

# Gig Workers

**JobWatch**  
Employment Rights Legal Centre

## What is gig work?

Gig work is work that is typically accessed through or organised by digital platforms. These digital platforms are websites or apps that match people that need work done with people who want to do that work. Typical examples include transportation, food delivery, personal, trade, professional or labour services, pet-sitting or babysitting apps.

While gig workers can be engaged as employees, it is more common for digital platforms to arrange this work in a way that classifies them as independent contractors. This allows the digital platform to avoid being liable for employee benefits such as minimum wages, tax, WorkCover insurance, and more.

As a result, many gig workers do not have access to certain protections under employment law and have reduced opportunities to resolve any legal issues they may encounter while doing the gig work.

## Independent Contracting

Most gig workers are independent contractors and are not employees. Generally, independent contractors are running their own business, and the emphasis is on getting a particular job finished, rather than working a particular number of hours.

There are some important things to keep in mind if you are working as an independent contractor. Many laws which protect employees' rights do not apply, or apply differently, to people classified as independent contractors. Some examples are provided below.

See JobWatch's 'Independent Contracting Traps' Fact Sheet for more information.

## Workers' compensation/WorkCover

Employees are entitled to workers' injury compensation (WorkCover) in the case of accident or injury at the workplace. If you are an independent contractor, you may not be entitled to compensation unless you have arranged your own accident protection insurance or the gig platform has insurance for all their independent contractors.

## Occupational health and safety

Occupational health and safety (OHS) laws apply to independent contractors as well as employees. This means that your principal (in this case, the gig economy platform) must provide you with a safe and healthy workplace. You are also required to comply with the duties set out in your state's OHS laws.

## About this Fact Sheet

This Fact Sheet discusses common issues experienced by independent contractors working in the gig economy. It is designed to help you identify your rights and to take the most appropriate action.

Many gig workers do full-time gig work, but there are some who do gig work as a 'side hustle' on top of a regular job so they can earn some extra money.

## Disclaimer

This Fact Sheet contains information of a general nature only and is not a substitute for professional legal advice. You should obtain legal advice from a lawyer about your particular situation before acting on any of the following information. This Fact Sheet is designed for gig workers in Victoria only. If you are not from Victoria, you should obtain advice about your specific case as soon as possible.

## Independent Contracting (cont.) Superannuation and Taxation

Some independent contractors are entitled to receive superannuation from their principal (gig economy platform). If you are not entitled, you will have to arrange your own super contributions.

If you are an independent contractor, you may have to pay tax at a different rate to employees. You also may have to arrange to pay your own tax. Contact the Australian Tax Office for further information.

**Australian Tax Office**  
Phone: 13 28 65  
Website: [ato.gov.au](http://ato.gov.au)

## Unfair dismissal

Unlike employees, independent contractors are not eligible to make an unfair dismissal claim. Nevertheless, independent contractors may have some rights under the General Protections in the *Fair Work Act 2009*, under state and federal anti-discrimination law and/or under the *Independent Contractors Act 2006*.

## Wages and conditions

Unlike employees, independent contractors are not entitled to a minimum rate of pay or conditions such as annual, parental, sick and personal leave, long service leave, redundancy entitlements or rest breaks. Your pay and conditions are solely a matter for negotiation between you and your principal (gig economy platform).

Further, independent contractors are not guaranteed regular payment of wages in the way that employees are. You may have to wait until the job is completed for payment.

The Fair Work Ombudsman cannot help independent contractors to recover unpaid monies for work performed. If the person refuses to pay you, to recover payment you will need to begin legal proceedings in either an eligible court or the Victorian Civil and Administrative Tribunal (in Victoria).

**Victorian Civil and Administrative Tribunal (VCAT)**  
Phone: 1300 018 228  
Website: [vcat.vic.gov.au](http://vcat.vic.gov.au)

**Magistrate's Court of Victoria**  
Website: [mcv.vic.gov.au](http://mcv.vic.gov.au)

## Underpayments

If you are being underpaid, or not paid at all, for your gig work, you can take steps to recover the money that is owed to you. These steps are summarised below.

### 1. Letter of Demand

As a first step, you should consider writing to the gig economy platform demanding payment of your unpaid work by a certain time, e.g. within 7 days from the date of your letter. You should inform the platform if it does not pay, you will begin formal legal proceedings without further notice. You should also keep a copy of your letter of demand for future reference.

See JobWatch's 'Sample Letter of Demand for independent contractors'.

### 2. Mediation through the Victorian Small Business Commission

The Victorian Small Business Commission can assist with mediation - a process where the parties in a dispute meet voluntarily to discuss their dispute with the help of an independent and accredited mediator. Independent contractors are able to access this service as they are deemed to be running their own small business. During mediation, parties are encouraged to identify and explore options to resolve their dispute. The mediator cannot make a decision about the outcome, rather they support the parties in resolving their dispute.

**Victorian Small Business Commission**  
Phone: 1800 878 964  
Website: [vsbc.vic.gov.au](http://vsbc.vic.gov.au)

## Underpayments(cont.)

### 3. Legal claim through an eligible court or tribunal

Independent contractors can bring a civil claim in the Victorian Civil and Administrative Tribunal or the state's Magistrate's Court to get access to money that they are owed for services that they have provided. There is a fee associated with filing a claim, and depending on the claim, the process could take up to a year to resolve.

