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OPTIONS FOR REGULATING LABOR IN THE GIG ECONOMY: WHAT ARE THEY?

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Abstract

Traditional labor regulations and employment standards are complicated by the features of paid work associated with digital platform businesses, such as taxi, delivery, and maintenance roles. This article evaluates the scope of this. The types of employment in Indonesia and their primary attributes subsequently examine the relevance of current employment regulations to these gig jobs, referencing Australian and international legislation and jurisprudence. Significant ambiguity exists over the extent of conventional legislation, minimum requirements, and remedies in the domain of irregular digitally mediated employment. Regulators and legislators should evaluate methods to enhance and broaden the regulatory framework overseeing gig work. The article identifies five principal options: enforcing current laws, clarifying or broadening definitions of 'employment,' establishing a new category of 'independent workers,' granting rights to 'workers' rather than employees, and reevaluating the notion of an 'employer.' We evaluate the advantages and disadvantages of these methods and encourage authorities to use innovative and ambitious strategies to enhance the minimum standards and conditions for workers in these circumstances.

Keywords: Digital work, gig jobs, labor regulation, precarity, risk

INTRODUCTION

In the future, correspondents will inform us enthusiastically that the economy will not be comprised of "jobs" but instead of "gigs." Individuals will refrain from attending work and will lack an employer.

Instead, they will do activities organized via anonymous internet platforms and remunerated through digital transactions. This vast marketplace may facilitate unprecedented connections between buyers and sellers. However, it may also engender a merciless race to the bottom as self-employed 'freelancers' vie in an expanded, more competitive labor market for sustenance. What will be the fate of workers' conventional rights and protections in this audacious, digital era?

The expansion of the gig economy, characterized by digital platforms and solitary independent contractors, presents significant difficulties to conventional frameworks for labor regulation and minimum standard establishment. Existing regulations' applicability to gig workers is ambiguous, and their effective enforcement inside the digital economy is questionable. Indeed, in many instances, circumventing conventional regulations and taxes seems to have been a primary motivation for the inception of digital enterprises.

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This article will examine the ramifications of the gig economy on labor legislation in Australia and the possible relevance of current laws and regulations to gig employment. We commence by delineating this work and examining the extant studies concerning its scope and composition. The regulation of labor in the gig economy is complicated by the triangular relationship among workers, digital intermediaries, and end users.

We subsequently examine the relevance of current labor legislation to gig employment. In certain instances, existing regulations may be applicable (if implemented rigorously), but in others, they may not be. We conclude by delineating five overarching strategies to enhance and expand rules, enabling gig workers to attain equivalent rights and minimum standards as other employees. We implore regulators and politicians to be innovative and bold in developing measures aligned with this objective.

The widespread perception of digitized, irregular work, or "gigs," encompasses numerous potential functions across various industries and incorporates numerous types of business. The concept is somewhat vague. Various words characterize this form of labor, frequently utilizing optimistic euphemisms to render the phenomenon appealing and favorable (Sundararajan, 2016). Thus, the 'sharing economy,' 'crowdsourcing,' or the 'collaborative economy.'

Notwithstanding the diverse array of circumstances and language, some fundamental characteristics indicate most types of gig employment. Gig workers generally encounter inconsistent work schedules influenced by variations in demand for their services. In numerous roles, the employee supplies part or all of the capital equipment utilized directly in their tasks – ranging from a bicycle for food delivery to more intricate and costly transportation or computing apparatus in other occupations.

Numerous gig workers also provide their own workspace, whether at home, in their vehicle, or elsewhere. Most employment is remunerated on a piecework basis, with compensation determined by individual tasks rather than the duration of time spent. Ultimately, gig jobs are typically perceived as structured around a type of digital mediation, such as an online platform.

LITERATURE REVIEW

The triangular relationships of gig work

One important feature of gig work that makes labor regulation more difficult is the triangular relationship between the worker who produces or performs the service, the end-user of the service (who could be an individual customer or another business), and the digital intermediary that facilitates the entire process. This relationship is depicted in Figure 1.

A contract that details the terms and conditions of the worker's involvement in the process governs the relationship between the worker and the intermediary (see Figure 1's top left arrow). Typically, this contract gives the intermediary firm the authority to monitor, discipline, or terminate the worker or block their platform use.

The worker generally assumes the majority or entirety of the risks related to supplying essential equipment and tools, service outages by the platform, income irregularities, service deactivation, and other related issues. The 'demutualization' of risk, which transfers significant corporate risks to the worker, exacerbates the vulnerability and instability experienced by gig workers (Kaine & Josserand, 2016; Slee, 2016).

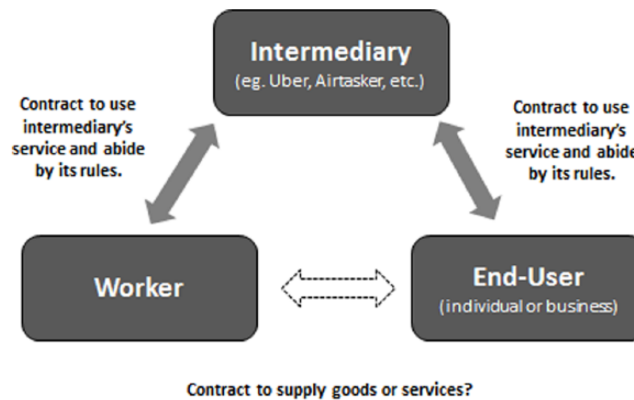

Figure 1. The triangular relationships of the gig economy.

