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April 30, 2021

Via email: ESDC.NC.LABOUR.CONSULTATIONS-TRAVAIL.NC.EDSC@labour-travail.gc.ca

The Honourable Filomena Tassi, P.C. M.P.
Minister of Labour
140 Promenade du Portage
Gatineau, Quebec K1A 0J9

Dear Minister Tassi:

Re: Consultation on the Right to Disconnect and Gig Work

I write on behalf of the Canadian Bar Association's Labour and Employment Law Section (CBA Section) in response to Employment and Social Development Canada's consultation on the new realities of working Canadians.¹ We recommend amending the *Canada Labour Code* to offer greater clarity and certainty on the status of gig workers. We also suggest deferring the consultation on the right to disconnect until after the pandemic.

The CBA is a national association of 36,000 lawyers, law students, notaries and law teachers. Among our primary objectives are improvements in the law and the administration of justice, and promoting the rule of law. The CBA Section includes lawyers who act both for unions and for employers. The CBA Section addresses issues related to law and practice affecting labour-management relations and employment standards.

Need for Clarity and Certainty on the Meaning of Gig Worker

There is no clear definition of gig worker, digital platform worker or the gig economy. Gig workers are not wage employees. They do not have the certainty of a long-term employment contact. They usually do not have a predictable work schedule or a predictable income.

Professor David Doorey argues that "the central legal conundrum for labour law when it encounters platform or 'gig' work is one of legal classification."² As Professor Doorey notes, distinguishing between employee, dependent contractor and independent contractor can be difficult in the context

¹ ESDC Consultation, [Share your thoughts on the new realities of working Canadians: The right to disconnect and gig work](#)

² The Canadian Law of Work Forum, September 2020, [The Classification of "Gig" Workers in Canadian Work Law](#).

of platform or gig work. Classification of workers in the gig economy/platform work is important as “it serves as the gatekeeper for access to many key legal entitlements, including protections under labour laws and various other social benefits.”³

Classifying gig workers as dependent rather than independent contractors may mean that they have the right to unionize and employment standards protections.

The Canada Labour Code definition of employee explicitly includes dependent contractors but is narrower than some provincial statutes such as the British Columbia Employment Standards Act. The *Canada Labour Code* should offer greater clarity and certainty on gig workers’ status. Workers need to be aware of the available protections and rights at the time of entering work and employers need to know their obligations and options at the time of establishing and offering work.

Right to Disconnect

While the CBA Section appreciates the Government of Canada’s desire to protect the well-being of all workers, we believe the consultation on the right to disconnect should be delayed.

The workplace has changed over the past 13 months due to the COVID-19 pandemic. Work from home arrangements (whether voluntary or by public health order) have become common. Many workers are balancing remote schooling and childcare while also working from home. Employers are balancing safety and operational needs while determining if (or when) to return employees to the workplace. These are unprecedented times.

Consulting on this issue now will likely lead to skewed data as the comments and feedback will relate to the current pandemic work situation rather than the usual work experience. Implementing changes that reflect a pandemic consultation period could lead to unintended consequences.

Even after the pandemic ends, it will take time for workplaces to find their “new normal.” We believe the consultation process should be postponed until that new normal has emerged.

Yours truly,

(original letter signed by Nadia Sayed for Ronni A. Nordal)

Ronni A. Nordal, Q.C.
Chair, Labour and Employment Law Section

³ The Canadian Law of Work Forum, September 2020, [The Classification of “Gig” Workers in Canadian Work Law](#).