



WORKER RIGHTS IN THE GIG ECONOMY

ENSURING EQUAL EMPLOYMENT STANDARDS
PROTECTIONS FOR ALL WORKERS



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An executive summary of this report is available at bcfed.ca/precariouswork



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The BC Federation of Labour represents more than 500,000 members of affiliated unions, working in every sector of the economy and every corner of the province.

The BCFED has a long and proud history of fighting for the rights of all working people.

The goals of the BCFED are best exemplified by the slogan: *"What we desire for ourselves, we wish for all."*

The BC Federation of Labour's work spans across the territories of two hundred and three First Nations that make up the area colonially known as the province of British Columbia. Our office is located on the unceded and traditional territory of the Halq'eméylem speaking peoples, including xʷməθkʷəy̓əm, Skwxwú7mesh, sə́lílwətaʔt, qiqéyt, kʷikʷə́ləm, and Stz'uminus First Nations. As part of our ongoing commitment to build meaningful relationships with the original peoples of these lands, the BCFED's reconciliation plan framework can be found at bcfed.ca.



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Introduction

THE BC GOVERNMENT HAS COMMITTED to developing a precarious work strategy. The BC Federation of Labour believes that a critical first step in that strategy is to address the underlying cause of precarious work: the misclassification of employees as independent contractors.

Misclassification deprives workers of employment standards protections including paid sick leave, minimum wage provisions, termination and severance requirements, and more. It puts employers who treat their workers fairly at a competitive disadvantage. When workers are misclassified, there are significant consequences for them and their families. And it deprives government of badly-needed revenue. These consequences have a ripple effect on our broader communities, economy, and social programs.

Addressing misclassification is a simple first step for the BC government because it relies on the current protections in place for workers. It does not require developing a new system or an elaborate set of rules. It works because it strengthens and reinforces the clear set of rules that already applies to the majority of workers in our province.

The employer-worker relationship is changing. According to preliminary results from the Understanding Precarity in BC Project's precarity survey (Strauss et al., forthcoming):

- 53% of workers do not have one employer that they expect to be working for a year from now and that provides 30 hours of work and pays benefits;
- 27% of workers do not receive any form of benefits from their employer;
- 46% lack extended health coverage and 41% lack dental benefits;
- 27% of women and 31% of men worked multiple jobs in the last three months — that number jumps to 33% for racialized workers; and
- 24% of men reported that 50% or more of their work is on-call.



Gig and platform workers

GIG WORK IS A FORM OF NON-STANDARD WORK where a worker is defined as an independent contractor or freelancer. Some workers choose this classification, but more often than not, workers are told they do not qualify or cannot work for a company as an employee. Gig work is not something new. It has been a long-used tactic by employers, and it affects a wide range of workers. Historically, we have seen misclassified workers in areas such as the construction trades, visual effects, graphic design, high technology, taxi industry, domestic work, hair styling, and personal care.

The BC Building Trades has been battling this issue for years. The BCBT's 2022 *Report on the Underground Economy* outlines the ongoing impact on workers, industry, and government. It estimates 14,000 workers are misclassified in the construction industry alone, with misclassification being highest among drywallers, painters, flooring installers, and tile installers (BCBT 2022).

With the emergence of app-based technologies, misclassification has grown and expanded into new areas. Ride hailing and food delivery are commonly understood as gig work. But platform-based gig work is performed in a variety of areas including personal shopping and chores, moving, yardwork, minor home improvement, and pet care.

More recently, gig work has been growing into a variety of professional roles including copy editing, translation, human resources, and graphic design. Some gig workers even provide caregiving and other health care services.

The “gigification” of work is steadily moving into new sectors and tasks as companies see an opportunity to capitalize on consumer demand and reduce overhead costs.

Given the expansion of and the popular interest in digital platform services, this paper predominantly focuses on examples from these industries.

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Proliferation of gig work

THERE IS LIMITED DATA on the number of workers who are engaged in gig work in BC. Based on the growth in platform services and consumer uptake, however, it is fair to say that more workers than ever are engaged in gig work.

A Statistics Canada study using tax data found that gig work in Canada increased from 5.5 per cent of workers in 2005 to 8.2 per cent in 2016 (Jeon, Liu, & Ostrovsky, 2019). It shows British Columbia as having the highest number of gig workers in Canada, with 8.7 per cent of men and 10.7 per cent of women employed in gig work. Gig work is increasing at a greater rate in the metropolitan area of Vancouver than in Montreal and Toronto. Vancouver is currently the only studied area where more than 10 per cent of workers are engaged in gig work. This study covers tax data up to 2016 only — employment trends and the number of platform companies have significantly changed since then, so this almost certainly underestimates the current number of gig workers in BC.

In the Statistics Canada study, Jeon, Liu, and Ostrovsky (2019) found that the industries with the highest percentages of gig workers are professional, scientific and technical services, health care and social assistance, administrative support, waste management, and remediation services and construction. The study also confirms that gig workers tend to be lower paid — their income more often falls into the two lowest-income quintiles. Their data also shows that women are more represented in gig work than men.

The prevalence of gig work is supported by a more recent report (2021) from Payments Canada that estimates more than one in ten Canadian workers (13 per cent) are employed in the gig economy and one in three businesses (37 per cent) hire gig workers (Payments Canada, 2021).

Using a conservative 9.7 per cent prevalence rate and the March 2022 Labour Force Survey data that shows 2,737,800 employed workers in BC, we can estimate there are 265,500 or more workers in BC employed in the gig economy (Government of British Columbia, 2022).

In the US, where platform-based, gig-work companies have been operating longer, the Gig Economy Data Hub estimates between 25 and 35 per cent of workers earn all or some of their income in the gig economy (Gig Economy Data Hub, n.d.).



Claimed advantages of gig work

PLATFORM COMPANIES ARGUE that there are a number of advantages for workers in the gig work structure. They say workers can set their own hours, have the flexibility to meet other life needs, and earn pay quickly (Uber, n.d.-a).

Platform companies have resisted compliance with existing labour and employment laws, arguing that workers themselves do not want to be employees because it infringes on the flexibility enjoyed by workers. Yet there is nothing stopping an employer providing similar flexibility to workers covered by the *Employment Standards Act* (ESA).

And much of that “flexibility” disappears under real-world conditions.

Take the case of a ride-hail driver. Theoretically they can choose when to work, but if a driver wants to make a profit, they need to drive evenings and weekends, when there is a concert or an event, or when the weather is bad. Their schedule is significantly controlled by consumer demand and weather.