## Workplace Safety

All workers, including independent contractors, have the right to work in a safe and healthy workplace free from bullying, discrimination, sexual harassment and unsafe work practices.

### Bullying

For behaviour to be considered bullying, it must be unreasonable, happen repeatedly, and create a risk to your health and safety. For many gig workers, due to the temporary nature of the work, it may be difficult to make a workplace bullying claim as it may not meet the 'happen repeatedly' requirement.

*E.g. Danny is a rideshare driver. On a recent trip, he was verbally abused by a passenger. Danny wouldn't be eligible to make a bullying claim as it only happened on one trip and did not happen repeatedly.*

However, if the bullying is happening repeatedly (e.g. from staff of the gig economy platform), is unreasonable, and is a risk to health and safety, then gig workers may be eligible to make a number of legal claims including:

- Application to the Fair Work Commission for an order to stop bullying
- Police complaint for serious workplace bullying behaviour
- WorkSafe complaint

### Discrimination (including sexual harassment)

As independent contractors, gig workers are eligible to make a discrimination claim in both state and federal jurisdictions if they experience discrimination on the basis of protected attributes such as:

- Race
- Colour
- Sex (including sexual harassment)
- Sexual orientation
- Age
- Disability
- Marital status
- Family or carer's responsibilities
- Pregnancy
- Religion
- Political opinion
- National extraction or social origin

If you have been dismissed from your job or other discriminatory conduct has occurred because of one of these attributes, you may be able to make a state or federal discrimination complaint.

- **State – 12 months** to lodge a complaint with the Victorian Civil and Administrative Tribunal (optional initial voluntary conciliation with the Victorian Equal Opportunity and Human Rights Commission)
- **Federal – 24 months** to lodge a complaint with the Australian Human Rights Commission

See JobWatch's 'Workplace Bullying' and discrimination Fact Sheets for more information.

#### Fair Work Commission

Phone: 1300 799 675

Website: [fwc.gov.au](http://fwc.gov.au)

#### WorkSafe Victoria

Phone: 1800 136 089

Website: [worksafe.vic.gov.au](http://worksafe.vic.gov.au)

#### Victorian Equal Opportunity and Human Rights Commission

Phone: 1300 292 153

Website: [veohrc.vic.gov.au](http://veohrc.vic.gov.au)

#### Australian Human Rights Commission

Phone: 1300 656 419

Website: [humanrights.gov.au](http://humanrights.gov.au)

## Workplace injury

Not all independent contractors in the gig economy have access to government-based workers' compensation schemes such as WorkCover. This will depend on the work you do and your contract with the gig economy platform.

Some independent contractors are deemed "workers" under the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) (WIRCA) (see Schedule 1), and are covered by the principal's WorkCover insurance against workplace injury; for example, where at least 80 per cent of the services under the contract are to be provided by the same individual contractor. It is important to check with WorkCover to find out if you are covered. If you are not deemed to be a worker for the purpose of the WIRC, you must have your own workplace injury insurance.

If you are injured at work, you should:

- Call WorkSafe Victoria (or your state or territory's equivalent) to check your eligibility to make a WorkCover claim.
- Check your gig economy platform's policies to see if they have an injury or accident policy, and any claims you may be able to make under this policy.
- Check your own personal medical or other insurance policy to see what may be covered.
- Check your eligibility to access Medicare-funded health services.

## Platform Disputes

Most issues reported by gig workers to JobWatch include disputes with the gig economy platform – for example, the worker's account has been blocked or access has been deleted.

In these cases, you can:

- Use the platform's own process (if any) for raising concerns and disputes.
- Contact the Victorian Gig Worker Support Service for assistance.
- Contact the Victorian Small Business Commission for mediation.

## Further information

Depending on your situation, you should also see our other Fact Sheets:

- Independent Contracting Traps
- Workplace Bullying
- Discrimination
- General Protections Dispute - Termination claims
- General Protections Dispute - Non-Termination claims

These Fact Sheets are available at [www.jobwatch.org.au](http://www.jobwatch.org.au).

### Victorian Gig Worker Support Service

**Phone:** 1800 000 478

**Website:**

[vic.gov.au/gig-worker-support-service](http://vic.gov.au/gig-worker-support-service)

## Where to get help

### JobWatch's free and confidential Telephone Information Service

**P:** (03) 9662 1933 (Melb Metro), 1800 331 617 (Regional Vic, Qld, Tas)

**W:** [jobwatch.org.au](http://jobwatch.org.au)

Victorian Gig Worker Support Service	1800 000 478
Victorian Small Business Commission	1800 878 964
Fair Work Commission	1300 799 675
Victorian Equal Opportunity and Human Rights Commission (VEOHRC)	1300 292 153
Victorian Civil and Administrative Tribunal (VCAT)	1300 018 228
Australian Human Rights Commission (AHRC)	1300 656 419
ACTU Worker Information line (for referral to a union)	1300 362 223
Law Institute of Victoria's Legal Referral Service	03 9607 9311

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JobWatch acknowledges the Aboriginal and Torres Strait Islander peoples of this nation. We acknowledge the traditional custodians of the lands on which we are located and where we conduct our business. We pay our respects to ancestors, and Elders, past, present and emerging.