



Fairwork **South Africa** Ratings 2021: Labour Standards in the Gig Economy



Executive Summary

The third Fairwork report for South Africa continues to chart the evolution of the national gig economy. In South Africa, digital labour platforms hold the potential to reduce the extremely high unemployment and inequality. However, the annual South African Fairwork ratings provide evidence that platform workers, as in so many countries worldwide, continue to face unfair work conditions and lack the benefits and protections afforded to employees.

The sustained impact of the COVID-19 pandemic presents additional challenges to South Africa's economy. The impact of the pandemic has been felt disproportionately by those who work outside of formal employment. This includes the rising number of workers who rely on digital labour platforms for income. Moreover, certain sectors of the gig economy have been disproportionately impacted by the sustained lockdowns. While the food delivery sector has increased; the lockdowns, curfews and alcohol bans have had a significant impact on the e-hailing sector. Similarly, in-person service delivery platforms, such as domestic work and handyman services, have been challenged by travel restrictions, social distancing and other COVID-related safety measures.

Nonetheless, regardless of the sector in which platform workers operate, most gig workers are more vulnerable to exposure to COVID-19 due to their inability to work from home. Furthermore, the lack of sick pay for many workers means that if they need to self-isolate, they face severe financial insecurity. Without UIF or sick pay, gig workers also have no safety net if they fall ill. This report captures not only the precarity of being a gig worker during lockdown. It also highlights some of the important steps that some platforms have been taking to safeguard their workers during the pandemic.

The report assessed twelve of the country's largest digital labour

platforms against five principles of fairness - fair pay, fair conditions, fair contracts, fair management, and fair representation - giving each a fairness rating out of ten.

Key Findings

- ▲ GetTOD leads the 2021 table with nine points, while M4Jam, SweepSouth, and NoSweat are tied in second place with eight out of ten points. Interestingly, the top six platforms in the 2021 ranking were all South African owned and led.
- ▲ **Fair Pay:** Six of the platforms can evidence that workers' gross pay is at or above the minimum wage, which in 2021 was R21.69/hour. When assessing minimum wage the scores took into account not only the amount paid by the platform to the worker for hours worked, but also the cost of providing task-specific equipment and pay work-related costs out of pocket. The scores also factored in waiting times between jobs. When extending this net calculation to consider living wage (currently assessed as R41/hour for 2021), only three of the platforms could evidence the principle of fair pay. The report also highlights how workers often have to work very long hours to cover expenses.
- ▲ **Fair Conditions:** Eight of the platforms are able to evidence

some action that they take to protect workers from risks that arise on their jobs. In particular, the majority of platforms were able to evidence some form of COVID-19 response, including providing personal protective equipment (PPE) to the workers free of charge. In contrast to previous years, there was also solid evidence that six platforms had made efforts to more actively improve working conditions. These included providing loss-of-earnings compensation for workers during the 2020 lockdowns, providing educational opportunities and affordable insurance for workers.

- ▲ **Fair Contracts:** Platforms in South Africa tend to do well when it comes to evidencing a basic level of fairness in their contracts: most platforms have clear and accessible terms and conditions, and eight platforms were awarded the point for fair contracts. However, only four platforms were able to evidence that the employment status of their workers is clearly defined and that they do not unreasonably exclude liability on the part of the platform.
- ▲ **Fair Management:** Eight of the platforms had codified their deactivation policies, providing workers greater recourse. In addition, a number of platforms have issued public statements in