Companies exert control over workers’ schedules too. They use promotions and pay differentials to direct when and where ride-hail drivers work. Platform companies essentially schedule workers through peak pricing, multi-trip “bonusing” and weekend targets to control when workers can pick up profitable jobs (Uber, n.d.-b; Sun, Z., Xu, Q., & Shi, B., 2020; Meyer, C., n.d.; Lyft, 2019). Regular rates are low; to make ends meet, workers must accept work that qualifies for these pay differentials.

Uber calls its program “surge pricing.” When there are more customers, the price of a ride goes up to attract more drivers. Lyft calls its program “Personal Power Zones,” which are located in areas or at times where there is high demand (Lyft, 2019). If drivers pick up a ride in a purple zone, then drivers will receive a higher rate of pay. Pink zones offer the highest pay rate. Successive rides trigger higher payouts. Lyft says, “The longer you stay in the pink zone, the bigger your bonus gets” (Lyft, 2019). Workers who leave the zone will lose the pay differential.

These kinds of successive-trip pay differentials fly in the face of gig company claims that their model is designed to be flexible to workers looking to pick up the occasional job. These pay differentials demonstrate that companies assign profitable work to workers who work longer, continuous shifts,

In the US, the Gig Economy Data Hub estimates between 25 and 35 per cent of workers earn all or some of their income in the gig economy.

rather than just picking up a ride here and there. Lyft's website says, "you'll lose our bonus if you go offline, cancel or miss the next ride request" (Lyft, n.d.-a).

Workers need to seek out higher-paying fares because many companies entice new drivers with promotions and incentives (Lyft, n.d.-b; Uber, n.d.-c). These incentives are temporary, and when the promotions expire, workers find they are earning far less. The idea of a bonus fare is a misnomer — drivers need to pick up rides that offer wage differentials to make ends meet.

With platform companies holding all the cards in terms of pricing, workers have no control over how much they earn, even for working the same number of trips or hours. In Ontario, Minister of Labour Training and Skills Development Monte McNaughton cited a situation where "There was one worker that made \$1,500 one week and the next week, for the same hours, made \$500" (CBC, 2022). With no consistency or predictability with regard to earnings, workers may find themselves unexpectedly trapped into working extra days and hours just to make their monthly bills.

Workers also lose out on other key protections that provide genuine flexibility. For example, misclassified workers do not have access to paid sick leave, vacation days, or statutory holiday pay. Access to paid leave is critical for workers' physical and mental health and for their relationships with family and in their communities. Not being able to take a day off when you are sick or plan a paid vacation is not very flexible — and it puts our workplaces and communities at risk.

Platform companies say their workforce is made up of part-timers earning "extra" cash as if that is an excuse to offer them inferior work conditions. In fact, for an increasing number of workers, income from gig work is critical to their financial stability. Workers may work full-time for one company or cobble together work from multiple platform apps to earn a full-time living.

Whether gig work is a full-time or part-time job, workers who do platform work have a right to be treated with respect and dignity.

Platform companies want regulators to see them as tech companies, not service providers, and certainly not employers. They say they sell a technology service that workers can use to connect with customers. Workers, they say, benefit from their app because they get access to a customer base they may not have been able to attract on their own. They also benefit from the massive investment in traditional and social media advertising.

But these companies would not have any revenue without these workers. A ride-hail app is worthless without drivers and a delivery service does not function without cyclists and drivers. No company can run a task-providing app without workers to perform those jobs. A platform company is no more purely a tech company than an insurance company is purely an office management company; the services they sell, and the workers who deliver them, these primarily define them.



Why do companies misclassify workers?

MISCLASSIFICATION IS A DELIBERATE CHOICE made by employers so they can gain market advantage, maximize profits, and minimize responsibility. When a company is permitted to misclassify workers, they get an unfair advantage over the competition and get out of paying their fair share of the costs of doing business in our province and country.

The biggest advantage for these companies is lower overhead costs. They avoid paying the employer share of payroll expenses such as Employment Insurance (EI) and Canada Pension Plan (CPP) contributions, and into other programs like the employer health tax. They do not have to administer a health and safety program or pay Workers' Compensation Board (WCB) premiums. They eliminate *Employment Standards Act* (ESA) obligations like statutory holiday and vacation time. The BC Building Trades report estimates the labour cost advantage to be 20 per cent for companies that misclassify workers (BCBT, 2022).

When factoring in other savings, companies can reduce their cost even more. The BC Building Trades estimate did not include the cost of other worker rights such as the new provision for up to five days of paid sick leave, or liabilities for compensation for length of service. And companies can save even more because they do not need to spend as much on human resources and payroll staffing.

By misclassifying workers, companies retain absolute control of all the terms and conditions of employment, as their workforce has virtually no ability to unionize and bargain collectively. This means inferior pay, benefits, and working conditions for workers.

The competitive advantage these companies gain is significant. If the BC government is not willing to stop this practice and enforce a level playing field, what is the incentive for employers to classify their workers correctly?

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Gig workers face a long list of challenges

GIG COMPANIES WANT WORKERS to make an expensive trade-off — and while they trumpet so-called flexibility, they never talk about what workers lose in exchange. Here's where misclassified workers are missing out.

NO CONTROL OVER TERMS AND CONDITIONS OF WORK

Most gig workers have no control over their terms and conditions of employment. The companies impose take-it-or-leave-it terms and conditions and leave no room to negotiate. Despite touting flexibility, their contracts are not very flexible at all. The companies set remuneration rates that vary based on factors determined solely by the company. They control the advertising, allocate the work, and can terminate workers from using their services without compensation for length of service.

Workers have no input or control in how the app algorithms work. These trade secrets are highly guarded by platform companies. Workers are left at the mercy of a programmer's code to access work and for compensation. For example, earnings for drivers are highly controlled by the company. According to Nicole Moore, a volunteer organizer with Rideshare Drivers United, companies frequently change terms and conditions:

When I started driving, I was guaranteed 80% of the fare. If that's where we were right now, you would see a very different equation on the road. Drivers are seeing 20, 30, 40% of the fare at times (Bursztynsky, 2021).

Additionally, workers are required to agree to non-negotiable terms and conditions of employment and onerous contracts that dictate how disputes are handled. For example, Uber contracts contained a clause that required disputes to be arbitrated under a specific set of rules and only in the Netherlands. A worker had to take a challenge to Canada's Supreme Court to get an order that their case could be heard in Ontario (Uber Technologies Inc. v. Heller, 2020).

