Workers are taking on more risk in the gig economy

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At the moment there is official classification for gig work, like the type uber drivers do. Credit: Reynaldo Vasconcelos/Newzulu

To secure work in the gig economy, workers often have to contribute not just their time and labour but also their capital. This means workers are not only shouldering the risks associated with insecure employment but also the risks associated with investing capital into businesses which they have little control over.

In the traditional economy businesses provide capital and employees provide labour. This is being challenged by the disruption wrought by technology, specifically the multitude of digital matching platforms.

There are now a vast array of organisations providing very different goods and services using digital platforms to match consumers and service providers in the sharing economy (also known as the collaborative economy, access economy or peer economy).

In this type of economy many organisations are "asset light". This means businesses make money through providing access to goods and services and making connections between smaller providers and consumers. In doing so, the risk shifts from business to individual gig workers.

In its recently released report into digital disruption, the Productivity Commission described gig work as a model of hiring labour on demand. This is facilitated through platform websites (think Uber, TaskRabbit, Amazon Mechanical Turk), enabling work to be broken down into components which allows tasks to be allocated as needed. The Commission's report warns that while "gigging" might increase flexibility of work it means workers bear more risk because of fragmented, insecure employment.

Gig workers are increasingly taking risks related not only to their labour but also to their own capital. This occurs when continued ownership of the assets used in work are dependent on a set of circumstances outside the control of the worker. For example, Uber drivers are encouraged to borrow money to buy their cars. If a driver is then "decommissioned" by Uber or if Uber changes the amount it pays to drivers or if the market gets flooded with new Uber drivers due to the accessibility of the platform, the driver is burdened with debt, with no ready means to pay it back.

This scenario also means that the official classification of gig workers is also contested. In the absence of a classification, gig worker status is being worked out on a case by case basis by the courts. For example the recent high profile legal cases involving Uber workers.

For platform providers there is a huge incentive to ensure their workers are not classified as employees in any sense – otherwise they would be liable for providing entitlements to workers, driving up their costs. It would also question the legitimacy of having "employees" provide the physical assets that the platform relies on to carry out its business.

The key claim of the platform providers is that their gig workers should be considered independent contractors, not employees at all. Contractors in the traditional economy, such as truck drivers, have also sometimes supplied their own "tools" but the gig economy differs in that the gig worker doesn't accumulate any goodwill that can be on-sold or leveraged for financial gain. The goodwill accrues to the platform provider, leaving the worker with fewer options.

Australia's industrial relations system seems ill-equipped to regulate for emerging forms of work, given that it continues to struggle to define long-established forms of contingent employment (such as casual work). In terms of determining if a worker is an "independent contractor" Australian courts consider whether the hirer controls the work performed; whether the worker is integrated into the hirer's organisation or is in business on their own; whether the worker is paid according to tasks completed or time spent working and whether the worker can subcontract out work, or is free to work for other hirers.

For example, bicycle couriers and insurance agents have been found by the courts to be employees because they were subject to hirer instructions or could not be said to be in business on their own. But in the absence of further regulation, each situation has to be assessed and tested on a case-by-case basis – a piecemeal and time consuming approach.

As the gigging economy gains momentum, policymakers, labour activists and the media are asking questions about how we conceptualise work and protect workers.

The experience of labour regulation in supply chains provides some indication about what may happen in the gig economy space - specifically that economically dominant agents (a common example being big retailers or other quasi-monopolies) set the rules. That companies with global footprints are able to influence political contexts, obscure lines of liability, and restructure out risk. Early indications by big players like Uber demonstrate they have observed and learnt these lessons too.

To provide protections to workers in the gig economy Australia is going to have to grapple with these questions and with a reality in which workers don't just provide labour but also capital, absorbing more business risk than ever.

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