Uber

Bill 88 Comments

Bill 88, *Working for Workers Act, 2022*, enacts the *Digital Platform Workers' Rights Act, 2022* ("DPWRA"). While the DPWRA has laudable policy objectives in improving working conditions for app-based workers, its current language presents several challenges that will mean that it does not adequately achieve its policy objectives.

Uber Canada believes that the DPWRA should be significantly amended due to the following three considerations:

- **Technical Issues** - the Bill contains several technical issues that create significant issues for the safety of app-based platforms in Ontario.
- **Substantive Issues** - the Bill does not address the major issues related to benefits and protections for app-based workers.
- **Red Tape Issues** - the Bill adds significant red tape to app-based platforms operating in Ontario.

We believe that the intention of many of these rules are appropriate and could be addressable through new rules. That said, the current wording is extremely problematic, and would introduce a host of unintended consequences that would be bad for drivers and the broader public.

Technical Issues

Throughout the DPWRA, there are several technical issues that create significant issues for the safety, operations, and other facets of app-based platforms in Ontario. The chart below outlines the issues:

Section of DPWRA	Current Text	Issues
7(4) - New work assignment	"An operator shall provide the following information in writing to a worker when offering a work assignment to the worker…"	• This requirement would add substantial text to the in-app offer card and potentially require a driver or courier to scroll through the app dozens of times per day. • This presents a safety risk insofar as a driver or courier is often on the road and is only permitted to engage the app when safe to do so per distracted driving laws.
7(5).3 - Completed work assignment	An operator shall provide the following information in writing to	• The impact of this legislation would be a threat to privacy and user safety.

	a worker within 24 hours of completion of a work assignment by the worker: Whether the worker received a performance rating for the work assignment and, if applicable, the details of the rating, and whether there are any consequences based on the rating and, if applicable, a description of those consequences.	● Earners may unduly pressure customers to provide a positive rating, and could harass customers who give a poor rating.
7(6) - Work assignment not completed	If a worker does not complete a work assignment that the worker agreed to perform, the operator shall provide the worker with a written description of the consequences, if any, of the failure to complete the work assignment before the consequences take effect.	● Again, this does not reflect the high-volume, fast-paced nature of app-based work. ● For example, digital platforms seek to successfully and quickly match requesters of work with workers. If a worker consistently declines a certain type of request, a matching algorithm may be less likely to surface those types of requests to that worker based on the past behaviour. ● But this cannot be meaningfully disclosed every single time a request pops up in the app, including because the consequences will be realized only on a global/aggregate scale, not on a one-by-one basis.
9(2) - Right to minimum wage	Minimum wage shall be paid for each work assignment performed by a worker.	● In jurisdictions like California with a pay period, drivers and couriers have expressed support for this approach because it ensures they are above the earning standard while not hindering their ability to find trips or deliveries. ● A pay-period based standard means that drivers know they'll earn at least the standard across the pay period. And dynamic, flexible pricing helps

		platforms grow the business, meaning more trips for drivers.
11 - Right to notice of removal	No operator shall remove a worker's access to the operator's digital platform unless the operator, if access is removed for a period of 24 hours or longer, has given the worker two weeks' written notice of the removal.	● This section fails to delineate between temporary waitlisting and permanent deactivations. ● For a number of reasons, drivers and couriers can be temporarily limited from going online on the platform. ● Particularly with ridesharing, there are numerous Ontario bylaws that require annual background checks, vehicle age, driver training, vehicle inspections, and other driver documents. Uber must, by law, immediately remove drivers who do not meet the bylaw requirements. ● Municipal regulators and law enforcement agencies also have the power to request driver removal immediately and this could occur across multiple platforms. ● In all of these cases, the two weeks' notice period could not apply as the deactivation must take immediate effect and last longer than 24 hours.

Substantive Issues

On top of the technical issues outlined above, the DPWRA does not go far enough in providing benefits and protections to app-based workers in Ontario. Particularly, it provides less than what the expert OWRAC panel recommended and what Uber Canada and UFCW Canada are proposing to provinces across the country.

- **OWRAC Recommendation** - On December 9, 2021, the Government released the recommendations from the Ontario Workforce Recovery Advisory Committee including one to “Create and recognize the **dependent contractor category** for gig or platform workers in the app-based space and give this category of workers basic employment rights”. The DPWRA does not create and recognize the dependent contractor category and does not extend basic employment rights beyond a minimum wage.

In the same way that OWRAC suggested to the Government to provide certainty to app-based workers and app-based platforms, Bill 88 “clarifies the treatment of many IT and business consultants under the ESA to give workers greater opportunities for work while giving businesses certainty about their obligations under the Act when engaging them." This type of certainty should be extended to app-based workers and app-based platforms.

- **Uber-UFCW Joint Standards** - On January 27, 2022, Uber Canada and UFCW Canada announced their national agreement which contained a package of benefits and protections for provincial governments to enact. This package included:
  - **Earning Standard -** At least 120% of minimum wage for engaged time
  - **Benefits Fund -** A benefits fund that scales as a worker spends more time across all platforms
  - **Health & Safety Coverage -** Occupational accident coverage that covers injuries sustained during Engaged Time
  - **Worker's Rights** - The right to join a union and engage in collective bargaining in line with existing labour relations legislation

The Government still has an opportunity to enhance the DPWRA to ensure that these substantive issues are addressed in the legislation and that drivers and delivery people in Ontario receive these benefits and protections as soon as possible.

<u>Red Tape Issues</u>

The Act contains roughly 4 pages of obligations (essentially, section 7-13) compared to 40 pages of procedure. This is out of balance particularly given the Government's ambition to make "life better for people and remove regulatory roadblocks for businesses".

The Act creates an entire mechanism for complaints, forms, investigations, orders, hearings, collections, appeals, and more, including the creation of another director-level position, the "Director of Digital Platform Work", and any number of additional officers. This language was imported from the *Employment Standards Act*.

While this level of machinery may be appropriate in the ESA since there is a great diversity of employers and how they operate, there are only a few platform "operators", and they are all, by definition, digital.

As such, the obligations under the Act will be carried out digitally and uniformly. Operators will create standard forms to satisfy the "right to information" and "notice of removal" obligations. Payments (i.e. the minimum wage and pay date obligations) will be done electronically, thus trackably. These are the prime obligations under the Act and they can be vetted by the Ministry through simple audits rather than a complicated superstructure of individual complaints.