Often companies require workers to agree disputes will be handled through an internal process or individual adjudication rather than a formal legal proceeding. These agreements often prohibit any

type of group or class action (DoorDash, n.d-a); Érudit, n.d.). And of course, without a union there is no grievance or arbitration process. Though these types of clauses have been successfully challenged in some jurisdictions, workers may feel bound to the process specified in the agreement and may not have the resources to fund a legal challenge.

NO PROACTIVE ENFORCEMENT TO PREVENT MISCLASSIFICATION

Though current BC employment laws may in fact cover the majority of these workers, there has been no proactive enforcement from the Employment Standards Branch (ESB) or clear direction to employers on how to classify these workers. Add that it will take years for a worker to get a determination on employment status and any determination will be challenged to the highest court. BC's ESB currently has wait times of over a year to have a complaint heard by an officer.

Additionally, workers are fearful to come forward as they cannot afford to lose their jobs and financial security. They fear repercussions from their employers, not to mention the significant challenge for an individual worker to stand up to a multinational company. These powerful companies have deep pockets and top legal teams. The current class action case filed in 2017 by David Heller, a former driver, alleging he and other drivers were misclassified as independent contractors and denied employment rights by Uber, has already gone through extensive legal proceedings and the main case is still waiting to be heard five years later (Uber Technologies Inc. v. Heller, 2020). Needless to say, individual workers are left with little chance to successfully make their case.

Only aggressive proactive investigation and enforcement of the employment conditions of platform companies will begin to address the misclassification of gig workers.

NO EMPLOYMENT STANDARDS ACT COVERAGE

When workers are misclassified as independent contractors, they are not being guaranteed minimum employment standards. Ensuring that these workers are properly classified would solve the following problems.

No minimum wage or time worked guarantees

There is no guarantee of minimum wage or what constitutes time at work. For example, most platforms pay for "active" time worked only, when workers are actively driving a passenger, performing a task, or biking to deliver a meal. However, much of a worker's time is spent preparing materials, getting from one location to the next to pick up the job, waiting for an order to be prepared or a customer to show up, or performing upkeep and maintenance on equipment. Platform companies only pay for a fraction of the time gig workers work.

Yet these in-between times account for a significant share of workers' time. A 2019 study commissioned by Uber and Lyft found that 28 to 37 per cent of the distance driven by ride-hail drivers was covered while waiting or searching for a ride request (Fehr and Peers, 2019). And while kilometres covered doesn't directly correlate to time, it does provide insight into the significant amount of uncompensated time drivers spend logged into the app.

Even when companies share earnings data — like the recent report produced by Accenture for Uber suggesting drivers in Vancouver net \$25 per hour — it is based on only a fraction of the time actually worked. Further, these estimates only account for some operating costs and omit others, including the most significant: the cost of vehicle ownership (Accenture, 2021-a).

In contrast, Ontario Minister of Labour, Training and Skills Development Monte McNaughton said in his ministry's investigation into working conditions in ride hailing, drivers reported earnings as low as \$3 or \$4 per hour (CBC, 2022), well below the \$15 per hour minimum wage in Ontario.

No regulation of hours of work and overtime

There is no regulation of hours of work or overtime for gig workers. When demand is high, workers who take on long hours are not receiving overtime compensation. Many ride-hail drivers report they put in 80-hour weeks or more to make ends meet or to access multi-trip bonuses to help them pay their bills (Rodino-Colocino, 2019).

However, these long hours are not always reflected in individual company statistics as they do not track hours spent working for their competitors. Many drivers work for multiple apps to make ends meet, switching between ride hailing and food delivery for example.

Companies know that working long hours is a problem and can compromise safety. In 2018, Uber announced it would be enforcing a mandatory break after 12 straight hours of driving (CBC, 2018). However, the system does not track time that drivers may be working for their competitors. It also does not provide workers with overtime pay.

Termination without cause and no right to compensation for length of service

Many platform companies rely on a customer review system and retain the ability to both prioritize the allocation of work and to terminate workers based on this and other data points. This system means workers can be deactivated (terminated) by the platform company at any time.

Workers have little and usually no control over reviews. Current and former TaskRabbit employees, commenting on the site Indeed.com, report they have no ability to respond to bad reviews and their ratings suffer if they refuse a job (TaskRabbit employee reviews, n.d.). They also report little follow up from the company when they want to challenge a bad review, customer complaint, or payment dispute.

And when a worker is terminated without ESA protection, the company does not pay them compensation for length of service, and they are unlikely to qualify for Employment Insurance. Workers are left with no pay and little recourse to pursue an unfair termination.

NO COMPENSATION FOR BUSINESS EXPENSES

Workers covered by the ESA cannot be charged for an employer's business expenses:

Deductions 21 (2) — An employer must not require an employee to pay any of the employer's business costs except as permitted by the regulations (Employment Standards Act, 2022).

Yet gig workers are stuck footing the bill for all kinds of business expenses. Platform companies do not provide compensation for workers' fuel, most insurance costs, maintenance expenses, equipment, or any other legitimate business expenses.

This negatively impacts the wages earned by workers and distorts workers' perception of their take-home earnings. In a video on Uber's website, driver Laurel Chase speaks directly about the challenges she faces budgeting and managing car maintenance and repairs. She says,

...As amazing as Uber is in regards to the flexibility of your time and making your own money, budgeting is on a different level because we still have to maintain our vehicles, make sure that they're clean, they're gassed up and if anything needs to be fixed etc. etc. ... But for me it's when you make it, then it's like, okay, do I have any car expenses? So it's like automatically I need to, I know that my car, my vehicle needs to be on the road. So I have to keep my vehicle in functioning form. So you are making, but at the same time it is going right back out. So you're not seeing anything going into a savings so to speak... (Uber, n.d.-d).

The Accenture profile, commissioned by Uber, reports on working conditions for drivers in BC. The report estimates drivers' earnings and makes it clear that Uber considers drivers to be on the hook for their expenses. Further, the report fails to account for the most significant cost of driving — purchasing a vehicle. The report assumes that drivers already own a vehicle suitable for transporting passengers (Accenture, 2021-b).

However, Uber's own website (Uber, n.d.-e) acknowledges that not all prospective drivers already own a car, or if they do, that the vehicle is suitable and meets the company's qualifying criteria (Uber, n.d.-f) for transporting passengers. To address this, Uber has rental car agreements with both Hertz and Avis. The website says, "We launched the Vehicle Marketplace program to help drivers without access to a qualifying car find an opportunity to earn with Uber" (Uber, n.d.-g).

