



Extend the powers of the Fair Work Commission to set minimum standards for ‘employee-like’ workers

These amendments implement an election commitment to empower the Fair Work Commission to set minimum standards for workers in ‘employee-like’ forms of work, including the gig economy.

What has changed?

This measure amends the *Fair Work Act 2009* (the Act) to empower the Fair Work Commission (the Commission) to set minimum standards for ‘employee-like’ workers performing digital platform work. The measure also introduces a consent-based collective agreements framework and access to dispute resolution for unfair deactivation from a digital labour platform.

What do these changes mean?

Workers in the gig economy are generally engaged as independent contractors, rather than employees. But many of these workers do not exhibit all the characteristics which are traditionally associated with independent contracting.

The changes will mean the Commission will be able to set fair minimum standards for ‘employee-like’ workers that work for or via a digital labour platform, where the Commission is satisfied it is appropriate to do so.

Who are employee-like workers?

An ‘employee-like worker’ is someone who satisfies two or more of the following characteristics:

- low bargaining power
- low authority over the performance of work
- receives remuneration at or below the rate of employees performing comparable work.

Independent contractors who are not ‘employee-like’ and/or do not perform work for or via a digital labour platform are not affected by these changes.

Who can apply for a minimum standards order?

Applications for minimum standards can be made by a digital labour platform, a registered organisation representing digital labour platform workers or businesses, or the Minister for Employment and Workplace Relations. The Commission may also set minimum standards on its own motion. Minimum standards can be in the form of a mandatory Minimum Standards Order or non-binding Minimum Standards Guidelines.

What can be in a minimum standards order?

The Commission has broad discretion to decide what terms and conditions will be set as minimum standards. For example, standards could include terms about payment terms, deductions, record-keeping, cost recovery and insurance. The Commission can only include terms relating to penalty rates, payments before and between accepting task-based work, and minimum periods of engagement where it is appropriate for the type of work performed.

The Commission cannot include certain terms, including overtime rates, rostering arrangements or terms that would change the form of engagement or status of workers covered by the standards order. The Commission also cannot include terms on matters that are primarily of a commercial nature that do not affect the terms and conditions of engagement of workers, and matters relating to work health and safety that are otherwise comprehensively dealt with by other laws.

Process of setting minimum standards

When setting minimum standards, the Commission is required to consider and balance a range of factors set out in a 'minimum standards objective'. This list of factors includes ensuring standards are tailored to the type of work, suit workers' preferences (including the ability to work for more than one platform at a time), and considering the impacts of standards on business viability, and on parties that use the services delivered by employee-like workers.

Before making an order, the Commission is required to publish a draft of the order and follow a consultation process, ensuring affected persons have a reasonable opportunity to make written submissions, and parties to be covered by the order have been genuinely engaged.

Consent-based collective agreements

Registered organisations representing employee-like workers will also have a new ability to make collective agreements with digital labour platforms. Negotiating entities have obligations to consult and explain the terms of the proposed agreements to the workers covered by the agreement, and a finalised agreement must be registered with the Commission and published on its website.

A new fair process to dispute unfair deactivation from a platform

Employee-like workers will have a new ability to apply to the Commission for assistance if they consider they have been unfairly deactivated by a digital labour platform. The new 'unfair deactivation' dispute resolution process will be available to employee-like workers who have performed work on a digital labour platform under a services contract or a series of contracts, on a regular basis for at least 6 months.

A digital labour platform will be able to suspend a worker's access to the platform in certain circumstances for a limited period of time (up to 7 business days). These circumstances include where a digital labour platform believes based on reasonable business grounds the deactivation was necessary because of matters such as health and safety concerns or suspected fraud.

Further guidance on what constitutes a valid deactivation and the processes for a fair deactivation will be provided in a Digital Labour Platform Deactivation Code, to be made by the Minister. There will be a public consultation process on the development of the Code.

New protections for workplace delegates

New protections will also come into place for employee-like workers who are workplace delegates, including the entitlement to reasonable communication with members of their employee organisation and any persons eligible to be members about matters of industrial concern, and reasonable access to workplace facilities.

When will these changes come into effect?

The measure will commence on 26 August 2024, or earlier by proclamation.

For more information on the Closing Loopholes legislation, visit: <https://www.dewr.gov.au/workplace-relations>