found even where a worker conducts business through a corporation and hires employees to assist in the performance of the work.
- ii) The recommendation includes a definition of "continuous employment" with periods of layoff or interrupted service.
- iii) Add a "joint and several liability" provision.

### Potential Policy Implications

The growing trend towards recognizing gig workers as dependant contractors has implications across Canada. Within provinces such as British Columbia, Alberta, Ontario, Newfoundland, and Labrador and businesses under federal jurisdiction, dependent contractors have the right to unionize under labour laws in the same way employees do. In addition, depending on the contract, dependent contractors may also be owed certain entitlements upon termination without cause in some jurisdictions, like British Columbia, Alberta, Ontario, Quebec and New Brunswick. When such protections are afforded to gig workers, the resulting consequences for the newly dubbed "employer" can be significant. Overall, the recommendations proposed in the federal government reports are significant for the future of the gig economy.<sup>31</sup>

### Ontario Workforce Recovery Advisory Committee

The Ontario Workforce Recovery Advisory Committee (OWRAC) was established soon after the *Report of the Expert Panel on Modern Federal Labour Standards* and appears to be interested in the proposed Flexible Work+ plan lobbied for by Uber based on the shared language on gig economy workers. The committee's mandate is to provide recommendations to position Ontario as the best place in North America to recruit, retain and reward workers.<sup>32</sup> As of October 14, 2021, the Ontario Workforce Recovery Advisory Committee has yet to release its report and recommendations nor has it provided a date for the release. The OWRAC has seen criticism from the Gig Workers United, which argues that the committee lacks representation from gig economy workers.<sup>33</sup>

### Potential Policy Implications

The recommendations from this report will be critical in determining the future of Labour Laws in Ontario. Ongoing monitoring of the anticipated publication date should occur.

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<sup>31</sup> Doing business in the gig economy: A global guide for employers. Canada | Global law firm | Norton Rose Fulbright. (n.d.). Retrieved, from <https://www.nortonrosefulbright.com/en-ca/knowledge/publications/87afaec5/doing-business-in-the-gig-economy-a-global-guide-for-employers>

<sup>32</sup> The Future of Work in Ontario. (November 2021). Findings and recommendations from the Ontario Workforce Recovery Advisory Committee. Source: <https://files.ontario.ca/books/mltsd-owrac-future-of-work-in-ontario-november-2021-en-2021-12-09.pdf>

<sup>33</sup> Workers, C. U. of P. (2021, October 8). Gig workers: "Gig work is real work". Cision Canada. Retrieved from <https://www.newswire.ca/news-releases/gig-workers-gig-work-is-real-work--857180907.html>



## Proposed Ontario Gig Workers' Bill of Rights

The proposed Bill of Rights was created by gig workers endorsed by Gig Workers United, Uber and United Food and Commercial Workers Canada (UFCW), and the Ontario Federation of Labour to outline what minimum rights governments must guarantee to ensure fairness and non-discriminatory treatment for gig workers. 10 rights are identified within the Bill including establishing a minimum wage, sick leave, vacation pay, right to form a union and other minimum employment standard. As of October 14, 2021, a total of 783 people had signed to support the Bill of Rights.<sup>34</sup>

### Potential Policy Implications

The Bill appears to be modest in the rights that it advocates for and could be a powerful supporting piece of evidence to prompt labour legislation reform within Ontario. However, the Bill currently lacks significant digital presence or support from the public.