While some may choose to rent, other drivers may choose to upgrade by purchasing a new vehicle in order to meet the criteria, transport more passengers, or ensure better reviews for cleanliness, condition, and comfort of their riders.

Cars used for ride hailing will depreciate more quickly due to excessive mileage and drivers may also buy cars more frequently and do more maintenance due to the wear and tear of continuous driving. Workers also solely bear the brunt of price shocks — like rising gas prices. None of these legitimate business costs are compensated by companies.

Some companies require workers to purchase other types of equipment. SkipTheDishes requires its couriers to have two types of thermal bags to transport deliveries. Workers can either buy a bag from

SkipTheDishes or have another thermal bag approved based on a specific set of criteria (SkipTheDishes, n.d.-a).

TaskRabbit's site makes it clear to prospective customers that Taskers are independent contractors and that their equipment needs will vary (TaskRabbit, n.d.-a). But they do provide a detailed list of recommended equipment for Taskers (TaskRabbit, n.d.-b). The list includes various types of cleaners, a tool kit, and a ladder, power drill, and dolly. None of these items are provided by TaskRabbit.

NO HEALTH AND SAFETY PROTECTIONS OR COMPENSATION FOR INJURY OR OCCUPATIONAL DISEASE

When workers are misclassified, there are no health and safety standards or rules in place. This means there are no industry standards established by the Workers' Compensation Board. Employers are not advising workers of hazards, conducting risk assessments, outlining safe work practices, or providing training. Businesses with gig workers are not required to include them in health and safety committees.

As a result, it is possible for entire industries to operate without any health and safety standards at all. On-the-job safety is left to the workers; it is essentially a free-for-all. It places all the responsibility for safety on the worker and none on the employer. For example, during the COVID-19 pandemic each worker was responsible for developing and implementing their own COVID-19 safety protocols.

Gig workers do not have the right to refuse unsafe work. Workers providing home repair, moving, maintenance, and similar services through companies like TaskRabbit may find themselves in unsafe working conditions and feel pressured to complete unsafe work, due to fear of a negative review. In app-based employment, negative reviews can have significant consequences for future employment and even result in termination from the app. This pressure to complete jobs is especially high when workers first start with a new company and are trying to build an online reputation.

Misclassified workers lose out on compensation in the case of injury. While businesses may save big bucks by avoiding required contributions to the WCB, workers bear the financial risk. Workers have identified this as a big concern. In one of Uber's own promotional videos, a driver, Laurie Pringle, talks about her fear of being in a serious car accident while working and not having sufficient coverage. She talks about the need for critical benefits and protections for her and her family. She says,

...we're lucky but uh I know when you are out on the road, these days, we pass by a lot of terrible car accidents out there, and you don't want to think that if someone were hurt while driving for Uber or something else in their job regardless of where they work there wouldn't be adequate benefits to support them as they recover and need to get back to full health (Uber, n.d.-h).

While workers have the option to purchase Personal Option Protection (POP) from the WCB, coverage is limited, and few workers know about its availability. Uber's car insurance may cover drivers like Laurie in certain situations, but she wouldn't have the option of a WCB claim and may not be sufficiently covered depending on the type of work she is doing when the accident occurred. More on this below.

Misclassification also puts consumers at risk of liability. When a homeowner hires a worker to perform a task and the worker is injured, the homeowner may face a lawsuit or a ruling from WCB that they are liable to pay a fine.

UNDER-INSURANCE AND PERSONAL LIABILITY

Workers may find they lack appropriate insurance to protect them in case of an injury or accident involving themselves, a customer, or a member of the public.

According to ICBC, ride-hail drivers are on the hook for insurance costs unless they have a trip accepted or are actively engaged on a trip (ICBC, n.d.-a). Once a driver accepts a trip, the ride-hail company's insurance policy applies, but the time spent between trips is not covered. In the case of an at-fault accident, collision coverage for Uber, for example, has a \$2,500 deductible.


TaskRabbit does not provide any insurance coverage for Taskers for personal injury, property damage, or any other legal liability (TaskRabbit, n.d.-c). Instead, they offer to assist with disputes with a Happiness Pledge. The pledge is available to users and clients to resolve issues at TaskRabbit's "discretion on a case-by-case basis." There are hard caps on payouts — a maximum of \$10,000 for most areas (TaskRabbit, n.d.-d) and a long list of terms and conditions to be eligible for payment.


According to the company's website, SkipTheDishes drivers are independent contractors responsible for their own insurance (SkipTheDishes, n.d.-b). In BC, commercial-delivery-vehicle insurance may be required to perform deliveries. This insurance can be significantly more expensive than business-use insurance and many drivers may not be aware of the requirement, leaving workers under-insured and possibly unprotected (CBC, 2020-a) in case of a serious accident. The impact could be financially devastating.


While the DoorDash website says it provides vehicle insurance for workers "on an active delivery," the extent of coverage and whether it applies in Canadian jurisdictions is unclear. Its website says, "You are considered on active delivery from the time you accept a delivery request until the time your customer receives their order, or the order is canceled" (DoorDash, n.d.-b). It is not specified whether the insurance complies with ICBC requirements for commercial delivery vehicles. DoorDash's contract states that workers are responsible for their own insurance and the website clarifies its insurance only kicks in if the worker's personal insurer denies the claim. The insurance does not cover driving to pick up an order or an event occurring between leaving a vehicle and delivering an item to someone's door. The coverage also does not apply to deliveries performed on bikes or scooters.


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INSURANCE PROTECTION SUMMARY


UBER 			
Vehicle insurance provided?	Yes	WCB or non-vehicle personal injury or liability insurance provided?	No
<p>Coverage: Commercial auto applies when ride request is accepted or when transporting passengers, collision with \$2,500 deductible (Uber, n.d.-i).</p>		n/a	
<p>Notes: Personal insurance required when app is active, but no trip accepted, coverage does not include provision of a rental car to ensure drivers can continue to earn.</p>			

LYFT 			
Vehicle insurance provided?	Yes	WCB or non-vehicle personal injury or liability insurance provided?	No
<p>Coverage: Commercial auto applies when ride request is accepted or when transporting passengers, collision with \$2,500 deductible (Lyft, n.d.-c).</p>		n/a	
<p>Notes: Personal insurance required when app is active, but no trip accepted, coverage does not include provision of a rental car to ensure drivers can continue to earn.</p>			

SKIPTHE DISHES 			
Vehicle insurance provided?	No	WCB or non-vehicle personal injury or liability insurance provided?	No
<p>Coverage: n/a</p>		n/a	
<p>Notes: ICBC website says: "Your vehicle may need to be rated in a delivery rate class depending on what else you use the vehicle for and how often you use the vehicle for delivery" (ICBC, n.d.-b).</p>			

DOORDASH 			
Vehicle insurance provided?	Unclear	WCB or non-vehicle personal injury or liability insurance provided?	No
Coverage: ?		Notes: Contract explicitly states: “CONTRACTOR agrees that CONTRACTOR will not be eligible for workers’ compensation benefits through DOORDASH, and instead, will be responsible for providing CONTRACTOR’s own workers’ compensation insurance or occupational accident insurance, if permitted by law” (DoorDash, n.d.-d).	
Notes: Contract states drivers are responsible for their own insurance. But another page states commercial auto insurance is provided but only if your claim is rejected by your personal insurance. It is not clear if this applies in Canada (DoorDash, n.d.-c).			

