

Digital Platform Workers' Rights Act, 2022

CONTEXT

The *Digital Platform Workers' Rights Act, 2022* (DPWRA) was enacted in April 2022. It provides certain rights and protections to digital platform workers who provide ride share, delivery, or courier services for payment through digital platforms.

The legislation is not yet in effect. Regulations are required to address certain matters under the Act before it can be proclaimed into force. The government is consulting on the proposed regulations.

OBJECTIVES

The purpose of the DPWRA is to establish certain worker rights and protections that apply to all digital platform workers (as defined), regardless of whether those workers are employees. The new legislation does not affect or change whether those workers are covered (or not) by other work-related statutes.

Key worker rights under the DPWRA:

- **Information:** Digital platform operators would be required to provide key information to workers, including factors used to offer assignments; performance rating; method of calculating pay; and estimated pay for each assignment.
- **Pay period and pay days:** Operators would have to establish a recurring pay period and recurring pay day, and pay all amounts earned and tips/gratuities collected during each pay period by the pay day for that period.
- **Minimum wage:** The DPWRA includes provisions regarding a minimum wage for workers under the Act.
- **Amounts earned and tips and other gratuities:** Operators would be prohibited from withholding or making deductions from an amount earned by a worker or a worker's tips/gratuities unless authorized by a statute of Ontario or Canada or a court order.
- **Notice of removal from the platform:** Operators would be required to provide a written explanation if a worker's access to the platform is removed. Operators would be required to provide two weeks' written notice of any suspension of 24 hours or longer (unless the worker is guilty of wilful misconduct) or other prescribed reasons.
- **Reprisal protection:** Operators (and persons acting on their behalf) would be prohibited from intimidating or penalizing a worker, or attempting or threatening to do so, for taking action under the Act.
- **Dispute resolution:** All digital platform work-related disputes between an operator and a worker would have to be resolved in Ontario.

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- **No contracting out:** An operator and worker would be prohibited from contracting out of or waiving a worker right under DPWRA. An exception would exist where a contract provides the worker with a greater benefit than the worker right.

Your feedback on the questions below will provide valuable insight as the government determines the best ways to operationalize this Act.

ISSUES FOR DISCUSSION

The government is interested in your view on the following issues:

A. Coming into Force Date

The DPWRA would come into force on a date proclaimed by the Lieutenant Governor in Council. It is proposed that the DPWRA and its supporting regulations would come into force on September 1, 2023. At that time, the legislation would be enforceable, and workers would have the ability to submit claims to the government.

What the government would like to know:

1. What are your views on this proposed approach to when the DPWRA would come into force?

B. Work Assignment Definition

A digital platform operator would be required to pay workers at least the ESA's general minimum wage for each "work assignment" performed by a worker. The minimum wage rate payable under the DPWRA is the same as the ESA's general minimum wage. The current general minimum wage under the ESA is \$15.50/hour and on October 1, 2023, it will be \$16.55/hour.

"Work assignment" would be defined in the regulations to make it clear when a "work assignment" starts and ends. Under the proposed approach, a "work assignment"

- i) would **begin** when the worker accepts the work assignment through the digital platform;
- ii) would **include** the time spent travelling from the location at which the assignment was accepted to the 'pick-up' location; and
- iii) would **end** when that work assignment is completed (i.e., the passenger or order is dropped off or delivered, as the case may be).

Note: There may be situations where a worker performs assignments for multiple operators. In those situations, each operator would be required to pay the worker the minimum wage for every work assignment performed by the worker.

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Further, the ministry has identified four scenarios where it is proposing that there would be modifications to the definition of work assignment above in certain circumstances that are unique to digital platform work:

1. There may be instances where a worker accepts a work assignment that is to be performed at a future time. The ministry is proposing in that case:

The work assignment would begin when the worker begins travelling to the location in the work assignment.

2. There may be instances where a worker is unable to complete a work assignment (include when the work assignment is cancelled by the operator or client). The ministry is proposing in that case:

If a worker, with reasonable cause, fails to perform a work assignment, the work assignment ends at the later of the following times:

- i. When the circumstances that cause the worker not to perform the assignment arises.
- ii. When the worker receives notice of the cancellation from the operator or client.
- ii. When the worker returns the item for delivery to the location specified by the operator, if the operator requires the item to be returned.

An example of this would be due to a safety incident at a grocery store (a reasonable cause), the grocery shopper is unable to complete a work assignment. In this case, the work assignment ends when the safety incident arose.

3. There may be instances where a worker receives an offer for an on-demand work assignment while completing the current work assignment, where those two work assignments are not performed simultaneously. The ministry is proposing:

For two immediately consecutive work assignments, where the second work assignment is accepted while performing the first assignment, the second one would begin when the first work assignment ends.

4. There may be instances where a worker is performing multiple simultaneous work assignments. The ministry is proposing:

For work assignments involving more than one offer, the work assignment would begin when the worker accepts the first work assignment and end when the worker completes the last work assignment.

Digital platform operators will also be required to provide workers certain information about work assignments (e.g., any factors used to determine whether work assignments are offered to workers). The proposed definition of "work assignment" would also apply to the DPWRA's information requirements.

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What the government would like to know:

2. What are your views on the proposed definition of “work assignment” and the range of scenarios?
3. What are some considerations for how the proposed definition of “work assignment” may vary by the type of service provided by a worker on a digital platform e.g., rideshare, delivery or courier services?

C. Transparency Rights/Right to Information

Background

This section outlines the current requirements in the legislation.

