



Fourth Study Commission
Public and Social Law

Questionnaire
2024
CANADA

Digital Revolution Impact on the Labor Market: Platform or Gig Economy and Artificial Intelligence

Dramatic changes in the economy and in labor markets have resulted in dramatic changes in the relationship between employers and employees/independent contractors. At the same time, increased computerization has impacted the marketplace. We will explore the “gig” or “platform” economy—such as short-term contracts or freelance work in contrast to permanent jobs, including ride sharing, delivery services, remote work via the Internet—and the impact on the employment relationship. We will also consider the impact of artificial intelligence on employment.

1. Provide a brief description of the presence of the “gig” or “platform” economy in your country. If possible, base your answer on official public data or academic reports, although we recognize that in some cases data may not be available.
 - a. A [Statistics Canada](#) report defines “gig work” as a form of employment characterized by short-term jobs/tasks which does not guarantee steady work and where the worker must take specific actions to stay employed. “Digital platform” employment refers to paid work carried out through Internet platforms or apps which exercise control over the work process. The report notes that “gig work” includes self-employed workers and employees, and it is both a main job and an additional source of income. From October to December 2022, an average of 871,000 Canadians aged 15 to 69 had a main job consistent with gig work: 624,000 who were self-employed and 247,000 who were employees. An additional 1.5 million people had completed gig work at some point during the previous 12 months. 468,000 Canadians had completed digital platform employment (working through Internet platforms or apps which pay workers directly) in the previous year. The report states that

- women are more likely than men to be gig workers. Gig workers tend to be low-income earners which is why nearly half combined their gig work with another job.
- b. A 2019 Angus Reid report estimated that 17% of Canadian workers are currently engaged in the gig economy and that more than 40% of Canadian millennials have participated in the “gig economy” over the past five years.
 - c. A [H&R Block Canada study](#) shows the share of Canadian workers who perform gig work has gone from 5.5% in 2005 to currently 28% (8.75 million), up 13 per cent from 2022. A majority (74%) of these workers say it’s in addition to their primary source of income. 51% of people said their employers weren’t aware of their side hustle, while 49% have told their employer.
2. How does this development affect the traditional employee/employer relationship? What is the status of platform or gig workers in your country: employees, independent contractors or a third category? Is there any jurisprudential divergence regarding the status of these workers? Cite relevant examples.

Relationship

- a. In general, employees are entitled to a minimum wage, overtime, regular breaks, health insurance and vacation pay. Independent contractors are not. They benefit of independence and flexibility in their work, but no security and little protection. The [Federal Labour Minister’s report](#) identified a need for legislative intervention to develop and promote protections for gig workers. However, the report acknowledged that significant statistical information and data gaps still exist meaning there is uncertainty in the breadth of the gig economy and the people who engage in it. Frameworks for the regulation of gig work are starting to appear in some Canadian jurisdictions. The report states that the Government is committed to making changes in the Labour Code and to pursuing non-legislative initiatives to ensure that workers in the gig economy have the protections they need.
- b. British Columbia amended the *BC Employment Standards Act* and *Workers Compensation Act* to allow for better working conditions and protections for app-based ride hailing and food delivery gig workers in BC. The legislation has received Royal Assent, but no regulations for minimum standards have yet been passed. In Ontario, the passage of the *Working for Workers Act, 2022* in April 2022 created the [Digital Platform Workers’ Rights Act, 2022](#) (the “Digital Platform Workers Rights Act”). Not yet proclaimed into force. In August 2023, the Government of Saskatchewan announced that it was undertaking a comprehensive review of *The Saskatchewan Employment Act* and its accompanying regulations.

Status of workers

- a. Canada recognizes three classes of work relationships: employees, dependent contractors, and independent contractors. Reports show gig workers are generally classified as independent contractors by employers. The Canadian Ministry of Employment and Social Development's [2023 report](#) on protections for gig workers shows 'misclassification' is an ongoing problem in the gig economy; where gig workers are treated as independent contractors by their employers, despite the fact that the actual relationship is more like an employment relationship. The *Canada Labour Code* includes prohibitions on misclassification that came into force in January 2021.

Jurisprudence

- a. The determination as to whether a worker is an employee is a complex question of mixed fact and law ([Uber Technologies Inc. v. Heller, 2020 SCC 16, \[2020\] 2 S.C.R. 118, at para. 217](#)). This largely factual question is governed by review of relevant factors, no 'one' conclusive test governs ([671122 Ontario Ltd. v. Sagaz Industries Canada Inc., 2001 SCC 59, \[2001\] 2 S.C.R. 983, at para. 48](#)). There is an upcoming case on whether delivery drivers were improperly classified as independent contractors: [Marinov v. PH Canada Company et al \(Pizza Hut Canada\)](#).
3. What is the impact of artificial intelligence on the labor market of your country? If possible, base your answer on official public data or academic reports. Outline the positive and negative impacts.
 - a. As any new technology, AI brings fear that many occupations will vanish with the replacement of workers by robots or software that will execute more rapidly the tasks assumed up to now by humans. The [OECD Employment Outlook 2023](#) states that there is little evidence of decreased labour demand due to AI so far. High-skilled occupations have made the most progress in AI. It found AI adoption is still relatively low, and the technology is evolving rapidly, so any negative employment effects may therefore take time to materialize.
 - b. The [Canadian House of Commons](#) just released a report on the "Implications of Artificial Intelligence Technologies for the Canadian Labour Force". It found AI is increasingly being adopted across various economic sectors, but the future impacts on the workplace are still unclear, though many agree there will be significant shifts in how the workforce performs daily tasks. Concerns include strengthening how workers' rights protections; supporting the ethical adoption of AI on the part of businesses and employers; and better monitoring and data collection to examine the current and future impacts of AI technologies on the labour force.
 4. Do you have any laws regulating and/or relevant judicial decisions about artificial intelligence on the labor market? What are the challenges for employers, such as

privacy, transparency, secrecy, plagiarism, and the claim that artificial intelligence will be replacing workers? What are the concerns of employees?

- a. **Federal:** AI is a powerful enabler, and Canada has a leadership role in this significant technology area. In June 2022, the Government of Canada tabled Bill C-27, [*The Artificial Intelligence and Data Act \(AIDA\)*](#) which introduces a new regulatory system as a “digital charter” to guide responsible AI innovation. It should come into force no sooner than 2025. The AIDA aims at ensuring that Canadians trust digital technologies that they use everyday. Currently, there is no regulatory framework in Canada specific to AI. While some regulations in specific areas, such as health and finance, apply to certain uses of AI, there is no common approach to ensure that AI systems address systemic risks during their design and development.
- b. **Provincial:** Sparse landscape provincially, some examples are the [*Working for Workers Four Act, 2024, SO 2024, c. 3*](#) which brings in changes to the *Employment Standards Act, 2000*, s. 8.4, regarding the use of AI in assessing job applications. Under the *Quebec Immigration Act*, CQLR c. I-0.2.1, there is a pilot program for workers in AI sectors.
- c. **Concerns:** As the House of Commons report outlined, more data collection is needed to understand the impact of AI and which protections are appropriate and necessary. The concerns and challenges facing employers/employees include the displacement of employees by AI; the use of AI tools in the workplace which may impact employees’ duties, the intersection of AI usage and confidentiality/privacy/intellectual property; and decisions made by AI tools that impact human rights considerations or discriminate based on a protected ground.