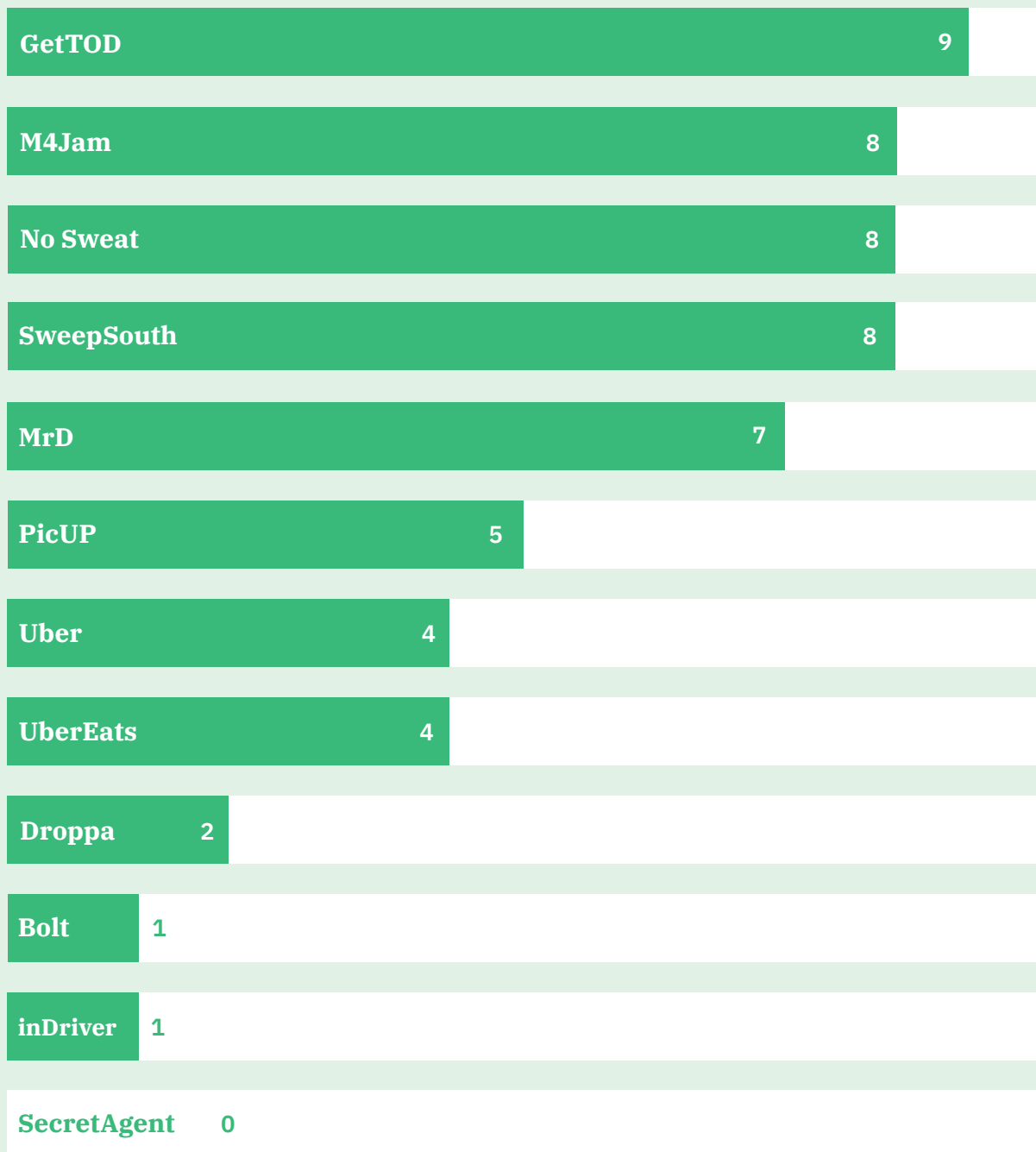
support of equality, diversity and inclusion.

- ▲ **Fair representation:** Being able to freely organise under recognised collective bodies is a key workplace right in

most countries. In the South African gig economy, there is still much that could be done to improve conditions in this regard, both in terms of organization and recognition. Seven of the platforms could

point to meaningful worker voice mechanisms. However, only two platforms have published public statements committing to recognise a collective body, should one be organised by their workers.

Fairwork South Africa 2021 Scores*



* Scores are out of 10.

Editorial:

Decent Work Standards in the Gig Economy

The emergence of digital labour platforms has ushered a significant transformation in the world of work globally. Not only have these nascent digital labour platforms disrupted conventional business logic associated with traditional market and labour relations structures, but they are also potentially reshaping the time and space that organises labour fundamentally. While this transformational potential has generally been viewed favourably, particularly in the global South where unemployment, market failures and institutional voids persist, cautions have been raised regarding the precarity and decency of the work opportunities produced in the digital platform economy.

This third Fairwork report for South Africa highlights the positive developments regarding decent and fair work standards in the gig economy, as well as the challenges experienced by gig workers. It evaluates working conditions on digital platforms and scores them according to five principles of fair work: Fair Pay, Fair Conditions, Fair Contracts, Fair Management, and Fair Representation. The scores provide an independent perspective on work conditions for policymakers, platform companies, workers, and consumers. Furthermore, the report provides platform workers a multi-sectoral view of working conditions and

gives new entrants a glimpse of what to expect from platform work. The report also shows how the COVID-19 pandemic compounded precarity for workers in the context of rising global unemployment due to national economic lockdowns.

The Fairwork scores presented in this report suggest that more reforms are still needed to move towards a fairer and more decent digital labour platform economy. Platforms need to strive for improved living wages for workers that factors in task-specific and work-related costs. Platforms also need to improve working conditions particularly in the context of the

ensuing Covid-19 pandemic. Platforms need to also work towards improved transparency and accessibility of their terms and conditions. There is also a need for platforms to strive for management processes that are fair towards gig workers, equitable, inclusive, and supportive of workplace diversity. Furthermore, platforms need to embrace the collective voice of workers more fully through the recognition of worker-initiated collective action formations.

We are confident that this report will shine the spotlight on the ever-widening gaps in worker protections as well as the urgent need for fairer work

standards in the South African platform economy. It is also our hope that this report will emphasise the urgency to transform digital labour platforms into workplaces that provide fair, decent and secure and sustainable work.



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Contents

- 04** Editorial: Towards Fair Work
- 06** The Fairwork Framework
- 08** Overview of the South African Gig Economy
- 11** The Legal Context: What Makes a Worker an Employee?
- 12** Fairwork Scores
- 14** Platform in Focus: GetTOD
- 16** Workers' Stories
- 17** Theme in Focus: Minimum and Living Wages for Platform Workers
- 19** Impact and Next Steps
- 22** Appendix: Fairwork Scoring System
- 26** Credits and Funding
- 28** Endnotes

The Fairwork Framework

Fairwork evaluates the working conditions of digital platforms and ranks them on how well they do. Ultimately, our goal is to show that better, and fairer, jobs are possible in the platform economy.

To do this, we use five principles that digital platforms should comply with in order to be considered to be offering 'fair work'. We evaluate platforms against these principles to show not only what the platform economy is, but also what it can be.

