
Future Work: Changing policy approaches to gig workers

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In brief

The way in which we work continues to evolve as technology plays a bigger role in our lives. Workers are drawn to the flexibility of new worker models. However, both workers and regulators are concerned to ensure a safety net for gig-workers. Our Alert reviews some recent policy and grass-roots developments, and considers how these might affect the way that you engage around new technology and future of work.

In detail

The way in which we work continues to evolve as technology plays a bigger role in our lives. Businesses and workers alike are drawn to the flexibility of gig-working, and other contract possibilities created by digital platforms. Whilst the way that we engage may be changing, many of the fundamental principles of employment and contracting relationships are not. We discuss this in our recent LegalTalk Alert, [*Future Work: Are your gig workers contractors or employees?*](#)

In this Alert, we consider how genuine contractor arrangements may still attract employment-like rights and obligations. We also look at emerging trends towards gig-workers organising, much like employees, to bargain over working conditions, and what that means for businesses who rely on contingent contract workforce models.

Policy approaches to protecting contingent workers

Giving genuine contract workers quasi-employment rights isn't new. Some existing Australian legislation already reflects this policy approach as the result of increasing rates of contracting over employment engagements. For example, Federal superannuation, and most State and Territory payroll tax and workers' compensation legislation already extends the definition of an 'employee' to include certain types of independent contractors.

The impact of increased automation and artificial intelligence on secure, long term roles poses a significant issue for government. Law-makers must consider how the disappearance of stable, full-time 'jobs' will impact on more than just employment-based taxes and welfare and pension safety nets.

Regulating to protect vulnerable contingent workers continues to be a focus at both the State and Federal level. For example:

- The *Migrant Workers Taskforce*, established in 2016 by the Turnbull government, has a number of disruptive technology businesses in its sights, given the tendency for overseas workers to seek short term contract engagements through these platforms.
- State governments are similarly interested in contingent worker protections. In May 2017, the Queensland government introduced the *Labour Hire Licensing Bill 2017* (currently before the State Finance and Administration Committee for report back by 24 July 2017). The Victorian government has also signalled introduction of a similar regime following its *Inquiry into Labour Hire and Insecure Work* in 2016.

Collective action

Contract workers may, over time, seek to acquire rights and protections similar to those enjoyed by employees. This may occur through litigation and grass-roots activism. Recently, though, worker groups appear to be approaching these issues in a more conciliatory manner.

The recent Australian example of AirTasker entering into an agreement with UnionsNSW over ‘minimum conditions’ for gig economy workers speaks to the types of interests and pressures in play when engaging or facilitating sizeable groups of contingent workers. In May 2017, Airtasker and UnionsNSW announced a deal to pursue promotion of ‘gigs’ on Airtasker at contract rates above comparable national minimum wage rates, the offering of salary continuance insurance in the absence of workers’ compensation insurance, and introduction of a dispute-resolution process to be overseen by the Fair Work Commission. The AirTasker deal follows Uber experimenting with a drivers’ guild in New York in late 2016, after multiple class action claims in the US against a number of ride-sharing services.

Best practice approach to establishing a contingent worker engagement model

- *Remember that genuine contingent contract workers may be regarded as employees for limited legislative purposes, or given special legislative protection.*

Businesses need to factor in the cost of existing ‘deeming’ laws that add ‘employment’ on-costs to genuine contracting models. Businesses should also be alive to the potential for legislative protections and obligations to change over time to take account of new engagement models.

- *Be prepared for interest and attention.*

Businesses should be prepared for government, union, or general social interest in, and activism over worker engagement and payment models. Businesses should focus on being able to demonstrate fair and equitable engagement and payment models that take account of worker autonomy and control over what they’re delivering to, or through a business. Payment should reflect fair valuation of a worker’s time and product taking account of market standards, including comparable minimum wage rates in the relevant industry.

The takeaway

We expect that this narrative will continue to evolve as the convergence of people and technology continues to set the scene for the future of work. Our three tips:

1. *Understand the quasi-employment obligations that apply to your contract gig workers,*
2. *Pay fair rates for services: have regard to underlying industry award rates of pay,*
3. *Be ready for regulatory, media, and general attention around new working models,*

are a useful framework to think about when considering how this applies to your business or industry. Businesses should be considering these matters proactively – from compliance, fairness and reputational perspectives.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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