## Benefits for Gig Workers – A Review of Canadian Practices

One of the main disadvantages that gig workers face is the lack of access to benefits, including statutory minimums such as annual vacations and employer-provided benefits such as medical and retirement savings plans (including pensions). The following section outlines some viable benefit best practices and innovative concepts within Canada that could be adapted to address current gaps faced by gig workers. The examples include a mix of contributions by employees and/or employers or different administrative models which capture the challenges of workers moving between multiple employers during their working life or working on newly emerging technology platforms (for example, the gig economy).<sup>35</sup>

**Figure 4: Innovative Canadian Benefit Plans with Potential to Impact Gig Workers**

Initiative	Overview	Key Features/Potential Policy Implications
Common Good Initiative	This retirement plan model is structured for the non-profit and charitable sector, aiming to set up a nationally portable, high-quality collective retirement plan to address the shortage of adequate savings for workers in Canada's non-profit sector.	<ul style="list-style-type: none"> <li>Boards of Directors have a legal duty to put plan members' interests first</li> <li>Group established Tax-Free Savings Account (TFSA)/Registered Retirement Savings Plan (RRSP)</li> <li>Membership can be either mandatory or voluntary, and open to sector employees, freelancers and spouses</li> <li>Employee contributions would be flexible and employer contributions optional.</li> <li>Professionally selected investment options</li> <li>Post-retirement options that optimize savings into a stream of income with simple plan administration.</li> </ul>
Tax-free workplace pensions	A design for workplace pensions would assist lower earning workers by operating similarly to current RRSP plans, with the critical exception of allowing them to grow in a tax-free savings environment.	<ul style="list-style-type: none"> <li>Pensions would be tax-free</li> <li>Additionally, since this plan would not be considered "income," it would also not be a factor in determining eligibility for federal or provincially income-tested benefits.</li> </ul>

<sup>34</sup> Take action. The Ontario Federation of Labour. (2022, March 11). from <https://takeaction.ofl.ca/action/gig-workers/>

<sup>35</sup> Canada, E. and S. D. (2022, February 24). Report of the Expert Panel on Modern Federal Labour Standards. Canada.ca. Retrieved from <https://www.canada.ca/en/employment-social-development/corporate/portfolio/labour/programs/labour-standards/reports/what-we-heard-expert-panel-modern-federal.html#h2.1>





Initiative	Overview	Key Features/Potential Policy Implications
Multi-employer benefits and pensions	Workers in the longshore industry <sup>36</sup> often work for several different employers at varying times. To maintain continuity for bargaining, payroll and benefits management for these workers, the British Columbia Maritime Employers Association collectively bargains on behalf of employers with the International Longshore Workers Association (BCMEA, n.d.), and provides benefits and pensions to employees who remain consistent despite workers shifting between different individual employers.	<ul style="list-style-type: none"> <li>▪ The central organization collectively bargains on behalf of workers that have multiple different employers for benefits and pensions.</li> <li>▪ A module could be adapted to gig economy workers, allowing them to rotate through multiple gig jobs while still receiving contributions from employers.</li> </ul>
Artists and producers associations	In Quebec, workers in this sector may engage in agreements that set out minimum terms and employment conditions. They may also include benefits in these employment agreements, paid into a shared security fund through producer and artist contributions. Unions and worker associations like the Canadian Freelance Union, a community division of UNIFOR, offer benefits and protections for freelancers and self-employed members (UNIFOR, n.d.), which follow the worker from job to job for as long as they are a member.	<ul style="list-style-type: none"> <li>▪ Centralized membership or unions for gig workers will allow for them to collectively negotiate minimum wages, better working conditions and pooling of benefits within their employment agreements.</li> </ul>
Saskatchewan	Employers in Saskatchewan with 10 or more full-time employees must provide 50% of the benefits afforded to full-time staff to part-time employees who work between 15 and 30 hours a week, while those working over 30 hours a week receive full benefits.	<ul style="list-style-type: none"> <li>▪ This policy would impact gig economy workers if they were classified as employees and were eligible to receive benefits equivalent to a proportion of full-time company staff.</li> </ul>
Quebec	In Quebec, multi-employer plans may be sectorally implemented by multiple employers who work within the same industry or geographical area to establish benefits options for employees. These plans are primarily found within unionized industries.	<ul style="list-style-type: none"> <li>▪ Similar employers within the gig economy (e.g., Uber and Lyft) could establish a multi-employer plan that would allow any rideshare driver access to benefit options.</li> <li>▪ Conversely, a border gig-economy plan that spans multiple different industries could be established.</li> </ul>

Source: [Report of the Expert Panel on Modern Federal Labour Standards](#)

<sup>36</sup> Longshore workers transfer cargo from ships and other vessels, and throughout the dock area.