The five Fairwork principles were developed at a number of multi-stakeholder workshops at the International Labour Organisation. To ensure that these global principles were applicable in the South African context, we then revised and fine tuned them in consultation with platform workers, platforms, trade unions, regulators, academics, and labour lawyers in Cape Town and Johannesburg.

Further details on the thresholds for each principle, and the criteria used to assess the collected evidence to score platforms can be found in the Appendix.

01 The five principles



Fair Pay

Workers, irrespective of their employment classification, should earn a decent income in their home jurisdiction after taking account of work-related costs. We assess earnings according to the mandated minimum wage in the home jurisdiction, as well as the current living wage.



Fair Conditions

Platforms should have policies in place to protect workers from foundational risks arising from the processes of work, and should take proactive measures to protect and promote the health and safety of workers.



Fair Contracts

Terms and conditions should be accessible, readable and comprehensible. The party contracting with the worker must be subject to local law and must be identified in the contract. If workers are genuinely self-employed, terms of service are free of clauses which unreasonably exclude liability on the part of the platform.



Fair Management

There should be a documented process through which workers can be heard, can appeal decisions affecting them, and be informed of the reasons behind those decisions. There must be a clear channel of communication to workers involving the ability to appeal management decisions or deactivation. The use of algorithms is transparent and results in equitable outcomes for workers. There should be an identifiable and documented policy that ensures equity in the way workers are managed on a platform (for example, in the hiring, disciplining, or firing of workers).



Fair Representation

Platforms should provide a documented process through which worker voice can be expressed. Irrespective of their employment classification, workers should have the right to organise in collective bodies, and platforms should be prepared to cooperate and negotiate with them.

02 Methodology overview

The project uses three approaches to effectively measure fairness at work.

Desk Research

The process starts with desk research to ascertain which platforms are currently operating in the country, as well as noting the largest and most influential ones. More than one platform from each sector was included to allow for comparisons. Desk research also flags up any public information that could be used to score particular platforms (for instance the provision of particular services to workers, or ongoing disputes). The desk research is also used to identify points of contact or ways to access workers.

Platform Interviews

The second method involves approaching platforms for evidence. Platform managers are invited to participate in semi-structured interviews as well as to submit evidence for each of the Fairwork principles. This provides insights into the operation and business model of the platform, while also opening up a dialogue through which the platform could agree to implement changes based on the principles. In cases where platform managers do not agree to interviews, we limit our scoring strategy to evidence obtained through desk research and worker interviews.

Worker Interviews

The third method is interviewing platform workers directly. A sample of 5-10 workers are interviewed for each platform. These interviews do not aim to build a representative sample. They instead seek to understand the processes of work and the ways it is carried out and managed. These interviews enable the Fairwork researchers to see copies of the contracts issued to workers, and learn about platform policies that pertain to workers. The interviews also allow the team to confirm or refute that policies or practices are really in place on the platform.

Putting it all together

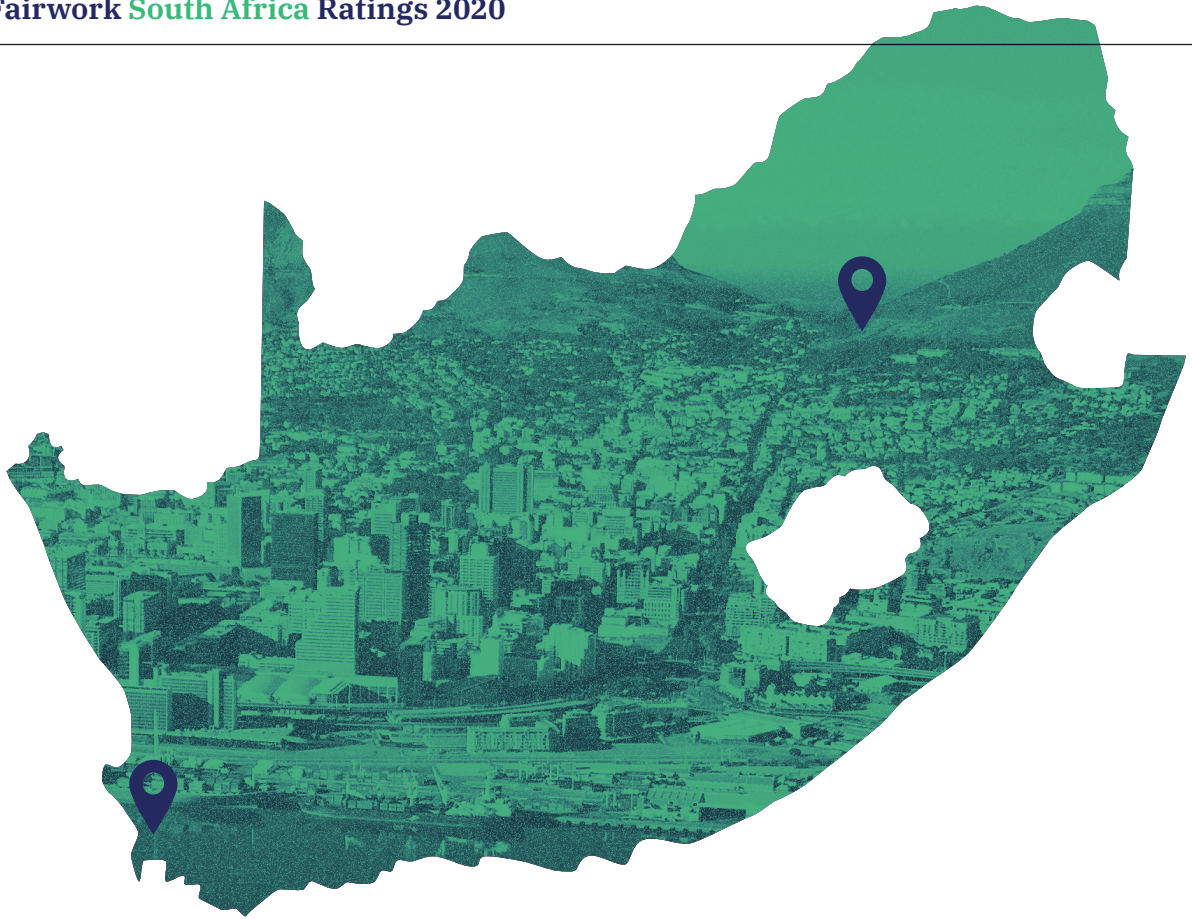
This threefold approach provides a way to cross-check the claims made by platforms, while also providing the opportunity to collect both positive and negative evidence from multiple sources. Final scores are collectively decided by the Fairwork team based on all three forms of information gathering. The scores are peer-reviewed by the country team, the Oxford team, and two reviewers from other Fairwork country teams. This provides consistency and rigour to the scoring process. Points are only awarded if clear evidence exists for each threshold.