TASK RABBIT 			
Vehicle insurance provided?	No	WCB or non-vehicle personal injury or liability insurance provided?	No
Coverage: n/a		Notes: TaskRabbit offers a Happiness Pledge to compensate losses including property damage, theft, or bodily injury during the performance of a task not otherwise covered by personal insurance. This policy requires claims within 14 days and has hard caps of \$10,000 (TaskRabbit, n.d.-e).	
Notes: n/a			

INSTACART 			
Vehicle insurance provided?	No	WCB or non-vehicle personal injury or liability insurance provided?	No
Coverage: n/a		Notes: Contract states workers are responsible for the following coverage: WCB, disability and health insurance, EI, CPP, liability insurance, commercial automobile insurance, GST (Instacart. n.d.-b).	
Notes: Contract states that “securing and paying for automobile insurance in coverage amounts consistent with legal requirements, including any required no fault automobile insurance or commercial liability insurance” (Instacart, n.d.-a) is the responsibility of the worker.			

NO BENEFITS

The vast majority of platform companies do not offer employees extended health or dental benefits or life insurance, yet access to benefits is a priority for workers.

In response to this pressure from workers, platform companies are devising complex plans so as to appear as though they are addressing this demand from workers. However, these companies aim to do so without incurring the true costs of running an effective benefits program or making contributions to federal benefit programs like EI and CPP.

Schemes like Uber's Flexible Work+ propose an explicit trade-off: swapping employment protections for participation in a forced-savings benefit program (Archer and Mandryk, 2022). While such programs may offer a tantalizing headline, the fine print tells a different story. As explained by lawyers Simon Archer and Josh Mandryk, this is an expensive trade-off for governments and a "bad deal for workers." Workers lose out on access to employment protections like minimum wage, overtime, and statutory holiday pay. Governments give up their share of payroll taxes, EI, and CPP contributions — contributions that could add up to more than double what Uber is willing to contribute to the benefits plan.

In return, workers would participate in a savings plan and allocate a percentage of their earnings to a benefit type of their choosing. But the benefits on offer may provide little value to workers. Flexible Work+ (Uber, 2021) does not guarantee a defined benefit plan in exchange for contributions, e.g., \$500 a year for physiotherapy. The program would be available only to workers who meet a particular threshold for hours worked, potentially leaving many workers without access to any benefits. And it is not clear how employer contributions would be applied. Will Uber match employee contributions 50/50 or will they contribute at a lower rate?

To truly make a difference for workers, benefit plans must be built on top of basic employment rights.

“Uber kept dropping prices every season to gain more ridership to satisfy their growth, and it didn't matter to Uber if the driver is not even making minimum wage... And the worst part is, they call us partners, [but] they make the rules, set the price, and they even choose the cars you can use.”

— Fawzi Kamel, Uber driver, who spoke to former UBER CEO about changes in driver remuneration (Andrews, T. & Larimer, S., 2017).

LIMITED ACCESS TO EMPLOYMENT INSURANCE AND RETIREMENT SECURITY

Independent contractors lose out on access to critical supports and programs. For example, they have limited access to Employment Insurance. The government loses employer contributions critical to the health of the program. Workers are only eligible to buy into special coverages at their own cost and receive no compensation during a work slowdown or when laid off.

Workers also see reduced CPP benefits. Again, employer contributions are not made on their behalf. Workers will pay the full share out of their pocket, and their contributions are likely to be smaller as they are calculated based on net income. This incentivizes maximizing write-offs in order to minimize income tax, but the long-term consequence of lower-reported income is a lower pension.

As a result, workers may end up on other programs like social assistance and disability as well as other government-funded and community-coordinated programs. These programs generally provide a smaller benefit, and the full cost of these programs is borne by taxpayers, not the platform companies who should be responsible for making contributions.

COMPARISON OF EMPLOYEE AND INDEPENDENT CONTRACTOR RIGHTS

Employment right in BC	Employee	Independent contractor
\$15.65/hr minimum wage	Yes	No
Overtime pay	Yes	No
Employment Insurance	Yes	(worker can pay in for limited coverage)
Workers' compensation	Yes	(worker can pay in for limited coverage)
Five paid sick days	Yes	No
Five days domestic and sexual violence leave	Yes	No
Statutory holiday and vacation pay	Yes	No
Right to refuse unsafe work	Yes	No
Right to a join union	Yes	No
Notice/compensation for length of service (severance)	Yes	No
Compensation for business expenses	Yes	No
Employer contribution to CPP	Yes	No

*Adapted from Economic Policy Institute (Rhinehart, McNicholas, Poydock, & Mangundayao, 2021-a).



Cost of misclassification

PRECARIOUS WORK IS A DETERMINANT OF POPULATION HEALTH

Multiple studies have found that precarious work is associated with a number of health issues (van der Noordt, IJzelenberg, Droomers, Proper, 2013) including both mental and physical illness (Gunn, Håkansta, et al., 2021). Additionally, given that precarious work is more likely to impact workers of intersecting identities, it can compound existing health inequities in our communities.

Here in Canada, the Poverty and Employment Precarity in Southern Ontario (“PEPSO”) study (Lewchuk-Lafèche et al., 2015) found that employment precarity was strongly associated with “poorer mental health” and that for low-wage, precarious workers it “is associated with poorer general health and with poorer mental health.”

A recent research article citing two Italian studies focused on the male population determined that “precarious employment contributes through financial strain to reduce the mental health related quality of life and to increase mental disorders such as symptoms of depression or dysthymia” (Ferrante-Fasanelli et al., 2019).

Knowing this, decision makers have a responsibility to shape public policy to deliver better health outcomes for workers and reduce the negative impact of systemic discrimination.

