

# MONITOR

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# How do we protect “gig” workers?

**IM HUDAK HAS** seen the future, and it is Uber.

Ontario should “send a signal that we are an economy that is open for innovators, for new ideas, and would take a leading role in supporting technology,” remarked the former Progressive Conservative leader in late 2015. The province could do that, he said, by passing laws encouraging the spread of Uber-like app-based businesses that link contract service providers to consumers through their phones.

Uber, the renegade ride provider that has municipalities across Canada scrambling to revise their taxi by-laws, is the best-known emissary of the so-called “sharing” or “gig economy.” But Uber is just the tip of the iceberg.

In the U.S., a multitude of companies with names like TaskRabbit, Zaarly, Postmates (Canadian version: SkipTheDishes) and Kitchensurfing, many of them based in Silicon Valley, are marshalling an army of casual employees waiting to be dispatched, via text message, to do a few hours’ work picking up fast-food orders, cooking in someone’s home, doing laundry, pet-sitting or performing some other daily chore their app users would rather not do.

Hudak’s glee that this new work model, already well established and growing in major U.S. cities, may soon take root in Canada mirrors the enthusiasm of his ideological brethren.

Presidential hopeful Marco Rubio, for example, in his eagerness to make Republican inroads in staunchly Democratic Silicon Valley, has declared “the on-demand economy is a miracle that only American free enterprise could produce.” There’s also no shortage of hyperbole coming from the industry itself, which likes to portray the foot soldiers of the “gig econ-

omy” as self-directed, empowered “entrepreneurs” who can work their way to riches on their own terms.

McMaster University labour studies professor Wayne Lewchuk says we need to look past this hype and acknowledge the conditions that gave rise to app-centric employers if we are ever going to deal with the challenges they pose to the social and economic security of workers in Canada.

Enterprises like Uber or TaskRabbit “aren’t at all different from a temp employment agency, other than it’s all done online,” says Lewchuk. The recent growth of the “gig economy” reflects neither the brilliance of the technology nor the novelty of the business model, but rather the more mundane reality that “there are lots of people who are desperate for work.”

And while they are often portrayed as bringing revolutionary change to the workplace, Lewchuk insists Uber-style companies are just more of the same—“a new variant” of an ongoing and well-established trend where stable employment is being replaced by precarious contract work.

Leaving aside the matter of wages (gig workers often earn less than minimum wage) this trend toward precarious employment has already had a significant impact on the way Canadians work and live.

A 2015 study, written by Lewchuk for the United Way, found that 52% of workers in the Greater Toronto and Hamilton Area hold temporary, contract or part-time positions, with profound personal consequences. Precariously employed workers are twice as likely to report mental health problems, six times as likely to delay starting relationships, and three times more likely to delay having children than workers in secure, full-time employment.

Almost half of precariously employed workers say their unpredictable work schedule disrupts their family life.

But perhaps the most prominent hallmark of precarious employment is that even those workers on longer-term contracts who are reasonably paid are less likely to have access to benefits.

“Most people on contract who are classified as employees might be entitled to CPP (Canadian Pension Plan) and unemployment insurance, although the chances of collecting unemployment insurance these days are practically zero. But they wouldn’t be getting employer-funded benefits like pension or healthcare,” says Lewchuk. “On the other hand, if they are classified as self-employed, they don’t even get any of the government benefits.”

This is precisely why companies like Uber classify their workforce as independent contractors. It lets app-based service providers get out of paying benefits while washing their hands of the responsibility of administering government programs or underwriting capital costs (such as cars, gasoline and maintenance if the service involves delivery). Meanwhile, the firms take a considerable percentage of all transactions between app users and workers.

This business strategy is not unasailable. A California judge recently agreed to hear a class action suit from a group of Uber drivers who want to be recognized as employees of the company and entitled to benefits. Meanwhile, courts in the same state ruled in 2014 that FedEx could not treat its couriers as independent contractors.

The bottom line for all precariously employed people, says Lewchuk, is that “whether you are a freelancer or an Uber driver, you don’t have a permanent relationship with an employer, and therefore you don’t have any buff-

er from the instability that's inherent in a market economy." Or, as U.S. Senator Mark Warner expressed it, "these [gig economy] workers exist on a high wire, with no safety net below them."