03 How we score

Each of the five Fairwork principles is broken down into two points: a basic point and a more advanced point that can only be awarded if the basic point has been fulfilled. Every platform receives a score out of 10. Platforms are only given a point when they can satisfactorily demonstrate their implementation of the principles.

Failing to achieve a point does not necessarily mean that a platform does not comply with the principle in question. It simply means that we are not – for whatever reason – able to evidence its compliance.

Further details on the Fairwork Scoring System are in the Appendix.



Overview of the South African Gig Economy

The South African economy is characterised by a relatively highly developed internet infrastructure, regulatory conditions supporting innovation, high levels of unemployment, a substantial informal sector, and extreme inequality. All of these factors make the country ripe for the emergence of the gig economy, which is commonly understood as a labour market comprising freelance and short-term jobs – or ‘gigs’ – wherein organisations contract with independent workers on a non-permanent basis, rather than recruiting full-time employees.¹

Growing numbers of South African workers find work through multinational gig economy platforms like Uber, Uber Eats, Bolt and Upwork. However, in part because of its novelty and the struggle of formal statistics to keep up, there are no reliable figures

on the scale of the South African gig economy. We have previously estimated that there are around 30,000 workers in location-based platform work like taxi driving, delivery, and cleaning,² and up to 100,000 actively undertaking online work, or

‘cloudwork’.³ While many of the latter will not be full-time, this still suggests gig work touches at least 1% of the workforce; and this number grows by well above 10% yearly.

Nonetheless, it must be recognized



that 2020 and 2021 have been years of considerable economic upheaval in South Africa, as the COVID-19 pandemic and responsive lockdowns have significantly impacted many sectors of the economy. At present, it is difficult to have a good overview of how gigwork numbers may have changed due to the influence of the COVID-19 pandemic, but it is highly likely that they are significantly higher than previous years.

Job Creation in the Gig Economy

The latest Quarterly Labour Force Survey (QFLS) published by SA Stats for the first quarter of 2021 showed a marginal increase in the number of unemployed people in the country, to an all-time high of 32.6%.⁴ The report observed that a large number of people moved from the “employed” status to “not economically active” and “unemployed” categories between the last quarter of 2020 and the first of 2021. This movement was predominantly into the “not economically active” category. These numbers demonstrate the significant impact of the COVID-19 pandemic, and the subsequent lockdowns of

2020 and 2021, on the South African economy, with many capable workers still inactive.

While the recent increase has seen unemployment rates across demographic groups either persisted or grown in recent years, unemployment rates in South Africa continue to be skewed by race, gender and age. This creates an enormous economic and socio-political pressure for job creation. Moreover, during the COVID-19 pandemic certain sectors experienced significant declines, including construction, trade, transport and agriculture.⁵

In the context of this unemployment crisis, South Africa’s digital labour platforms have come to play an increasingly important role. Digital platforms are frequently heralded as the solution to this problem, as they allow those who typically face barriers to employment to find work more easily. Nonetheless, joining the gig economy in South Africa can often present hidden economic barriers that continue to challenge inclusion for already marginalized communities. These could include the cost of hiring a car in order to enter the e-hailing sector, or paying for public transport costs to get to jobs far from one’s place

of residence.

Despite these costs the gig economy has played an important part in providing work during a year of considerable financial instability. In particular the food delivery sector has seen considerable growth during the lockdown periods, as have grocery delivery services. As many of our interviewees were previously unemployed or had lost jobs during the course of the pandemic, these opportunities have definitely been important for the South African economy.

Quality of Gig Work

The employment challenge facing South Africa is not simply the quantum of jobs but also the quality of jobs being created. Like all of the world’s economies, South Africa has a spectrum of job qualities available. At one end of the spectrum is the best of formal-sector employment. This is well-institutionalised: covered by relatively well-implemented government regulations, by widespread trade union membership, and potentially by other standards and agreements. As a result, most workers enjoy reasonable levels of

pay and protections. At the other end of the spectrum is the worst of informal-sector employment. This, by definition lies outside any framework of regulation, standards and agreement and trade union membership is very rare. Nonetheless, it is estimated that 18.3% (5 million people) of South African employment lies in the informal sector.⁶ The variability of these jobs and the precarity of working conditions within this sector raises concerns about poor pay and conditions.