CONSEQUENCES FOR COMMUNITIES AND GOVERNMENT

It is not just workers who suffer. We all pay the price when workers are misclassified.

All work should be good work. The pandemic cast a light on all the essential work performed in our communities. We saw the critical role of front-line service work, the need for resilient supply chains and how many low-wage workers have been keeping our communities safe and our economy running. The BC government has an obligation to ensure that all workers are treated with fairness and dignity. Workers need to be protected from exploitation and must have access to a pathway to justice.

Misclassification distorts the economy and allows some companies to gain advantage by gaming the system. This hurts companies that are complying with our laws and paying their fair share. It makes it harder for legitimate actors to compete.

Misclassifying workers has a broader impact — it destabilizes the social safety net by underfunding some government programs and relying on other programs to fill the gaps. This shifts costs from business to taxpayers.

Many government programs rely on an economy of scale to deliver benefits at an affordable contribution rate; misclassification depletes the participation base. This includes programs like EI, Workers' Compensation, and CPP. Businesses contribute lower payroll and income taxes, and workers make lower contributions to EI, CPP, and income tax as well. The BC Building Trades estimate a loss of \$115.4 million annually in direct program revenue to the government (BCBT, 2022). This is for one sector alone.

In many cases, a lack of coverage shifts costs onto other government programs. For example, injured workers without WCB coverage do not receive compensation for health care costs they incur as a result of a workplace injury. When a WCB claim is accepted, the health care system is compensated for the cost of treating the illness or injury. When WCB coverage does not apply, the health care system must absorb the costs. Further, workers who suffer long-term illness or become disabled as a result of an injury may require other provincial and federal programs such as disability assistance, social assistance, and other community supports. These programs are funded by taxpayers rather than employers.

There are other examples of this shift in responsibility. During the pandemic, the federal government needed to act quickly to expand EI coverage to thousands of independent contractors who lost their jobs. Due to their employment status, they did not qualify for coverage under the current EI rules. Workers needed support and the EI program stepped up. However, independent contractors and more significantly their employers did not contribute to the EI system to cover the cost of these payouts.

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NO ACCESS TO THEIR CHARTER RIGHT TO JOIN A UNION

When workers are misclassified as independent contractors, they may lose out on their right to join a union. Without a union, gig workers lack the power to improve their pay and working conditions, have no representation, and lack a binding and balanced dispute resolution mechanism.

While platform companies tout the benefits of their employment model, there is growing global evidence that workers are not satisfied with their working conditions and want to see improvements:



- Canadian Pizza Hut delivery drivers allege they were misclassified and filed a lawsuit (Mojtehedzadeh, 2022);
- A class action lawsuit alleging misclassification has been filed against Uber and Uber Eats and will be heard in Canada (Samfiru Tumarkin, LLP, 2021; Fric, L., Rowe, M.A., Scott, L., 2021);
- In September 2021, a group of DoorDash employees in California protested outside CEO Tony Xu's home to demand better wages and working conditions (Leahy, G., 2021);
- Canadian couriers working for Foodora joined Gig Workers United and won the right to unionize before the company shuttered its Canadian operations (CBC, 2020-b);
- US app-based workers engaged in a one-day strike over their working conditions (Paul, K., 2021); and
- South African drivers in Gauteng engaged in a three-day strike over misclassification and working conditions (Khumalo, S., 2022).

It is already extremely difficult for low-wage workers to form a union. Multinational corporations have deep pockets and lots of tools to fight back. That is why it has taken decades, a pandemic, a new president, and multiple attempts to unionize the first corporate Starbucks coffee shops and an Amazon warehouse in the US (Isidore & O'Brien, 2022). The first Canadian corporate Starbucks was unionized in 2021 in Victoria.

It is no small feat to stand up to a multinational corporation and win. And gig workers face an even bigger hurdle — workers who are classified as independent contractors are unable to unionize unless they are successful in challenging misclassification first. Further, gig workers do not have a central dispatch or common work location, making it difficult for them to connect with each other to organize.

While gig workers have had some victories around the right to unionize, they have been only partially successful. In the UK, Uber drivers were found to be workers but not full employees (Uber BV and others v Aslam and others, 2021). This gives drivers access to some basic rights like minimum wage, statutory holidays, some hours of work protections, and the right to unionize, but not full protection through minimum employment standards (Government of United Kingdom, n.d.).

In Ontario, bicycle couriers employed by Foodora were found to be dependent contractors (White, R., 2020). Under Ontario laws, dependent contractors are not covered by their employment standards laws but are entitled to unionize and have access to other rights like notice of termination (Cavalluzzo, 2019).

As noted throughout this document, the impact of a lack of employment standards coverage is significant. In 2018, the BC government brought in legislation to ensure that all employees, including those covered by a collective agreement, would have access to minimum employment standards. But if workers are not classified as employees, even if they win the right to bargain a collective agreement, the floor will not apply. These workers are stuck negotiating from a weaker position — either from zero or from a set of reduced rights, rather than being able to build up from a floor established in the applicable employment legislation.



Gig companies push back

PLATFORM COMPANIES HAVE SHOWN they will go to considerable lengths to avoid the responsibility of being employers. In January 2020, the California government brought in a new law, AB-5 (Assembly Bill 5, 2019), designed to protect gig workers and give them access to employment standards protections. It included bringing in a new test, the ABC test,^a to determine whether a worker is an employee or independent contractor. The legislation enshrined employee status for most gig workers.

But gig companies fought back.

In California, platform companies funnelled \$204 million into Proposition 22 (n.d.), a ballot measure designed to counteract AB-5 legislation. They proposed Proposition 22 to exclude app-based drivers and food delivery workers from basic employment rights and prevent new laws that allow unionization from being brought in. Then they marketed the ballot measure as a tool to help the very workers it would hurt.

Marketing focused on centring the voice of workers and on issues like access to a livable wage. Yet once it passed, workers would have fewer employment protections. Companies like Uber and Lyft also threatened to leave California if the ballot measure was lost (Hussain, Bhuiyan, & Menezes, 2020).

The ballot measure did indeed succeed, but the fight for workers' rights did not end there. Workers took a case forward challenging the law. The Alameda Superior Court of California recently overturned Proposition 22, finding it unconstitutionally denied employment rights to workers (Chen, B., & Padin, L., 2021; *Castellanos vs. State of California*, 2021).

California brought in a new law to protect gig workers and give them access to employment standards protections. But gig companies fought back.

a A: The first person is free from the direct or indirect control and direction of the second person in connection with the performance of the work, both under the terms of the contract for the performance of the work and in fact. B: The first person performs work that is outside the usual course of the second person's business. C: The first person is customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed.