Digital platform operators would be required to provide the following key information to workers in writing. Digital platform operators have flexibility in how this information is provided and displayed to workers through the digital platform or other channels. Within 24 hours after an individual is given access to an operator’s digital platform for the purpose of accepting or declining assignments, the operator shall provide the following information in writing to the individual:

1. A description of **how pay for digital platform work is calculated**.
2. **Whether tips or other gratuities are collected by the operator** and, if so, when and how they are collected.
3. **The recurring pay period and recurring pay day** established by the operator.
4. **Any factors used to determine whether work assignments are offered to workers** and a description of how those factors are applied.
5. **Whether the digital platform uses a performance rating system** and whether there are consequences based on a worker’s performance rating or a worker’s failure to perform a work assignment and a description of those consequences.

If there are any changes to the information above, the operator shall inform the individual, in writing, of the change before the change takes effect.

An operator shall provide the following information in writing to a worker when offering a work assignment to the worker:

1. **The estimated amount the worker will be paid for the work for each work assignment** and a description of how that amount was calculated.
2. Any **factors** used in determining to offer the work assignment to the worker.

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3. Whether there will be **consequences based on the worker's performance ratings** for the work assignment or the **worker's failure to perform the work assignment** and, if applicable, a description of those consequences.

An operator shall provide the following information in writing to a worker within 24 hours of completion of a work assignment by the worker:

1. **The actual amount the worker will be paid for the work**, a description of how that amount was calculated) and when the amount will be paid. For example, a description could include mileage reimbursements, surcharges etc.

2. **The amount of any tips or other gratuities** collected by the operator in respect of the work assignment, the amount of tip or other gratuity that will be paid to the worker and when the amount will be paid.

An operator shall provide information to a worker about performance ratings, as follows:

1. If a worker receives five or more performance ratings for work assignments on a calendar day, the operator shall provide to the worker **the average performance rating** for that day.

2. If a worker receives fewer than five performance ratings for work assignments on a given calendar day but a total of five or more such ratings over two or more days including that day, the operator shall provide to the worker **the average of all performance ratings** received on those days.

3. The operator shall provide, if applicable, **the aggregate details of the rating** referred to in paragraph 1 or 2, whether there are any consequences based on the rating and a description of those consequences.

Note: This information shall be provided within 24 hours after the end of the last day included in the calculation of the average performance rating.

Operators would also have to provide such other information as may be prescribed.

If a worker does not complete a work assignment that the worker agreed to perform, the operator shall provide the workers with a written description of the consequences, if any, of failing to complete the work assignment before the consequence take effect.

The requirement to provide workers with certain information is designed to help workers make informed decisions about their work. Further, operators would have discretion in how information is displayed to workers, e.g., directly through the digital platform or via an email and hyperlink.

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Proposals

The government is proposing that an operator, in addition to providing a description of how the amount paid to the worker was calculated, shall provide a breakdown of the amount that the worker is paid, such as compensation for distance travelled.

What the government would like to know:

4. Is there additional information that operators should be required to provide to workers in addition to what is already specified in the legislation?
5. Are there any additional considerations for courier workers who work delivery blocks? Is there information specific to courier work that should be provided to those workers?
6. Do you have any input on how information should be provided to workers? For example, should it be available through a link embedded in an email sent to the worker?

D. Notice of Removal from Platform

Digital platform operators would be required to provide:

- a written explanation if a worker's access to the platform is removed; and
- two weeks' written notice of any suspension of 24 hours or longer (subject to an exception).

Under the DPWRA, operators would not have to give the required two weeks' notice of removal from the platform if the worker is guilty of willful misconduct.

The government is considering prescribing two additional circumstances for when the two weeks' notice would not be required:

- i. The removal from the platform is because of public safety concerns
- ii. The removal from the platform is required by law

What the government would like to know:

7. Are there additional circumstances in which advance notice would be inappropriate? Please give concrete examples if possible.
8. Are there risks of not prescribing additional circumstances and operationalizing this provision as it stands (i.e., with only willful misconduct)?
9. What are some reasons which would constitute "willful misconduct" whereby two weeks' notice would not be appropriate?
10. What are some examples of "public safety" concern whereby two weeks' notice would not be appropriate?

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11. What is the current process before and after a digital platform worker is permanently removed or suspended from a digital platform?

HOW TO RESPOND

If you are interested in responding to this paper with your comments, ideas and suggestions, please contact the Ontario Ministry of Labour, Immigration, Training and Skills Development by:

Email: ELCPB.Consultations@ontario.ca

Mail: Consultations on the *Digital Platform Workers' Rights Act, 2022*, Employment, Labour and Corporate Policy Branch, 400 University Avenue, 15th Floor, Suite 1502, Toronto, Ontario, M7A 1T7

Please provide your responses by April 27, 2023.

Your input will help us address the critical issues that have been raised.

Thank you for taking the time to participate.

NOTICE TO CONSULTATION PARTICIPANTS

Submissions and comments provided to the Ministry of Labour, Immigration, Training and Skills Development (the Ministry) are part of a public consultation process to solicit views on proposed regulations under the DPWRA. This process may involve the Ministry publishing or posting to the internet your submissions, comments, or summaries of them. In addition, the Ministry may also disclose your submissions, comments, or summaries of them, to other parties during and after the consultation period.

If you have any questions regarding this consultation, you may contact the Employment, Labour and Corporate Policy Branch, 400 University Avenue, 15th Floor, Suite 1502, Toronto, Ontario, M7A 1T7, or by emailing ELCPB.Consultations@ontario.ca.