The gig economy is offering Australians jobs, but it comes at a cost. These are often temporary positions, where workers are independent and have to take on more risks.

In our series Working Well in the Gig Economy we ask experts how workers can cope in this new environment.

Most workers want to be paid a fair rate for their work, they want to receive their pay promptly, and they don't want to lose the opportunity to work in their chosen job for an unfair reason. This is particularly important when workers have invested their own capital in a vehicle or equipment for doing the job.

Gig economy workers – who don't have the same rights to award wages and unfair dismissal protection that regular employees enjoy – face some challenges in securing these needs.

When a worker agrees to provide services on a platform (such as Uber or Airtasker) they will be asked to agree to a contract. The contract they sign (and this may effectively be by clicking 'Agree' on a screen) will determine their rights, subject only to the unfair contract terms provisions in the Australian Consumer Law.

The law provides that unfair terms in standard form small business contracts are void, and cannot be enforced. It lists many ways in which a contract will be unfair. Examples of this are terms that allow one party to vary the price or payment terms, or terminate the contract prematurely.

So it's important these workers take the time to read the contract, and to look out for terms about pay rates, payment terms, and job security. They need to look out for clauses that allow the platform controller to increase their own commissions or reduce the price of services; and beware of clauses that allow them to cut off their access to the platform without notice or reasons.

I was able to obtain a copy of the standard form contract between the organisation behind Uber (Rasier Pacific VOF) and its Australian drivers in May 2016. The terms of this agreement appear to be similar, if not the same, as those of the UK Uber contract. This type of contract was examined in a well-known case between Uber and drivers, decided on October 12 2016.

The English Tribunal held that a statement in the contract declaring that Uber is not a provider of or agent for transportation was not true, and that Uber did in fact engage its drivers as "workers", according to the definitions in the UK law. This meant drivers could claim rights to be paid the minimum wage.

However this doesn't necessarily mean that Australian Uber drivers would be found to be "employees" under the equivalent law - the 2009 Australian Fair Work Act . This is because Australian entitlements to national employment standards and modern award conditions apply only to "employees", defined as having its ordinary meaning under the common law. An extensive body of case law deals with the distinction between an "employee" working under a "contract of service", and an independent (self-employed) contractor, working under a "contract for services".

The British decision, disregarding the contract terms, may prove useful in showing that Australian Uber drivers are working under a services contract for the purposes of both the Australian Consumer Law, and also the Independent Contractors Act 2006 (which permits review of unfair or harsh contract terms). A services contract is a contract for the performance of work (rather than for the sale of goods or the provision of finance, for example). Uber's contract attempts to describe itself as a contract for the provision of a telecommunications tool, but the British decision decided that it was a contract for the performance of work.

Some of the terms in the Australian Uber contract are dubious. For example clause 4.4 in the contract allows Uber to change its own percentage commission from fares at any time, without notice.

Another clause, 14.1, allows Uber to change any term of the contract, at any time, without notice. And it can deactivate a driver's access to the app without notice, if customer ratings fall below an acceptable level. These are likely to be relevantly unfair terms according to Australian Consumer Law.

Of course, Uber and other platform controllers may never seek to rely on these kinds of terms in practice, especially if they want to keep the goodwill of their drivers or workers. But if a working relationship sours for any reason, it's the worker who is in the weaker position, should the platform controller decide to rely on its contract terms.

The best advice for workers would be to negotiate for fairer terms, but this is likely to be futile. These contracts, like many consumer contracts, are in standard form, and platform controllers have no interest in negotiating individual arrangements.

That's why collective bargaining through an association of workers is so useful. Hirers may ignore a single worker, but they have an incentive to listen when all of the workers speak in a common voice. The right to bargain collectively is another advantage enjoyed by employees covered by the Fair Work Act, over workers in service contracts.

Individual workers' access to legal remedies to challenge the fairness of service contracts can be expensive and inconvenient. It's far better to read contract terms carefully before you sign, and make a realistic assessment of what you can expect to make from the work before investing in a new vehicle or equipment to do the work.

Joellen Riley does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond the academic appointment above.

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