Additionally, a contract governs the relationship between the intermediary and the end-user of its services (see the upper right arrow in Figure 1). When the end user logs into the digital service or platform, they must approve the standard terms and conditions established by this contract. It generally restricts the intermediary's obligations and responsibilities regarding any issues arising during production or delivery. End-users are seldom cognizant of how these arrangements constrain the intermediary's obligations.

The connection between the gig worker and the final consumer of their services (shown by the bottom arrow in Figure 1). The determination relies on the intermediary's adopted business model and its characterization by regulatory authorities. Uber asserts that the drivers it supports technologically unequivocally engage in contracts with their clients. However, in the aforementioned British litigation, this proposal was dismissed promptly. It was 'absurd' to propose that the drivers and their passengers entered into binding agreements without knowing each other's identities. At the same time, Uber controlled both the route and the fare.

Even if this finding withstands appeal, it does not imply that a comparable perspective regarding the relationship between workers and end-users utilizing other platforms will be adopted. If a platform provider offers only a matching service, we anticipate that the worker and the end-user would negotiate the specifics of the service provision and the corresponding remuneration. In instances where this occurs, it substantiates the notion of a genuine contract between the parties; nevertheless, the nature of that contract—whether commercial or employment-related—may be a separate issue.

Numerous statutes and regulations in Indonesia could potentially apply to gig laborers, offering some level of protection in their interactions with intermediaries and end users. These regulations were not explicitly formulated for gig employment, rendering their applicability and efficacy ambiguous.

Continuous testing and elucidation will be necessary to enhance comprehension of their scope and efficacy. A significant legal concern in this context is the ambiguity surrounding the legal status of gig workers. Most duties and safeguards defined in the principal federal labor legislation, the Fair Work Act 2009, are exclusively for employees. It encompasses regulations about minimum salaries, restrictions on working hours, rights to paid leave, safeguards against unjust termination, and the majority of collective bargaining rights. The Fair Work Act 2009, like previous legislation of its nature, does not provide a clear definition of an 'employee.' The classification of a worker is determined by a set of common law standards established by the judiciary (Stewart et al., 2016: Ch.8).

Two criteria must be fulfilled. The initial point is that the worker must deliver services under a contract with the individual or entity identified as their employer. Without a contract between the parties, an employment relationship cannot exist. It elucidates why a labor-hire worker dispatched by an agency to a client of the agency cannot typically be classified as an employee of that client. The worker often possesses a contract solely with the agency; hence, if there is an employer, it will be the agency (see Stewart et al., 2016: 256–261). Secondly, any contract must possess the attributes of employment rather than a commercial agreement between independent entities. In assessing whether an individual qualifies as an employee, the courts evaluate many indicators or characteristics. It encompasses the authority to dictate the execution of the work, the degree of the worker's assimilation into the other party's enterprise, payment modalities, the party accountable for supplying necessary tools or equipment, the worker's autonomy to engage with other clients, and their capacity to delegate or subcontract responsibilities. The test is impressionistic; no definitive number or combination of indicators will determine whether a worker is classified as an employee.

For numerous years, corporations found it very simple to formulate contracts that either explicitly defined or obscured a person's status as an 'independent contractor,' regardless of the scant evidence indicating the worker possessed an independent business. Recently, Indonesian federal courts have increasingly focused on the substance or practical reality of an agreement rather than the formal terms agreed upon by the parties.

In conjunction with the readiness of agencies like the Fair Work Ombudsman to enforce legal provisions against specific types of 'sham contracting,' it has become increasingly complex and perilous for businesses to circumvent employment obligations in this manner (Johnstone & Stewart, 2015; Roles & Stewart, 2012). Certain courts, though not universally, assert that a worker cannot qualify as an independent contractor unless there is demonstrable evidence of their status as an entrepreneur who offers their labor inside the framework of their business. It may necessitate proof of their recurrent interactions with clients, promotion of their services, employment of personnel, possession of business assets, and/or use of fundamental transactional systems for invoicing, record-keeping, and budgeting.

This method has the potential to contest the prevailing assumption that gig economy workers are 'self-employed' or functioning as independent contractors. There is a notable connection with the

rationale recently employed by the UK Employment Tribunal, which determined that the Uber drivers were engaged in work for the international corporation rather than for themselves, irrespective of the stipulations in their contracts. The case fundamentally hinged on interpreting statutory definitions absent from laws like the Fair Work Act.

RESULTS AND DISCUSSION

Options for extending regulation.