Policy solutions

THE RAMPANT MISCLASSIFICATION OF WORKERS is a system-wide problem that requires concrete action on behalf of the government. The impact is too great and too widespread to ignore.

The BC government must adopt a multi-prong approach that strengthens legislation and regulations and ensures compliance through a rigorous program of enforcement.

WE ARE CALLING ON THE BC GOVERNMENT TO:

1. Implement the ABC model as the legal test for determining employee status

The ABC test, first used in California, is now the gold standard for determining who is an employee. The ABC test is superior to the previously-relied-on Common Law test, as it presumes employee status unless three clear conditions are met (see page 23). The ABC test is easier to apply, reflects changes in our modern workplaces, and recognizes the differential power between workers and employers.

Twenty-one US states use the ABC test to determine eligibility for unemployment insurance, or access to basic employment standards. Six of those states — California, Connecticut, Massachusetts, Nebraska, New Jersey, and Vermont — apply the ABC test for both unemployment insurance and access to basic employment standards (Rhinehart, et al., 2021-b).

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The ABC test, first used in California, is now the gold standard for determining who is an employee.

In Canada, the Ontario NDP tabled a bill called the *Preventing Worker Misclassification Act, 2021* (Bill 28, 2021) in an unsuccessful attempt to bring in the ABC test. We recommend the following test is used for coverage under the *Employment Standards Act* and *Workers Compensation Act*.

The person doing the work will be considered an employee unless the employer shows:

- A: 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;
- B: The worker performs work that is outside the usual course of the hiring entity's business; and
- C: The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

2. Reverse the onus of proof so workers are considered employees unless the employer can prove otherwise

The government should reverse the onus of proof so that it falls to employers to prove that a worker is not an employee. This would send a strong message to employers that are misclassifying workers. It means an employer would have to produce clear evidence to establish that the worker is not an employee. This also supports balance in the workplace, as reversing the onus recognizes that employers hold more power over terms and conditions of employment: employers do the hiring and they for the most part set the terms and conditions of employment in lower-wage and non-unionized workplaces.

The *Canada Labour Code* was amended by the federal Liberal government to bring in this change as follows:

Marginal note: Burden of proof— 167.2 If, in any proceeding in respect of a complaint made under this Part, the employer alleges that the complainant is not their employee, the burden of proof is on the employer (Canada Labour Code, 2021-a).

This change has been in force since January 1, 2021.

Additionally, the Wynne government in Ontario brought in a similar law as part of the reforms recommended by the Ontario Changing Workplaces review. These improvements have since been repealed by the Ford government.

From Ontario's now-repealed bill 148:

Onus of proof— (2) Subject to subsection 122 (4), if, during the course of an employment standards officer's investigation or inspection or in any proceeding under this Act, other than a prosecution, an employer or alleged employer claims that a person is not an employee, the burden of proof that the person is not an employee lies upon the employer or alleged employer (Bill 148, 2017).

3. Eliminate exemptions and carve-outs to the *Employment Standards Act*

There should be one set of rules that applies to all workers. That is the strongest basis for building compliance. The BC government must resist the urge to create new carve-outs as they erode protections for all workers by creating a lack of clarity about which rules apply in which scenario. In BC, we have seen direct evidence of this in the abuse of the ESA's high-tech exemption, confirmed in a 2018 determination won by film animators (Employment Standards Branch, 2018).

Getting rid of the sexist server wage was an important step, but many other exemptions remain. Farmworkers are excluded from many protections including minimum wage, overtime, and statutory holiday pay. High-tech workers are excluded from a host of provisions including hours free from work, overtime, and statutory holiday pay (Government of British Columbia, 2016). The BC government should continue to remove exclusions contained in the ESA and regulations, including the high-tech exemption and exemptions for farmworkers.

We strongly oppose the creation of a third category of worker with fewer rights. We believe the majority of gig workers are misclassified and should be covered by the full protection of the ESA.

4. Develop a robust plan for education and enforcement, including high penalties for employers found to knowingly misclassify workers

Laws are not effective without enforcement. The government must clearly communicate its expectations of employers.

This can be achieved through an express prohibition on misclassification. Again, an example is included in the *Canada Labour Code*:

Prohibition— 167.1 An employer is prohibited from treating an employee as if they were not their employee in order to avoid their obligations under this Part or to deprive the employee of their rights under this Part (Canada Labour Code, 2021-b).

To support a prohibition on misclassification, the government has a responsibility to sufficiently resource the ESB and hire and train more enforcement officers to enforce the law. This must include education coupled with clear directives, compliance blitzes in problem sectors, and random spot checks.

There should be one set of rules that applies to all workers. That is the strongest basis for building compliance. The BC government must resist the urge to create new carve-outs as they erode protections for all workers by creating a lack of clarity about which rules apply in which scenario.

Enforcement needs to be coupled with stiff penalties. Financial penalties for businesses are an effective way to deter abuse. However, in BC, officials continue to be reluctant to issue penalties even for flagrant violations. Penalties are also not increased based on the number of employees impacted. So an employer that underpays 100 employees is treated the same way as an employer with a single violation. Further penalties only increase for violations of the same provisions of the ESA. Employers can violate different sections of the ESA within a three-year period and not see their financial penalties increase.

The BC government should:

- Ensure that penalties for a contravention of the ESA increase in proportion to the number of employees affected;
- Require penalties to increase every time any provision of the ESA is violated by an employer; and
- Increase penalty amounts in the regulation retroactively and on a go-forward basis by at least the rate of increase in the annual BC inflation rate since 2001 — 39.3 per cent in 2021 (will exceed 40 per cent in 2022).

5. Identify sectors where worker classification is abused and legislate employment standards coverage

The government should provide clear direction to workers and businesses. It can remove confusion by establishing sectors where workers are classified as employees. While the steps above will be effective, they still require challenges to be brought forward or proactive enforcement to be conducted by the ESB. This will take a significant amount of resources and, given the experience in other jurisdictions, workers will be tied up fighting legal challenges for years. This can be avoided by providing direction, through legislation and regulation, to workers and employers.

6. Take concrete action to end discrimination in workplaces to support the rights and full participation of workers who are Indigenous, Black, racialized, neuro-diverse, women, two-spirit, gender diverse, diverse in sexual orientation, or living with a disability

Though data on the demographics of gig workers is limited, we know that workers from equity groups are over-represented in low-wage and precarious work in general (Block et al., 2019). There are a number of actions the BC government can take to address discrimination in the workplace, including bringing in pay equity legislation, ensuring that translation services are available at the Employment Standards Branch, providing additional resources to the Human Rights Commission and Tribunal, and advocating for the federal government to provide migrant workers with permanent residency upon arrival and open work permits.