The majority of South African gig workers continue to be classified as “independent contractors” rather than “employees”. Thus, where these workers fit into the spectrum between high-quality formal jobs and low-quality informal jobs remains problematic. Across contexts, our research has shown that gig work skews to the latter end of the spectrum: gig workers face low pay (frequently earning below minimum wages), dangerous work conditions, opaque algorithmic management structures, and an inability to organise and bargain collectively.⁷ The Fairwork scores (see Page 12) reveal that there is a lot of variation among digital labour platforms working within South Africa. Some platforms are actively trying to create good-quality work, whereas there is no evidence that others are

operating with the same concern. One danger is a race-to-the-bottom that squeezes good practices out of the market. Fairwork’s mission is to prevent this from happening.

Inequality and the Gig Economy

South Africa is well-known for many positives: its rainbow nation multiculturalism, its sporting prowess, the beauty of its landscapes. But it is also well-known for a negative: that it is the world’s most unequal nation. Its Gini coefficient – a measure of how unequal a society is – is nearly 50% higher than the average for emerging markets and, unlike those other countries, South Africa’s inequality has risen, not fallen, in the past 20 years.⁸ The top 1% in South Africa own 67% of the country’s wealth; the top 10% own 93% meaning, of course, that the remaining 90% own just 7%.⁹ In South Africa, the legacy of apartheid means inequality remains highly spatially and racially delineated.¹⁰ With this pattern fuelling high crime rates and undermining social and political cohesion, reducing inequality is a top priority in the country. This includes ensuring that technological change reduces rather than increasing gaps.

In addition to the challenges of historic inequality, the rising crime rates in South Africa continue to threaten the well-being of gig workers. Concerns about the possibility of theft and assault were present for workers across the platforms. Moreover, for delivery and e-hailing drivers the threat of hijacking was a daily worry. As the gig economy is directly putting workers into these unsafe environments, we must continue to question how we - as users, platform owners and government - can ameliorate the need for workers to assume this disproportionate risk to their personal safety and well-being.

Against this backdrop, it becomes important to consider whether South Africa’s gig economy platforms can help to reduce inequality. Where they provide a job for those previously unemployed and where they pay a fair wage, platforms are making a positive contribution. But where workers find themselves earning less than a decent wage and/or earning less than they previously did, then inequality may be worsening, not improving. We discuss this later in the report in relation to our evidence on minimum and living wages.



The Legal Context:

What Makes a Worker an Employee?

Gig Economy platforms benefit from a legal loophole that exists in South Africa, as in most countries: labour rights are limited to workers classified as ‘employees’. Digital platforms can avoid the costs and duties arising from employees’ rights – minimum pay, maximum hours, paid leave etc. – by classifying their workers as ‘independent contractors’. Workers on the platforms covered by this study were, without exception, classified as independent contractors.

This classification is problematic for multiple reasons. Objectively, on most platforms, workers are under the platforms’ control and deliver their brand just like employees. In several countries, workers have taken court action to claim employee rights, in some cases successfully but in others not, depending on the details of their work and the local definition of ‘employee’. In South Africa, Uber drivers who tried to do so were unable even to have their claims heard. In one case, drivers tried to take a dispute with Uber to arbitration. Despite performing key functions for the South African market, the Netherlands-based company fell beyond the reach of South African law.¹¹ The route of litigation is therefore fraught with uncertainty and undoubtedly costly. While sham employment must be exposed, Fairwork and its co-thinkers believe that a more effective solution lies in promoting appropriate legal protection extending to all platform workers, irrespective of their legal classification.

This also addresses a second problem: employee rights were designed for

‘standard’ employees, such as factory or office workers, working fixed hours in workplaces where their rights can be enforced. But this is possible only to a limited extent, and with great difficulty, in the context of platform work. Thus, even those rights which do extend to independent contractors – such as certain rights of domestic workers – are difficult to apply to a dispersed workforce by means of the existing institutions.

