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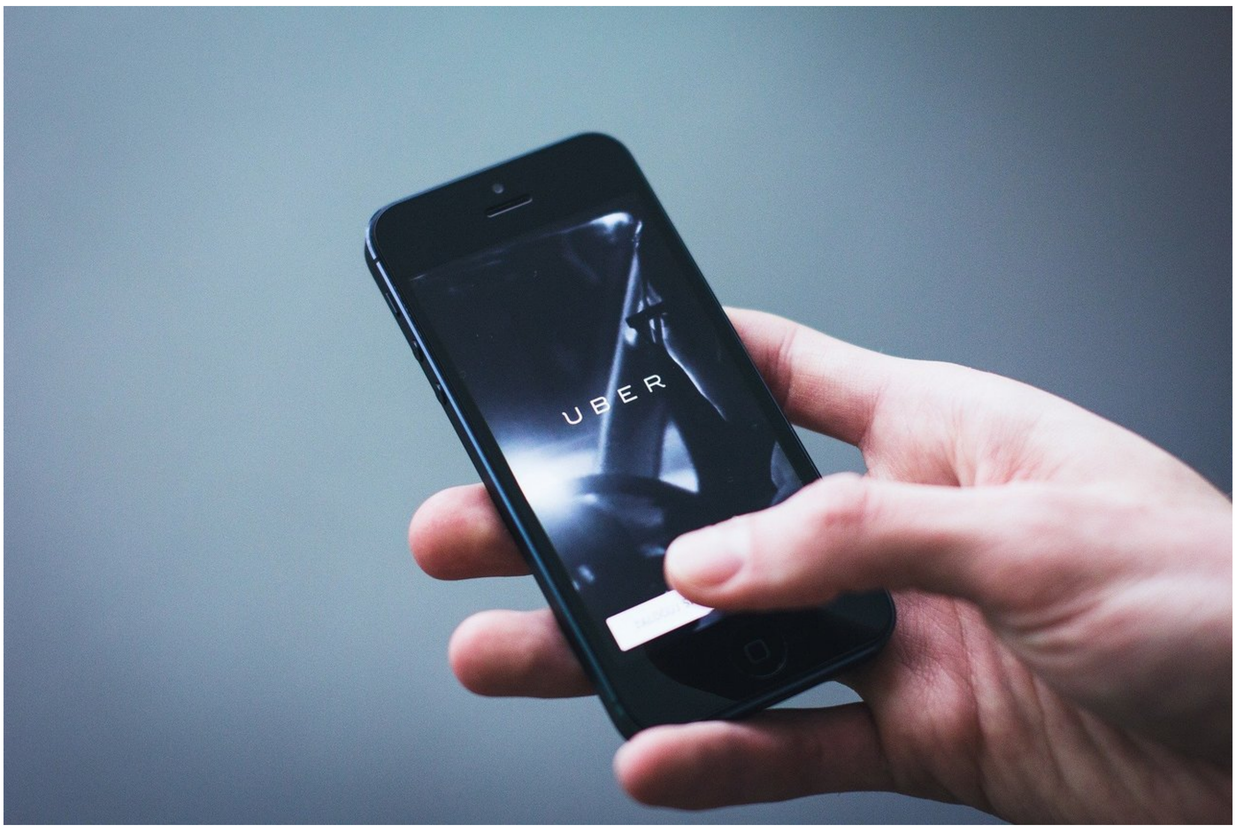
How to stop workers from being exploited in the gig economy

October 5 2018, by Michael Rawling And Sarah Kaine



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Hot on the heels of the gig economy company Foodora shutting up shop in Australia amid accusations about its labour abuses, a Senate Committee report has recommended more robust laws to protect gig economy workers. But this doesn't go far enough.

Foodora, which uses bicycle couriers to deliver food, says it has pulled out of Australia to focus on opportunities in other countries. Legal cases against it might also have had something to do with it.

The Fair Work Ombudsman took the company to court for sham contracting – treating its employees as independent contractors to avoid paying minimum wages, annual leave, sick leave and superannuation. The Australian Taxation Office is pursuing Foodora for unpaid employee entitlements.

The Fair Work Ombudsman has now dropped its case.

In two other cases the Fair Work Commission has decided that other gig workers – namely Uber drivers – are contractors for the purpose of unfair dismissal laws.

So the Senate committee report offers the best relief on the horizon to the "gig workers" that companies such as Foodora have used to drive down employment costs.

The report recommends changing the legal definition of employee to capture gig workers and ensure they are fully protected by Australia's industrial relations system.

This would no doubt help. But it might not be enough to protect gig workers into the future.

The work rights of these gig workers needs to be clear from the start. The federal government not only needs to broaden the definition of employee but also empower the Fair Work Commission to set minimum rates and conditions for gig workers even if classified as contractors.

Manipulating legal loopholes

The Senate Committee to examine the future of work and workers was established in October 2017. Its scope included considering "the adequacy of Australia's laws to deal with the "employment landscape of tomorrow". Its recommendations are directly relevant to the rise of the gig economy.

The crucial question has been whether gig workers are employees or independent contractors.

This legal distinction has allowed companies to circumvent or evade employee entitlements by engaging workers purportedly as contractors. Digital platform providers such as Uber, Deliveroo and Foodora have aggressively touted their workforce as "partners" or even "micro-entrepreneurs." They describe themselves as providers of technology, not of services.

In Britain, the Employment Appeals Tribunal has disagreed. It has ruled that Uber is indeed a provider of transport services, and enters into dependent work arrangements with transport workers.

Similarly, the Senate committee report does not regard gig economy workers as independent contractors "in the true spirit of the term." It argues that if a worker depends on a company for work and income, and the company profits from their labour, they are employees. It therefore recommends changing the legal definition of employee to include what gig workers do.

Work status shouldn't matter

But effective government action to protect gig economy workers cannot solely rely on changing the legal definition of employee. This just sets up another artificial boundary that could be circumvented.

By tweaking their arrangements with their workforce, gig companies could find new grounds to argue their workers are contractors, not employees.

Broadening the definition of employee is not enough. It is also necessary to give the Fair Work Commission the power to inquire into any gig economy work arrangements and determine if the workers are getting fair pay and conditions.

This would be a better, and cheaper, approach than having to test the legality of a work arrangement in court. Gig companies would be on notice that they have to pay their workers fairly, regardless of whether they call them employees or contractors.

Keeping up with technology

Better regulating the gig economy is important to ensure everyone benefits from technological change. We need to consider the gains to workers, not just companies and consumers. Is technology going to provide quality jobs and increase people's control over their work? Or is it going to be used to circumvent the basic minimum wage and drive down working conditions?

These questions about the emerging gig economy are part of a wider social conversation we need to have about technological change and the challenges of the digital divide. For starters, there needs to be a focus on transparency about who profits the most from technology. We need to implement technology in terms of net social benefit.

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