

The Gig Economy

Training for public interest organizations

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Agenda

1. Pros and cons of the gig economy

2. Employees vs. contractors

3. Unpaid internships

Your guide for this journey



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1. Pros and cons of the gig economy

Definition

- The gig economy is a term used to refer to work which is in the nature of short-term contracts or freelance work, as opposed to permanent jobs. It can also include unpaid internships.

Pros

- Flexibility for both workers and companies
- Company costs reductions
- Permits workers to do more than one job at a time

Cons

- Undermines traditional career development
- Reduced pay and benefits for workers
- Legal risk for companies
- Increased safety risks and/or reduced insurance coverage

2. Employees vs. Contractors

- Test for employment status in Canada (*671122 Ontario Inc. v. Sagaz Industries, S.C.C.*)

“The central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account. In making this determination, the level of control the employer has over the worker’s activities will always be a factor. However, other factors to consider include whether the worker provides his or her own equipment, whether the worker hires his or her own helpers, the degree of financial risk taken by the worker, the degree of responsibility for investment and management held by the worker, and the worker’s opportunity for profit in the performance of his or her tasks. It bears repeating that the above factors constitute a non-exhaustive list, and there is no set formula as to their application. The relative weight of each will depend on the particular facts and circumstances of the case.”

2. Employees vs. Contractors, con't.

- Courts will often look to the written agreement between the parties as a starting point, because it may give some guidance as to the intentions of the parties in framing their relationship. However a written agreement is not determinative.
- In most countries, the distinction between employees and contractors is made by looking at a number of factors, which may include the following:
 - Does the worker receive insured benefits?
 - Does the worker provide services through a personal services company?
 - Does the worker receive paid vacation?
 - Does the worker receive paid public holidays?
 - Does the worker have control over when they work?
 - Does the worker have control over where they work?
 - Does the worker have control over how they work?

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Catherine's Golden Rule – “If it walks like a duck and quacks like a duck, it's probably a duck”

2. Employees vs. Contractors, con't.

- Risks of class action litigation around the world:
 - e.g. Uber; Skip the Dishes; Foodora; FedEx
 - Uber- May 2021 recognized the GMB (trade union) – holiday pay and pension
 - Uber – Canada class action certified by the courts
 - In 2021 Uber Canada urged provincial governments to set up a “Flexible Work+” model requiring gig economy companies to offer benefits based on hours worked that would allow workers to choose the benefits they wanted to fund, as well as to offer safety training requirements. It was met with scorn by labour groups.
- Recent willingness of jurisdictions to tighten laws in this area:
 - Canada (Ontario); EU Parliament

3. Unpaid Internships

- Cons:
 - Replaces entry-level paid positions
 - Drives down wages
 - Additional barrier to diversity in the workplace
 - Lack of rights in the workplace
- Pros:
 - Ability to obtain work experience which might otherwise not be available
- Alternatives:
 - Minimum wage and benefits if a proper salary isn't affordable for the NGO
 - A stipend, plus reduced hours so the intern can work elsewhere in order to be able to take the internship
 - Clear path to paid employment at the end of the internship

Thank you

Get in touch!

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