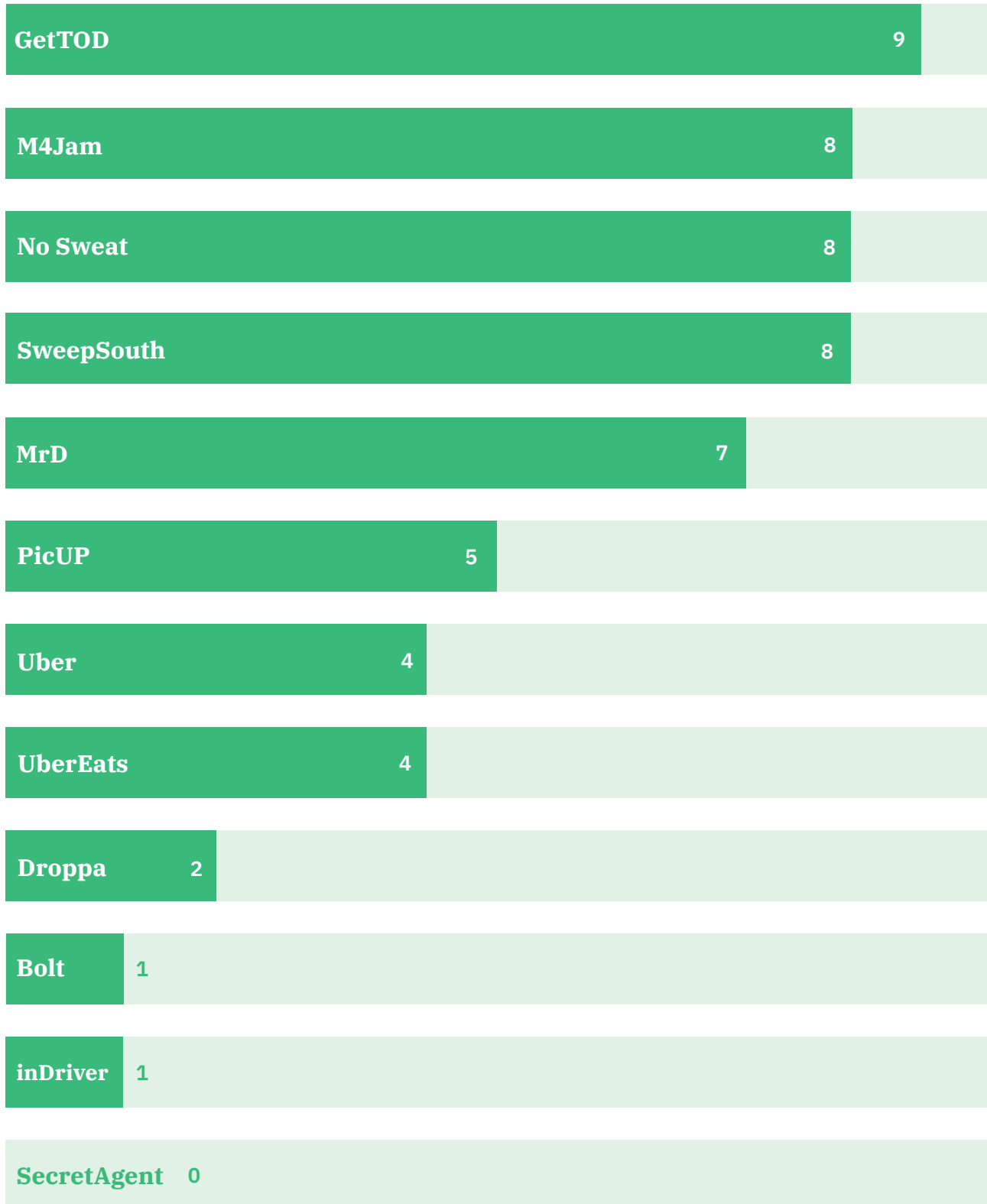
Moral pressure on platforms can encourage them to make improvements but, unfortunately, not all platforms will do so voluntarily. That makes adequate legal rights necessary. However, as with factory workers two centuries ago, the greatest obstacle is lack of political will on the part of policy makers. There is a belief that worker rights discourage job creation and that, in South Africa, job creation is the bigger priority. However, decent work and job creation are not mutually exclusive. We need to develop – by bringing workers and other stakeholders to the table – an enforceable code of basic worker rights

that are compatible with sustainable business models.

To this end, the Fairwork South Africa team developed a Code of Practice for applying and extending existing law to the gig economy context in South Africa. The Code is intended as a resource for platforms, workers, legal practitioners, decision-makers and policy-makers to better protect gig workers who are falling through the cracks of regulation. It draws on the existing legal framework, as well as highlighting areas where legal reform is needed. This Code of Good Practice was presented at the South African Society for Labour Law (SASLAW) conference in Johannesburg on November 6th 2020.¹²

Fairwork Scores

Score (out of 10)



The breakdown of scores for individual platforms can be seen on our website: www.fair.work/ratings

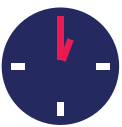


Fair Pay

Six of the platforms can evidence that workers' gross pay is at or above the minimum wage, which in 2021 was R21.69/hour. When assessing minimum wage the scores took into account not only the amount paid by the platform to the worker for hours worked, but also the cost of providing task-specific equipment and pay work-related costs out of pocket. The scores also factored in waiting times between jobs.

Adding in these additional costs - such as unpaid waiting times, travel costs, vehicles, petrol, mobile phone data and insurance - meant that the minimum wage point could not unequivocally be awarded to the other six platforms.

When extending this net calculation to consider living wage (currently assessed as R41/hour for 2021), only three of platforms can evidence this principle of fair pay, and we found workers often working very long hours to cover expenses.



Fair Conditions

Eight of the platforms are able to evidence some action that they take to protect workers from risks that arise on their jobs. In particular, the majority of platforms were able to evidence some form of COVID-19 response, including providing personal protective equipment (PPE) to the workers free of charge.

In contrast to previous years, there was also solid evidence that six platforms had made efforts to more actively improve working conditions. These included providing loss-of-earnings compensation for workers during the 2020 lockdowns, providing educational

opportunities and affordable insurance for workers.



Fair Contracts

Platforms in South Africa tend to do well when it comes to evidencing a basic level of fairness in their contracts: most platforms have clear and accessible terms and conditions, and eight platforms were awarded the point for fair contracts.

An important criteria for awarding points for fair contracts was that the platforms recognized South African law as the legal system for addressing worker-related issues. As a result, some platforms registered in other countries were not able to gain this point.