Rectifying this situation, according to Lewchuk, requires an understanding of how the previous social contract unravelled, while leaving in place a set of legal and social provisions that are inadequate for today's workplace realities.

He says the fracturing of the "great social compromise" coming out of the Depression and Second World War, whereby companies agreed to supplement government health and pension plans designed for a primarily full-time workforce, has made it necessary to fortify the state's social safety net and find new vehicles for delivering supplementary benefits.

The good news is that models for providing those benefits already exist. In the building trades, for example, where electricians or carpenters work on a succession of projects for different firms, the norm has long been for construction unions to provide worker training, and to collect fees from the companies that allow them to administer benefits on behalf of their members. Unions take on the same roles in the theatre and film worlds.

"Those are also project based," explains Lewchuk. "A film comes in and it needs a crew. People work on the crew and when the film is done the operation vaporizes."

Leslie Dyson, B.C.-based president of the Canadian Freelance Union (CFU), envisions a day when her organization will assume the same function within its corner of the contract worker universe. Chartered in 2009, and operating as a "community chapter" of UNIFOR, the CFU represents a wide number of communications-related professionals including writers, editors, illustrators, web developers and designers, and project managers.

Currently, the union offers benefits like insurance, although "we're not big enough yet to offer a pension plan," says Dyson. Ultimately, she adds, the organization hopes to take a role in collective bargaining, sitting down with "non-unionized workers and industry people to set minimum standards of pay and

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working conditions" that employers would be obligated to adhere to.

But for contract employees to gain that kind of representation there must be an enabling legal framework in place. In its submission to Ontario's Changing Workplace Review, which is looking into labour code reforms that would better respond to current workplace conditions, UNIFOR has proposed several measures that would give leverage to advocates for casual and contract workers.

For one, the union calls for government-mandated sectoral councils, made up of labour organizations, independent contractors and employers, charged with establishing a minimum pay scale and discouraging "competition based on low wages and precarious working conditions."

The UNIFOR submission also proposes the application of the "Status of the Artist" model in dealings with freelancers such as media workers. This model requires employers to meet with an organization deemed by the Labour Relations Board to represent workers in a specific sector to negotiate a standard agreement that must be respected by the employer in transactions with any contractor.

Dyson says she thinks these mechanisms could be extended across the country, and that they would be of clear benefit to workers in a wide range of industries. She also envisions the "community chapter" model "being really effective for other people who don't have any protection, maybe even Uber drivers," since it combines the organizational strength of a big union like UNIFOR with the familiarity of chapter officials with specific conditions in their own industry. Dyson reports the model is spread-

ing beyond the media-related workforce; for example, there is a UNIFOR community chapter representing ministers and other faith workers employed by the United Church.

Lewchuk stresses that improved standards for precariously employed workers inevitably hinge on governments creating the conditions for those initiatives to succeed. He cites as an example the provision of health insurance for previously uninsured restaurant workers in San Francisco. There, the city passed a law requiring that businesses pay health premiums for their workers. While restaurants have the option of funding the program through a surcharge on customer bills, or absorbing the costs as part of their general overhead, what makes the program work is that employers are legally obligated to fund their workers' health care.

It also seems essential, in this era of casual and contract work, to update and strengthen government-run social programs introduced in an era when full-time employment, often with only one company, was the norm for a large number of people. A supplementary, government-administered pension plan to augment the CPP, under active consideration in Ontario and endorsed in principle by other provinces, seems a logical response to the widespread disappearance of workplace pension plans.

"That's definitely the right thing to do," says Lewchuk. "But bringing self-employed people into the scheme is still a challenge. Ontario is struggling with how a self-employed person would deduct their pension contributions from their income. Does the Uber driver charge customers a surcharge for pension contributions?"

Dyson is convinced the acutely felt need for "gig economy" workers, freelancers and contract employees to gain greater security indicates that multiple efforts—new organizing drives for new forms of labour organizations, better legislation, new obligations for employers—are required simultaneously.

"Everybody has that sense of insecurity now," she says. "I don't know anybody who doesn't feel that they can be easily replaced. I don't know anybody who feels 'I'm untouchable.'" **M**