From the preceding section, it is evident that gig laborers may receive some level of protection under existing laws, contingent upon their status. It is essential for legislators to clarify and, where feasible, enhance protections for all vulnerable workers, including gig workers, and to enforce these protections more consistently. However, due to the disruptive characteristics of digital technologies and platform-based business models, it is essential to contemplate the expansion of instrumental state regulation to enhance the protection of gig workers. In this context, a minimum of five general possibilities may be contemplated.

The initial alternative is to gradually broaden the scope of the current legal framework by employing or threatening test cases. Litigation is underway and initiated by or on behalf of gig workers in multiple countries. Airtasker has consented to advocate for payments for work conducted via its platform in Indonesia to adhere to minimum wage standards, following a warning from Unions NSW regarding potential legal action on the matter (Minter, 2017; Workplace Express, 2017a). Other advocacy organizations are contemplating comparable challenges against various platform enterprises. At the same time, the Fair Work Ombudsman has declared an investigation into the treatment of Uber drivers in Indonesia (Workplace Express, 2017b).

In nearly all instances, the litigation initiated or threatened seeks to ascertain the status of gig workers as employees; however, this presents a challenge. The extent of control imposed by intermediaries or end-users over some workers, coupled with the lack of substantial evidence indicating that such workers had independent enterprises, may render a determination of employment feasible.

However, this is improbable for all crowd work or on-demand labor within the gig economy. The incremental expansion of regulatory protections to new forms of paid work achieved through recent case law may not ensure that crowd work and on-demand laborers receive an acceptable level of protection. The prompt and direct enhancement of these provisions could be achieved by explicitly broadening the definition of employment. It may entail recognizing a wider array of activities comparable to employment, ensuring that the category more explicitly encompasses work organized, overseen, and supported by a digital intermediary.

Such workers should, at a minimum, be afforded equivalent rights to participate in collective bargaining as employees, without contravening competition rules. Alternatively, some forms of

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intermediation may be categorized as 'labor hire' functions, thereby invoking legislation pertinent to the functioning of labor hire agencies. This strategy would be even more effective if combined with enhanced regulation of labor hire firms, as recently proposed in Victoria and Queensland. Another approach to guarantee that gig workers receive employee protections would be to impose stricter limitations on businesses' capacity to misclassify employees as contractors. The Productivity Commission (2015) and others have advocated for enhancing the rules against 'sham contracting' within the Fair Work Act.

According to Harris and Krueger (2015), gig work necessitates an entirely new regulatory approach due to its structurally distinct nature and innovative features. Independent, freelance, or 'platform' workers would be delineated, and fundamental norms of equitable treatment articulated and upheld. These protections likely concentrate on the contractual agreements between platform workers and their respective intermediaries (the upper left arrow in Figure 1) but may also extend to their interactions with end-users. Nonetheless, other analysts (like De Stefano, 2015, and Minifie, 2016) contest this policy, arguing that it would further diversify and complicate the regulatory structure governing labor. This method creates more avenues for regulatory evasion, particularly by enabling businesses to misclassify people into this new category of non-standard activity to circumvent employment obligations. A more feasible proposal may involve establishing a new category encompassing platform workers and other forms of 'dependent contractors' (Cherry & Aloisi, 2017). However, this is indeed reverting us to option 2.

The most extreme alternative would be to eliminate employment status as the criterion for regulating work and to extend suitable rights to all individuals engaged in 'work.' This comprehensive strategy for regulatory reform would emulate the framework established in Indonesia's Work Health and Safety legislation. These rules aim to eliminate distinctions in the precise nature of the working relationship to guarantee that all individuals who 'work' receive fundamental health and safety protections. A comparable strategy may be employed to modify further labor regulations, rendering the classification of a person as a traditional employee completely inconsequential. There is substantial academic endorsement for the concept of acknowledging a 'law of labor' or a legal structure governing 'personal work contracts' in a broader context (see, for instance, Freedland and Kountouris, 2011; Johnstone et al., 2012: Ch. 8). While many rights, such as protection from discrimination, are inherently applicable to a wide range of individuals, others necessitate considerable modification or reconfiguration to be relevant for all categories of workers.

It mainly applies to those who impose a financial obligation, such as disbursing a minimum wage, contributing to a pension fund, or offering paid leave. A further recommendation has been to concentrate on the concept of "employer" rather than a worker's status. Prassl and Risak (2016) examine the various roles attributed to an employer. Specific platforms, like Uber, arguably perform all of those duties. However, in certain instances, they may be divided among many entities, most notably the intermediary and the end-user. In such instances, the authors propose that a gig worker

should be considered to have distinct employers for various legal purposes—or, in some instances, none whatsoever. The methodology is intellectually refined. However, significant challenges are expected to arise in its application without comprehensive regulatory reform. It is significant that, within the broader framework of labor hire, Indonesia has not adopted the notion of 'dual employment' (Stewart et al., 2016, pp. 259–261).

CONCLUSION

According to the Productivity Commission (2016: 69), contract work can provide several advantages, including increased flexibility, supplement or stabilize income, and more significant opportunities for specific demographic groups. However, it has also cautioned about the possibility of a significant transformation in employment relations, with employees assuming greater risk linked to precarious employment. Graham et al. (2017) conclude their study of digital workers in sub-Saharan Africa and Southeast Asia.

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