However, only four platforms were able to evidence that the employment status of their workers is clearly defined and that they do not unreasonably exclude liability on the part of the platform.



Fair Management

Arbitrary termination or deactivation is a big concern for gig workers, who lack the recourse available to formal employees. That's why we assess whether platforms have due process for decisions affecting workers. The Fairwork scoring system stipulates that platforms must include their policies for disciplinary actions and deactivation in their terms and conditions, as well as provide clear processes for workers to appeal decisions.

In 2021 eight of the platforms had codified their deactivation policies, providing workers greater recourse.

We also encourage platforms to ensure there is equity in the management process, and that steps are taken to be inclusive of marginalised or disadvantaged groups. These included a diverse range of activities, including internal reviews, active recruitment of previously marginalized communities and consciously extending income opportunities to the lowest-income communities in South Africa. In addition, a number of platforms have issued public statements in support of equality, diversity and inclusion.























Fair Representation

Being able to freely organise is a key workplace right in most countries. In the South African gig economy, there is still much that could be done to improve conditions in this regard. Seven of the platforms could point to meaningful worker voice mechanisms.

In addition, two platforms have published public statements committing to recognise a collective body should one be organised by their workers.

Platform in Focus:

M4Jam

				Total			
	Principle 1: Fair Pay		Pays at least the local minimum wage after costs		Pays at least a local living wage after costs		2 POINTS
	Principle 2: Fair Conditions		Mitigates task-specific risks		Provides a safety net		2 POINTS
	Principle 3: Fair Contracts		Provides clear and transparent terms and conditions		Does not impose unfair contract terms		1 POINT
	Principle 4: Fair Management		Provides due process for decisions affecting workers		Provides equity in the management process		2 POINTS
	Principle 5: Fair Representation		Assures freedom of association and the expression of collective worker voice		Supports democratic governance		1 POINT

M4Jam's overall score


08¹⁰

M4Jam is a Johannesburg-based platform that distributes “micro-tasks” to users. These tasks include surveys, as well as product, advertising and concept testing. The platform enables brands, start-ups, small/medium enterprises or big business, as well as NGOs and governments to connect with a large community of 81000 “Jobbers” (as their workers are called). These Jobbers typically come from informal markets, including those not in formal employment as well as students.

The M4Jam platform leverages off two key aspects, namely the penetration of smartphones across South Africa, and the parcelling of large jobs into smaller “micro-tasks”. M4JAM takes large tasks or projects from brands and breaks them up into small tasks called micro-jobs. These micro-jobs are then completed by many different Jobbers in many different locations who are rewarded for completing these micro-

tasks. An innovative aspect of the platform is its “zero rating”, meaning that accessing the platform through the mobile phone app does not require the Jobber to have data on their phone.

M4Jam describes its business strategy as “passing economic opportunities from big to small”. Completing a micro-job may involve a variety of activities including uploading a photo, selecting an answer, typing an answer or dropping a location on a map. Completing a micro-job rarely takes more than 10 minutes to complete and can pay anything from R2 - R 120 per job. The calculation of cost per job puts the platform well above both minimum and living wage per hour, earning M4Jam both points for principle 1. M4Jam also offers flexibility in the spending of the micro-task rewards, enabling Jobbers to choose to have money paid into a bank account, buy data or airtime, withdraw money from supermarket tills or spend earnings

directly at various participating outlets.

In recognition that some micro-tasks take Jobbers out into the community, M4Jam provides on-the-job insurance that covers accidents, theft and even death. During the COVID-19 pandemic the platform has actively worked to mitigate lockdown-related loss of earnings. This included partnering with Cell C to provide individual workers with additional earnings through collaborative projects. The platform also increased training and educational opportunities available to Jobbers during this period. In recognition of these efforts, Fairwork was pleased to award M4Jam both points for principle 2.

M4Jam has a well-documented process through which workers can be heard, can appeal decisions affecting them, and be informed of the reasons behind those decisions. This includes being able to get information

about management decisions and deactivation. The zero rating¹³ of the app is an important element of this, as it enables Jobbers to engage with platform managers at all times - not just when they have data or airtime on their phones. Features like this facilitate inclusivity and remove any expectation of workers investing financial resources in addressing disputes.

Central to the business strategy is social upliftment. In 2021 M4Jam became a Global Champion for the WSA Global Congress. This was in recognition of the platform design as technology that combines smart content with a social cause to solve global problems. Indeed, certain organisations utilise M4JAM as a learner management system allowing for employees or organisation members to grab micro-modules around various and customised topics. This can be anything from specific training modules to general up-skilling lessons. In addition, M4Jam has also set up an independent company called Fanaka¹⁴ that works with the informal business sector to identify candidates that would benefit from corporate enterprise development funds. The clear communication channels as well as the social upliftment commitment together scored M4Jam both points of principle 4.

Despite scoring all points on principles 1, 2 and 4 M4Jam lost points for 3.2 and 5.2. In terms of the former, the Fairwork legal team felt that some adjustments could be made to the terms and conditions to soften clauses that limit platform liability and arbitration. Furthermore, M4Jam has yet to release a statement of their willingness to recognise and meaningfully engage with a trade union or other collective body of workers.

Other Notable Platform Changes

Principle 3:

GetTOD converted their terms and conditions from UK to South African law.