## Appendix B: Full Jurisdictional Review

The following is a review of how jurisdictions outside Canada define gig workers and the gig economy alongside a look at relevant trends, active discussions and policies. Jurisdictions under review included California and New York in the United States (U.S.) as well as the United Kingdom (U.K.) and Australia. It's important to note that data related to the gig economy, including gig workers' racial profile,<sup>37</sup> is based on the accompanying source's definition for the gig economy. See the footer for more information on the source and their methodology for collecting data on the gig economy.



### California, United States

- California continues to see substantial growth in gig work. However, it's been difficult to confirm specific trends, partly because of the varying definitions of gig work
- In a report by the University of California Berkeley Center for Labor Research and Education,<sup>38</sup> three dimensions were identified to help analyze work in the gig economy based on the conflation of varying evidence and examples of gig work
  - Distinguish between the two main categories of employment in the U.S., employees and independent contractors, each of which has distinct subtypes
  - Distinguish between work as a main job and work for supplemental income: Most workers in the U.S. are employees only; others rely solely on independent contracting; and some combine the two forms of work
  - Distinguish between job quality and type of job: Bad jobs and good jobs exist in all parts of the economy and in all employment types

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<sup>37</sup> The racial profiles provide context around the impact of relevant trends, discussions, and policies on racialized and immigrant populations in each jurisdiction.

<sup>38</sup> What do we know about gig work in California? . (n.d.). Retrieved from <https://laborcenter.berkeley.edu/pdf/2017/What-Do-We-Know-About-Gig-Work-in-California.pdf>



- From a public policy standpoint, gig work is defined as all forms of independent contracting (i.e., workers who are in business for themselves). For many, this has been the most relevant definition given the very different treatment of independent contractors by employment and labour laws and by social insurance programs
- On-demand platforms are often the focus of gig economy debates. Although, work is being done to expand the focus area onto a more diverse picture of gig work in California

## Perspectives on Racialized Communities

- A survey,<sup>39</sup> by a professor at U.C. Santa Cruz included 643 gig workers across platforms like DoorDash, Instacart and others
  - 76% of those surveyed were people of colour - 29% Asian, 23% Hispanic, 22% White, 12% Black, 13% multiracial or other
  - The majority of respondents were foreign-born at 56%

## Relevant Trends and Discussions

- On-demand platforms such as Uber and Lyft have long classified their drivers as independent contractors, which has allowed these large companies to avoid the expense of employment benefits, including health insurance, unemployment insurance and sick leave
- Some state legislatures, federal officials and legal experts have maintained that drivers are employees under the law and that Uber and other gig companies owe them the full protections that come with employment

## Policy Developments

- In 2019, California legislators passed the California Assembly Bill 5,<sup>40</sup> which was designed to regulate companies with large numbers of gig workers as independent contractors and force them to reclassify workers as employees, with a few exceptions

### Case Study: Canadian Union of Postal Workers v. Foodora Inc.,

In February 2020, The Ontario Labour Relations Board ruled that Foodora couriers are dependent contractors of the food-delivery company. This represented a major legal victory as workers had greater protections under law now and had the right to unionize. This set a major precedent for other workers in the gig economy<sup>1</sup>. Although, a few months following this legal win Foodora left<sup>1</sup> the Canadian market.

### Potential Policy Implications

At the time of the decision the Ontario Labour Relations Board ruling indicated that the tide was turning in favour of gig economy workers to be offered greater labour protections. On the other hand, Foodora's exit from the Canadian market is the result feared in jurisdictions like California. This is slowing down the development of progressive policies that protect gig workers.

