Centre for Labour, Employment and Work

COVID-19 and workers in the ‘gig’ economy

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Economies projected to experience the most severe labour market effects of the crisis created by the COVID-19 pandemic are those in which unemployment has fallen to historic lows in recent years, such as in Britain and the US. A key factor said to have made it possible for those economies to sustain those low levels of unemployment over the last decade is the rapidly developing ‘gig economy’, characterised by one-off or short-term contracts for services, as opposed to full-time, permanent jobs.

While by no means an historic low, New Zealand's unemployment rate fell to 4 percent in the last quarter of 2019, marginally above the 3.9 percent posted in the second quarter last year, the lowest unemployment rate since it stood at 3.8 percent the second quarter of 2008. Mirroring the experience of other OECD economies, New Zealand’s labour market has relied heavily on the boom in jobs in the gig economy over the past decade, and this has undoubtedly contributed to its recent success in keeping unemployment in check.

Despite that the actual size of the gig economy is difficult to gauge, it is clear from the available data that, since the Global Financial Crisis (GFC), there has been an upsurge in the number of temporary and project-based jobs and such jobs make up an increasing share of the labour market. Often referred to as ‘dependent contractors’, a category of worker not presently defined under New Zealand law, those who hold those job are contractors in name only. That is, they often depend on a single ‘payer’ and they exercise limited control over their working arrangements for a given job or ‘gig’.

The COVID-19 outbreak and nationwide lockdown should not create an opening for employers to treat the labour market like the Ultimate Fighting Championship (UFC) in the early 1990s, when it used the tagline "There are no rules"! Although there is no New Zealand case law pertaining to lockdowns, there appears to be consensus within the legal community that an employer must continue to act towards its employees in a manner consistent with how ‘a fair and reasonable employer’ might act. This suggests they need to consult and provide those employees with relevant information and an opportunity to offer feedback on any redundancy proposal. Good faith also requires that employees facing redundancy be given a reasonable period of notice, long understood to be a minimum of 4 weeks, or payment in lieu.

But, even in the best of times, because they are likely to be designated as contractors, gig economy workers generally fall outside of the ambit of New Zealand’s employment law. Consequently, workers such as taxi drivers, delivery persons, freelance journalists, performance artists, photographers, landscapers, tech repair professionals and sex workers are often not entitled to most of benefits and protections under the law as are those identified as employees. It follows that these workers also lack statutory protections against dismissal, effectively making them ‘at-will’ employees. Moreover, out of fear of retaliation such as ‘blacklisting’, gig workers are likely to be reluctant to exercise the very limited legal rights they do have.

As part of its response to the recent health crisis, the Government has launched a wage subsidy scheme aimed at softening the blow of the COVID-19 outbreak to both businesses and workers, as they adjust to the initial impact of the four-week national lockdown. The goal of this initiative is to sustain the relationship between businesses and their staff and ensure an income for affected workers, especially those who are unable to work due to the crisis created by spread of the virus or the lockdown.

Yet, notwithstanding those objectives, it is likely to prove difficult, if not impossible, for most gig workers to provide all of the information required to complete the application, as they are for all intents and purposes employees, not contractors. To qualify for a wage subsidy, an enterprise must either be registered with the New Zealand Companies Office or be a sole trader with a personal IRD number, and it must hold any mandatory licences or permits to work in the industry, as well as any qualifications or registrations for the relevant trade or profession. To receive a payment under the scheme , self-employed individuals must be able to show at least a 30% decline in their actual or predicted revenue, that the decline is related to COVID-19, and that they have taken ‘active steps’ to mitigate the impact of it on their business. Therefore, despite that they may be eligible to apply for the wage subsidy, few gig workers will have put in place the business and operating practices necessary to facilitate this process.

Toward the end of last year, Government mooted a proposal to provide greater legislative protections to dependent contractors. The threefold aim of that initiative was to ensure all workers are covered by the basic statutory minimum rights and entitlements to which those labelled ‘employees’ now have access; to reduce the imbalance of bargaining power between firms and vulnerable contractors; and to ensure inclusive economic growth. With it now focused on curtailing the spread of COVID-19 and mitigating its impacts on the economy, however, any legislation which might come from this proposal and the discussion it generated prior to the crisis has been put on Parliament’s back burner.

The crisis created by the coronavirus pandemic has drawn back the curtain to reveal the true face of the Great and Powerful Oz, a labour market comprised of a growing number of workers denied access to the basic employment law rights and protections afforded to most. It underscores the precariousness and conspicuous risks faced by gig economy workers and other dependent contractors, who are nonetheless as vulnerable to economic shocks as legally defined employees. As new restrictions affecting people’s ability to work are put in place in response to the rise in cases of COVID-19, action is urgently needed to ensure that those who comprise this growing segment of the labour market are not left out in the cold, with no support on the horizon from either those for whom they ply their services or Government.