The BC government must also continue with important work like development and implementation of the Gender Based Violence Action Plan, the implementation of the Declaration Act Action Plan, and using the data collected as part of the *Anti-racism Data Act* to make informed decisions on the effectiveness of government programs for racialized British Columbians.

Though data on the demographics of gig workers is limited, we know that workers from equity groups are over-represented in low-wage and precarious work in general. There are a number of actions the BC government can take to address discrimination in the workplace.



Conclusion

MISCLASSIFICATION OF WORKERS is a widespread and growing problem with significant consequences for workers, business, our communities, and government programs. It cannot be effectively challenged by individual workers or small groups of workers. Fixing misclassification will take strong policy leadership from the BC government.

In particular, the BC government needs to take six concrete actions to stop misclassification:

- Implement the ABC model as the legal test for determining employee status;
- Reverse the onus so workers are considered employees unless the employer can prove otherwise;
- Eliminate exemptions and carve-outs to the *Employment Standards Act*;
- Develop a robust plan for enforcement, and establish high penalties for employers who are found to knowingly misclassify;
- Take action to end discrimination in workplaces to support the rights and full participation of workers who are Indigenous, Black, racialized, neuro-diverse, women, two-spirit, gender diverse, diverse in sexual orientation, or living with a disability; and
- Identify sectors where worker classification is abused, and legislate employment standards coverage. There are some sectors that require crystal-clear guidance to keep workers from being tied up for years fighting legal challenges.

Misclassification of workers is a widespread and growing problem with significant consequences for workers, business, our communities and government programs. It cannot be effectively challenged by individual workers or small groups of workers.

Appendix 1

JURISDICTIONAL COMPARISONS

ABC test or similar used to determine employment rights (Rhinehart et al., 2021-c)	Reverse onus
<ul style="list-style-type: none">■ California■ Connecticut■ District of Columbia (construction)■ Illinois (construction)■ Maryland (construction and landscaping)■ Massachusetts■ Nebraska■ New Jersey■ New York (construction)■ Vermont	<ul style="list-style-type: none">■ <i>Canada Labour Code</i>■ Ontario (repealed by Ford government)■ Australia (<i>Fair Work Act, 2009</i>)■ European Union — Directive of the European Parliament and of the Council

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PRECARIOUS WORK GLOSSARY

ABC test

The ABC test is now the gold standard for determining who is an employee. We recommend this test is used for coverage under the *Employment Standards Act* and *Workers Compensation Act*.

The person doing the work will be considered an employee unless the employer shows:

- A: 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;
- B: The worker performs work that is outside the usual course of the hiring entity's business; and
- C: The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

App-based employment

Employment that operates through a software application, such as Uber or SkipTheDishes.

Common law test

This test focuses on how two key aspects function in an employment relationship: control and dependency. "Who is responsible for determining working conditions and financial benefits and to what extent does a worker have an influential say in those determinations?"^a

Dependent contractor

On a scale of employment relationship, this is an intermediate category in relation to the key factors of control and dependency. "A dependent contractor might set their own hours and hire their own employees but derive most of their income from a contract with one business, and thus be fairly dependent on that business to earn their living."^b Currently, the employment rights of dependent

a McCormick v. Fasken Martineau DuMoulin LLP, 2014 SCC 39 (CanLII), [2014] 2 SCR 108, canlii.org/en/ca/scc/doc/2014/2014scc39/2014scc39.html

b Law Students' Legal Advice Manual, Law Foundation of British Columbia, 2021, Chapter 9, p. 14, lslap.bc.ca/uploads/2/9/3/5/29358111/9_-_employment_law__2021_.pdf

contractors are limited to the right to unionize and the right to reasonable notice of termination.^c Dependent contractors may be covered by workers compensation if they meet the definition of a worker under the *Workers Compensation Act*.

Employee

Under the *Employment Standards Act*, an “employee” includes:

- (a) a person, including a deceased person, receiving or entitled to wages for work performed for another,
- (b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee,
- (c) a person being trained by an employer for the employer’s business,
- (d) a person on leave from an employer, and
- (e) a person who has a right of recall.^d

Employer

Under the *Employment Standards Act*, an “employer” includes a person:

- (a) who has or had control or direction of an employee, or
- (b) who is or was responsible, directly or indirectly, for the employment of an employee.^e

Gig work

A form of non-standard work where a worker is defined as an independent or dependent contractor (or freelancer). Some workers choose this classification but, more often than not, workers are told by a company that they do not qualify or cannot accept work as an employee. Historically, gig work has included work in the construction trades, visual effects, graphic design, high technology, taxi industry, domestic work, hair styling, and personal care. Currently, app-based technologies are emerging as a significant sector of gig work. A gig company is a business that profits through this type of work.

c Cavalluzzo, *Employees, Dependent Contractors and Independent Contractors: What’s the Difference? What misclassification can mean to you*, 2019, cavalluzzo.com/resources/blog/post/item/employees-dependent-contractors-and-independent-contractors-what-s-the-difference

d *Employment Standards Act, Definitions*, current to July 13, 2022, bclaws.gov.bc.ca/civix/document/id/complete/statreg/00_96113_01#section1

e Ibid.

Independent contractor

A person who is self-employed, running their own business. “When deciding if a worker is an employee or an independent contractor, one of the main questions to ask is ‘whose business is it?’”^f

Misclassification

When employers incorrectly classify workers as independent contractors instead of employees. Misclassification deprives workers of employment standards protections including paid sick leave, minimum wage provisions, termination and severance requirements, and more.

Platform company

A business that operates through a software platform, such as Uber or SkipTheDishes.

Worker for the purposes of workers compensation

Under the *Workers Compensation Act*, a “worker” includes the following:

- (a) a person who has entered into or works under a contract of service or apprenticeship, whether the contract is written or oral, express or implied, and whether by way of manual labour or otherwise.^g

f Employment Standards Branch Factsheet, July 2016, gov.bc.ca/assets/gov/employment-business-and-economic-development/employment-standards-workplace-safety/employment-standards/factsheets-pdfs/pdfs/employee_or_contractor.pdf

g *Workers Compensation Act*, Definitions, current to July 13, 2022, bclaws.gov.bc.ca/civix/document/id/complete/statreg/19001_01#section1