<sup>39</sup> On-demand and on-the-edge - UCSC institute for social transformation. UC Santa Cruz Institute for Social Transformation. (n.d.). Retrieved from [https://transform.ucsc.edu/wp-content/uploads/2020/05/OnDemand-n-OntheEdge\\_MAY2020.pdf](https://transform.ucsc.edu/wp-content/uploads/2020/05/OnDemand-n-OntheEdge_MAY2020.pdf)

<sup>40</sup> California Legislative Information. Bill Text - AB-5 Worker status: employees and independent contractors. (n.d.). Retrieved from [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB5](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB5)



- Legal action<sup>41</sup> was taken to enforce the law, and major companies employing gig workers such as Uber threatened to leave the state
- In 2020, California voters approved Proposition 22 (Prop 22), officially known as the App-Based Drivers as Contractors and Labour Policies Initiative, in a general election. This allowed drivers to remain independent contractors, while companies offered them limited benefits. These benefits include work limits, anti-discrimination and sexual harassment policies and payment, healthcare and insurance considerations for workers who meet minimum work hour thresholds
- As of 2021, ride-hail drivers and labour groups have made multiple attempts to sue, arguing that Prop. 22 is unconstitutional. For now, all provisions of prop 22 are in place until developments in the courts are settled

## Key Takeaways

- California is home to a diverse gig economy workforce, predominantly made up of people of colour and immigrants from dozens of different countries
- Prop 22 replaced Assembly Bill 5 to allow gig workers to work on their preferred schedule as independent contractors and save jobs that would have been lost if large gig economy employers pulled out of California. This is while providing workers with benefits and earnings guarantees not previously available to independent contractors
- Opponents to the legislation point out that gig workers are being denied the right to be employees, including all the benefits and protections offered under state labour law
- Large gig economy employers such as Uber, DoorDash, Lyft, Instacart and PostMates contributed over \$200 Million collectively to the “Yes on Proposition 22” campaign in addition to threats to leave the state, showcasing the influence large players can have on policy supporting gig workers
  - This influence is a consideration when evaluating policy such as Flexible work+ being proposed in Ontario

## New York, United States

- During a panel discussion, The New York State Bar Association’s Labour and Employment Law program<sup>42</sup> defined gig workers as workers who take on temporary or project-based jobs of different durations performing personal services to consumers or contract work for companies. These workers connect with contractors or consumers via online digital platforms or apps
- New York, like many other states, often looks at the precedence created in California to understand better how to define the gig economy, create policy and analyze trends that impact gig workers

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<sup>41</sup> Conger, K. (2020, May 5). California sues uber and lyft, claiming workers are misclassified. The New York Times. Retrieved from <https://www.nytimes.com/2020/05/05/technology/california-uber-lyft-lawsuit.html>

<sup>42</sup> Fucillo, J. (2020, February 26). What is the "Gig economy" and why does it matter? New York State Bar Association, from <https://nysba.org/what-is-the-gig-economy-and-why-does-it-matter/>



- App-based services have been the main focus during debates on whether gig workers are defined as employees,<sup>43</sup> covered by state labour law or independent contractors
- New York City Council's new bills to support gig workers includes policies mostly relevant to app-based food delivery workers

### Perspectives on Racialized Communities<sup>44</sup>

- 44 percent of all New York independent contractors working in low-paying industries as their primary job are persons of colour
- Two-thirds of low-paid independent contractors in New York City are persons of colour
- Among primary independent contractors who work in personal services, 74 percent are persons of colour as are 87 percent in transportation

### Relevant Trends and Discussions

- During the pandemic, the use of food delivery apps had soared as lockdowns closed dining rooms of restaurants around the state. Working conditions were very difficult for gig workers, especially for immigrant labourers<sup>45</sup>
- In New York City, a survey<sup>46</sup> of 500 app food delivery workers by the Worker Institute at Cornell University's School of Industrial and Labour Relations and the Workers Justice Project found that 42 percent of workers had experienced being underpaid or not paid at all. 54 percent reported being robbed, and 30 percent said they were assaulted during the robbery. Nearly half said they had crashed while delivering food, and 75 percent of those said they used their own money to pay for their medical care
- According to research by Upwork, reviewed by The New York State Bar Association's Labour and Employment Law Program<sup>47</sup> in 2019, younger workers freelance or gig more than any other age group. 59% of gig workers live paycheck to paycheck<sup>48</sup>, and only 43% have enough saved to get through two weeks without a gig

