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Federal Consultation on Gig Work

The New Realities of Working Canadians; The right to disconnect and gig work
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Gig Workers United CUPW is a worker-led union for people who deliver food and parcels on apps, in Toronto and the GTA. As Foodsters United we won the precedent-setting right to unionize as dependent contractors. We write this submission to state unequivocally that we are misclassified workers, that misclassification is the root of the dehumanization and inequity that we experience at work, and that it is imperative that gig workers are classified as employees to ensure our rights as workers under the law.

1. Are you a gig worker (someone who enters into short-term contracts to complete specific and often one-off tasks)? What is your experience with this type of work?

Gig employers are disrupting Canada's existing labour standards; taking advantage of the ability to classify workers as independent contractors for financial profit, and distancing themselves from all responsibilities to workers. This exploitation is prevalent in every aspect of the day-to-day experience of gig workers.

We work under the constant threat of arbitrary deactivation which results in immediate loss of employment without any options for recourse.

Without guaranteed wages many of us earn less than the standard minimum wage, often working up to 80 hours a week to earn enough to survive. We don't know how our wages are calculated, and when a delivery fee appears inaccurate we do not have a path to seek accountability from app employers.

Changes to the contracts between gig workers and gig employers are done unilaterally by the companies. On UberEats, for example, we find out that there is a change to our contract without any advance notification. We open the app to login to work and receive a notice that we must agree to changes to our contract or we will not be able to work. Many of us, under duress, accept these changes without understanding them, because we need to be able to go to work.

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2. What made you decide to become a gig worker?

Gig workers agree that 'flexible work' is what draws us to this work, it's the primary language of the gig economy. What we learn after beginning to work is that 'flexible work' within the gig economy means workers being flexible to accommodate the needs of apps. The 'flexibility' that gig employers advertise isn't what gig workers get.

We can choose the days we work, but not the times when work is available, if we want to earn an income we must work when the apps are busy which is not necessarily when it is beneficial for us to go to work. Gig employers saturate geographical areas with workers reducing the amount of work available for any individual; which means that earnings are high for the company and wages are low for us. It's our flexibility to work without a guaranteed or transparent wage that is most apparent during these times.

Gig employers insist that if any aspect of our employment classification is changed, we'll lose this flexibility. We know that isn't true. Learning from the recent (Feb 2021) ruling of the UK Supreme Court we see that gig workers can be classified as employees and retain the important aspects of flexibility that are desirable for workers, like low barriers to employment.

3. Gig workers: What challenges are you facing?

As essential workers we continue to work through the COVID 19 pandemic without protections. We've been taking care of our communities by delivering food, groceries, and other necessities to families quarantining or social distancing at home. By doing this we take on significant risk to our health and safety without adequate, employer-provided PPE, without access to washrooms while we're on delivery, without paid sick days, and without the right to refuse unsafe work without penalty.

On the UberEats platform we have experienced reductions in pay during the pandemic, with many gig workers reporting pay cuts as high as 60%. During the largest health crisis in living memory we are working, as essential workers, for the lowest wage Uber has ever paid.

4. How could greater labour protections affect you as a gig worker?

Correcting the mis-classification of gig workers by making employee status the default classification under Canadian labour laws would provide gig workers with equality, through access to the rights and labour protections that other workers in Canada have. If gig employers believe that we are independent contractors, the burden of proof should be placed on the employers to prove it.

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The way to do this is through integrating a multi-factor test similar to California's *ABC* test from Assembly Bill 5 (AB5) into the Canada Labour Code. Under AB5 a worker is considered an employee unless the company can show that the worker meets *all* of the following criteria:

- The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- The worker performs work that is outside the usual course of the hiring entity's business; **and**
- The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Additionally, the implementation of a livable minimum wage for gig workers could help eliminate the precarity that is synonymous with gig work now. Access to paid sick days would mean not risking our long term well being by working when we're sick or injured on the job. We wouldn't fear arbitrary deactivation because we'd have the right to file a grievance for wrongful dismissal. We'd be protected from racial, gendered, and ageist discrimination. We'd have access to necessary benefits like EI, CPP and WSIB. We would have the right, as other workers do, to organize, unionize and collectively bargain with our employers.

Gig workers have been organizing on the streets of the cities we work in to improve our working conditions for years, we've set historical precedents, demonstrated that workers want union representation and deserve labour protections. We can see a brighter future for gig work; precarious income replaced by quality jobs protected under the current Canadian labour standards with employee status classification. We urge you to look towards our vision of the future and listen to the voices of people who make the gig economy run - gig workers. We now look to you to help make that vision a reality.

Thank you for creating this opportunity for Gig Workers United to comment on the realities of working in the gig economy.

Jennifer Scott
President GWU

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