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<sup>43</sup> McDonough, A. (2021, July 6). Will gig workers be classified as employees? City & State NY. Retrieved from <https://www.cityandstateny.com/policy/2020/09/will-gig-workers-be-classified-as-employees/175677/>

<sup>44</sup> The Center for New York City Affairs at The New School:

[https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5e424affd767af4f34c0d9a9/1581402883035/Feb112020\\_GigReport.pdf](https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5e424affd767af4f34c0d9a9/1581402883035/Feb112020_GigReport.pdf)

<sup>45</sup> Fan, J., Osorio, C., & Heller, N. (2020, April 29). The uncertain life of New York City's immigrant uber drivers during the pandemic. The New Yorker. Retrieved from <https://www.newyorker.com/news/daily-comment/the-uncertain-life-of-new-york-city-immigrant-uber-drivers-during-the-pandemic>

<sup>46</sup> Essential but Unprotected: App-based Food Couriers in New York City : <https://img1.wsimg.com/blobby/go/6c0bc951-f473-4720-be3e-797bd8c26b8e/09142021CHARTSLos%20Deliveristas%20Unidos-v02.pdf>

<sup>47</sup> Fucillo, J. (2020, February 26). What is the "Gig economy" and why does it matter? New York State Bar Association. Retrieved from <https://nysba.org/what-is-the-gig-economy-and-why-does-it-matter/>

<sup>48</sup> Sixth annual "Freelancing in America" study. Upwork. (n.d.). Retrieved from <https://www.upwork.com/press/releases/freelancing-in-america-2019>



## Policy Developments

- In September 2021,<sup>49</sup> New York City became the first in the United States to approve a package of legislation that will set minimum pay and improve working conditions for gig workers employed by large app-based gig economy services like DoorDash and Uber
- The new bills address the following:<sup>50</sup>
  - Prevent large app-based gig economy services and courier services from charging workers fees to receive their pay
  - Makes the apps disclose their gratuity policies
  - Prohibits the apps from charging delivery workers for insulated food bags
  - Delivery workers can set parameters on the trips they take without fear of retribution
  - Delivery workers can determine the maximum distance they want to travel from a restaurant or specify if they are unwilling to travel a particular route
    - i) This protects workers who have been targeted by robbers' intent on stealing their money or e-bikes
  - Requires restaurant owners to make bathrooms available to delivery workers
- However, the package of bills still classifies these workers as independent contractors who are ineligible for workers' compensation or unemployment benefits

## Key Takeaways

- Footage of gig workers delivering food on the flooded streets of New York City while carrying food and dragging their bikes during Hurricane Ida<sup>51</sup> in September 2021, helped showcase the tenacity of workers and the value of the food delivery service
- Labour groups are worried the bills created in New York City will be seen as a victory for gig workers when they set a minimum standard for better working conditions and more needs to be done
  - An important consideration when evaluating incremental vs radical policy changes to support gig workers and how the policies are communicated
- While this legislative package focuses on gig workers in the food delivery industry, legal groups<sup>52</sup> are advising it is possible that New York City might set its sights on other industries in the near future

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<sup>49</sup> Subin, S. (2021, September 23). New York City passes bills offering protections to food delivery workers. CNBC. Retrieved from <https://www.cnbc.com/2021/09/23/new-york-city-passes-protections-for-food-delivery-workers.html>

<sup>50</sup> McDonough, A. (2021, July 6). Will gig workers be classified as employees? City & State NY. Retrieved from <https://www.cityandstateny.com/policy/2020/09/will-gig-workers-be-classified-as-employees/175677/>

<sup>51</sup> Crump, J. (2021, September 2). Delivery drivers wade through floods as New Yorkers order takeout during Storm Ida. Newsweek. Retrieved from <https://www.newsweek.com/delivery-drivers-storm-ida-flooding-new-york-city-1625345>

<sup>52</sup> Kelly M. Cardin New York Stamford. (2021, September 30). New York City Council passes six bills protecting Gig Economy Delivery Workers. Ogletree Deakins. Retrieved from <https://ogletree.com/insights/new-york-city-council-passes-six-bills-protecting-gig-economy-delivery-workers/>



## United Kingdom

- Examples of gig worker definitions<sup>53</sup> include:
  - Workers on short-term, freelance, “casual gig”, or zero-hour contracts
  - Workers<sup>54</sup> who rely on a digital platform to be put in contact with clients to provide their freelance services
- Like many jurisdictions, the U.K. has been investigating which of the three types of employment status<sup>55</sup> (employees, workers and self-employed) gig workers fall into to determine their employment rights under English law
- In February 2021, the U.K. Supreme Court ruled that drivers for gig economy employers such as Uber were “workers” and not independent contractors.
  - The ruling was reached based on the level of control<sup>56</sup> Uber and similar employers have over its drivers. Examples of control included:
    - i. The company setting the fare
    - ii. The company unilaterally setting the terms of the working arrangement
    - iii. The company punishing drivers if they did not comply with company policies, such as maintaining a certain rider acceptance rate
    - iv. The company dictating what drivers could talk about with passengers

## Perspectives on Racialized Communities

- According to research by Chartered Institute of Personnel and Development (CIPD) and highlighted by the Taylor Review,<sup>57</sup> the gig economy in the U.K. has a broader range of ethnic backgrounds than other work environments
  - A test sample found that less than seven in ten gig economy respondents (68%) describe themselves as white British compared with 85% of a sample with traditional workers (non-gig workers)
  - There is also a significantly higher proportion of gig workers who describe themselves as either Indian or black African than a sample with traditional workers (non-gig workers)

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<sup>53</sup> Article by Dr Zubaida Haque, Research Associate at the Runnymede Trust:

<https://www.newstatesman.com/business/economics/2018/02/how-gig-economy-widening-racial-inequality>

<sup>54</sup> Doing business in the gig economy: A global guide for employers. Canada | Global law firm | Norton Rose Fulbright. (n.d.). Retrieved from <https://www.nortonrosefulbright.com/en-ca/knowledge/publications/87afaec5/Kingdom#United>

<sup>55</sup> Doing business in the gig economy: A global guide for employers. Canada | Global law firm | Norton Rose Fulbright. (n.d.). Retrieved from <https://www.nortonrosefulbright.com/en-ca/knowledge/publications/87afaec5/Kingdom#United>

<sup>56</sup> Spiggle, T. (2021, February 26). Gig workers as employees: Why America won't follow the U.K. Anytime soon. Forbes. Retrieved from <https://www.forbes.com/sites/tomspiggle/2021/02/26/gig-workers-as-employees-why-america-wont-follow-the-uk-anytime-soon/?sh=17b8ccb1db85>

<sup>57</sup> Good work: The Taylor review of modern working practices - gov.uk. (n.d.). Retrieved from

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf)



## Relevant Trends and Discussions

- Around five million people<sup>58</sup> in the U.K. were employed in the gig economy in 2019. These numbers have doubled since 2016
  - This assumes that gig workers are defined as anyone who relies on a digital platform to be put in contact with clients to provide their freelance services
- Under the gig worker definition<sup>59</sup> of workers on short-term, freelance, “casual gig” or zero-hour contracts, the gig economy has grown from around 200,000 workers on zero-hour contracts in 2011 to approx. 1.1m in 2017
  - Of the 1.1 million gig workers under this definition, a quarter are black and ethnic minority workers. Black workers are twice as likely to be on zero-hour contracts compared to their white peers

## Policy Developments

- In 2017, the U.K. government released the Good Work: The Taylor review of modern working practices report,<sup>60</sup> which assessed and offered recommendations on a number of modern working practices, including new forms of work, digital platforms, and employment rights and responsibilities
- In December 2018, the U.K. government published its Good Work Plan,<sup>61</sup> which set out a vision for the future of the U.K. labour market. This includes mentions of the gig economy and a proposal that the government would introduce legislation to improve the clarity of the employment status test, reflecting the reality of modern working relationships
- In February 2021, the U.K. Supreme Court classified gig workers as “workers” instead of independent contractors under the law. This made gig economy drivers eligible for various employment protections, such as minimum wage, paid annual leave, and whistleblower protections from retaliation
  - The “Worker” classification is a hybrid U.K. class with fewer job rights than employees but more benefits and protections than independent contractors
  - As “workers” uber drivers may be eligible for pensions.<sup>62</sup> In response Uber has called on rival operators to create a cross-industry pension scheme
  - The ruling also found that Uber’s more than 70,000 U.K. drivers would be paid for the hours that they’re logged in to the Uber app, regardless of ride demand

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<sup>58</sup> Doing business in the gig economy: A global guide for employers. Canada | Global law firm | Norton Rose Fulbright. (n.d.). Retrieved from <https://www.nortonrosefulbright.com/en-ca/knowledge/publications/87afaec5/Kingdom#United>

<sup>59</sup> Article by Dr Zubaida Haque, Research Associate at the Runnymede Trust: <https://www.newstatesman.com/business/economics/2018/02/how-gig-economy-widening-racial-inequality>

<sup>60</sup> Good work: The taylor review of modern working practices - gov.uk. (n.d.). Retrieved, from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf)

<sup>61</sup> Good work: The taylor review of modern working practices - gov.uk. (n.d.). Retrieved, from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf)

<sup>62</sup> Faragher, J. (2021, September 24). Uber launches driver pension scheme. Employee Benefits. Retrieved from <https://employeebenefits.co.uk/uber-launches-driver-pension-scheme/>





## Key Takeaways

- The U.K.'s hybrid classification of “worker” offers fewer job rights than employees but more benefits and protections than independent contractors, forming a version of a “middle ground” for gig workers and employers
- The U.K.'s Supreme Court ruling primarily impacts drivers with uber and other app-based gig economy services and has not yet expanded to other workers that could fit under the varying definition of a gig worker in the U.K.
- The requirement to provide benefits is pushing gig economy companies to work together to support gig workers. For example, Uber called on competitors to create a cross-industry pension scheme

## Australia

- The Australian government<sup>63</sup> states: In the gig economy, individuals provide services to consumers for a fee via digital platforms or marketplaces. These platforms can provide consumers with greater choice and flexibility in their daily lives
- Common gig economy services in Australia include:
  - Ridesharing services: Example - where consumers book an individual to drive them somewhere
  - Delivery services for a fee: Example - where consumers engage an individual to deliver food or other items to them
  - Personal services for a fee: Example - where consumers engage an individual to provide creative or professional services like graphic design and web development, or odd jobs like assembling furniture and house painting
- The Australian government<sup>64</sup> states individuals working in the gig economy often perform work as independent contractors
  - In other words, independent contractors have a commercial relationship with the company that hosts the digital platform or the consumers who receive their services. Independent contractors also control the hours they work and can work for different companies (ex. delivery service)Independent contractors use their own resources to complete their work and can subcontract the work to others (ex. asking a friend to deliver a meal)
  - A gig worker is seen as an employee and not an independent contractor if they have the following
    - ii) An obligation to accept work
    - iii) An obligation to wear a company uniform
    - iv) An obligation uses company equipment or resources (ex. a company car or bike)

<sup>63</sup> Australia Government - Gig economy. Gig economy - Fair Work Ombudsman. (n.d.). Retrieved from <https://www.fairwork.gov.au/find-help-for/independent-contractors/gig-economy?fbclid=IwAR2y9-nHCPwrwDER3z5K5j7tCHx0ILAmxKRiP4roFw4HPWY1S0hPase0UYk>

<sup>64</sup> Australia Government. Gig economy - Fair Work Ombudsman. (n.d.). Retrieved from <https://www.fairwork.gov.au/find-help-for/independent-contractors/gig-economy?fbclid=IwAR2y9-nHCPwrwDER3z5K5j7tCHx0ILAmxKRiP4roFw4HPWY1S0hPase0UYk>



- v) An obligation to do the work themselves
- vi) An obligation to tend to fixed shifts

## Perspectives on Racialized Communities

- Limited public research is available on the racial profile of gig workers in Australia

## Relevant Trends and Discussions

- 4.1 million Australians<sup>65</sup> or 32 percent of the workforce had freelanced between 2014 and 2015
- The largest freelance category in Australia is web, mobile and software development (44 percent), followed by design and creative (14 percent), customer and admin support (13 percent), sales and marketing (10 percent) and writing (8 percent)
- The economics of the gig economy grew nine-fold between 2015-2019 to \$6.3 billion, a gain of 32 percent in 2019<sup>66</sup>
- In 2015,<sup>67</sup> an estimated 80,000 Australians (0.5% of the Australian workforce) worked on peer-to-peer digital platforms more than once a month
- A survey<sup>68</sup> with approximately 1,000 gig economy workers found 22.7% were Uber drivers. These results suggest that the Australian gig economy workforce in 2019 could have been as high as 250,000 workers
- Many gig workers consider their work in the gig economy to be supplementary to another primary form of income, with 15.4% of gig workers indicated that income from gig work was essential for meeting basic needs

## Relevant Policies

- In 2017, the Senate Inquired into the Corporate Avoidance of the Fair Work Act<sup>69</sup>
- In 2020, The Senate Inquiry committee recommended that the government amend the Fair Work Act to cover all workers. These amendments would allow dependent and on-demand contractors to access better labour standards, minimum wages and other conditions as stated in the act
  - The amendment was intended to protect these workers from being disguised as independent contractors
- Recommendations<sup>70</sup> have been made for reformed equality laws in Australia to protect gig workers. These recommendations include:
  - Regulating work contracts, rather than specific relationships between employers and employees

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<sup>65</sup> AI group Workforce Development: [https://cdn.aigroup.com.au/Reports/2016/Gig\\_Economy\\_August\\_2016.pdf](https://cdn.aigroup.com.au/Reports/2016/Gig_Economy_August_2016.pdf)

<sup>65</sup> Actuaries Institute: <https://actuaries.asn.au/Library/MediaRelease/2020/MediaReleaseGigEconomyGreenPaperFinal161220.pdf>

<sup>66</sup> *ibid*

<sup>67</sup> *ibid*

<sup>68</sup> *ibid*

<sup>69</sup> The gig economy: hyper flexibility or sham contracting? Parliament of Australia. Retrieved from [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/AvoidanceofFairWork/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/AvoidanceofFairWork/Report)

<sup>70</sup> Gig economy requires a rethink of Equality Law. Research, Gig economy requires a rethink of equality law, University of Melbourne. (n.d.). Retrieved from <https://research.unimelb.edu.au/research-at-melbourne/discovery/gig-economy-equality-law>



- Removing barriers preventing gig workers from forming unions or engaging in collective bargaining, where possible
- Encouraging or legally requiring companies to find and remove any discrimination in their data, algorithms and operations

## Key Takeaways

- The Australian government has developed a national definition of the gig economy, including ridesharing, delivery, and personal services. Clear descriptions and short videos are made available on their website to communicate this definition
- The Australian government has clarified under what working arrangements a gig worker is considered an employee or independent contractor. Clear descriptions and short videos are made available on their website to communicate the difference between contractors and employees<sup>71</sup>

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<sup>71</sup> Independent Contractors. Australian Government. (n.d.). Retrieved from <https://www.fairwork.gov.au/find-help-for/independent-contractors>