NoSweat has created a non-technical version of their terms and conditions (T&Cs) to ensure that all workers have a thorough understanding of the contract they are committing to.¹⁵ This has served as a model for M4Jam to adopt a similar approach to their T&Cs, and a number of other platforms are likely to follow suit.

Principle 4:

SweepSouth released a public commitment to equality, diversity and inclusion (EDI).¹⁶

Principle 5:

SweepSouth released a public statement confirming their willingness to engage in collective bargaining.



Workers' Stories



Mary

Domestic worker

Mary* works on a platform that sources domestic work. She had previously been employed as a domestic worker, but had lost her job and “needed something to tide her over”. Like many other gig workers, she saw a downturn in the availability of jobs during COVID-19, as the lockdown prevented in-person service delivery. In addition, she feels that the lockdown led to many more domestic workers signing up to the platform, stretching the scarce jobs even further. When describing booking jobs she says: “It’s a gamble. We are so many. The one with the quickest finger gets the job”.

The pressure on job availability has also

impacted on her dealings with customers. While she says that clients who interfere or have unreasonable requests are part of the job she says that she rarely complains.

“[The Platform] says you should end the job”, she says, “but you don’t want to “cry wolf” and complain. I tend to do the job even if it is not in the job booking. You must just smile and move on”.



Sam

*Ride-hailing
driver*

Sam* has driven for ridesharing platforms in Cape Town for the last two years after he was retrenched from his formal employment. When he started driving for the ridesharing platform he was making sufficient money to support himself and his family. During the COVID-19 lockdowns he saw a dramatic downturn in his earnings, saying that: “putting in the work does not yield results. It all amounts to nothing and is demotivating”. This downturn in earnings has led to what he terms considerable “lifestyle changes”.

The loss of earnings during COVID has not only led him to work very long hours, but

also to sign up to other platforms as well. He says that he needs to “take initiative because we can’t put all our trust in [the ridesharing platform]”. Being out on the road all day is exhausting, and the lack of spaces to rest and relieve himself add further challenges to an already difficult day. He feels very strongly that ridesharing in South Africa has changed considerably since he joined. In his own words, “I started the job for the returns, but now the ship is sinking and the returns aren’t there”.

***Names changed
to protect worker
identity**

Theme in Focus:

COVID-19 and Platform Responses

2020 and 2021 have been challenging years for digital labour platforms workers around the world. The national lockdowns have rapidly changed both work and personal practices, causing rapid expansions and contractions in many previously stable sectors of the economy. In South Africa, the national lockdown measures caused significant disruptions that continue to persist within the gig economy. For example, the level 5 and 4 restrictions on movement in 2020 and 2021 significantly affected the e-hailing sector as South Africans ceased to make daily trips for both work or leisure. Moreover, the extended alcohol bans and curfews that persisted into the lower lockdown stages¹⁷ meant fewer evening customers and a longer impact on earning potential of e-hailing drivers. In contrast, however, stay-at-home policies significantly increased food deliveries and online shopping, meaning that delivery gig workers were busier than in previous years.

These lockdowns have had a significant impact on gig workers offering in-person services. As public transport options were limited during some levels of lockdown, workers faced long and complicated commutes to jobs across the cities. Moreover, social distancing and COVID compliance could cause disruptions to the jobs when they entered private homes as handymen or domestic workers.

While COVID-19 posed serious challenges for gig workers, it was no

less challenging for platform owners and managers. In addition to coping with rapidly changing demand, platforms had to rapidly adapt systems to cope with changing regulations and requirements. The vast majority of platforms assessed in the South African 2021 ranking issued workers with COVID-19 information and some form of personal protective equipment (PPE). Moreover, a small number of platforms responded to the vulnerability of their workforces in novel and exciting ways.

During the lockdown M4Jam recognized that many of these job opportunities previously available on their platform were not available during the lockdowns. In recognition of the economic hardship caused by the loss of earnings, M4Jam partnered with the mobile telephone company CellC to provide financial relief to Jobbers during lockdown. The companies partnered on a project to understand the dynamics of the informal telecommunications retail market. As many of the Jobbers were

not employed in the formal economy, this provided an important source of income. The project yielded an average pay-out per jobber is estimated to be R310 per week.¹⁸

Similarly, SweepSouth, a platform for domestic work, established their SweepStars COVID fund to raise money for their workers – many of whom were unable to work during the lockdown of 2020 and 2021.¹⁹ This fund differed from M4Jam’s COVID response in that it also enabled regular customers to donate money directly to the fund or to specific workers. On the other hand, Uber made food vouchers available to full-time drivers to offset some of the domestic bills under pressure from loss of earnings.

In addition to financial support, some platforms including Uber and M4Jam also provided training opportunities to their workers. These took the form of in-app training modules on personal development, business and money management. In particular, Uber partnered with the African Management Institute training during lockdown to provide drivers access to a personal development programme.²⁰

The COVID-19 responses of these platforms offer exciting opportunities for further discussion. Even as the employment of gig workers continues to be debated around the world, these platforms demonstrate how social responsibility can be actioned. These responses also raise key questions that we all need to ask: how can gig workers be better supported – by the platforms they work on, and by the government? Should we, as users, purposely select to use platforms that are “going the extra mile” to take care of their workers? What else can be done?

The willingness of certain platforms to enact social responsibility offers the potential to establish a dialogue on these issues. Their willingness to address worker vulnerabilities highlights the flexibility of the gig economy and the opportunities to design future platforms that take issues such as justice, responsibility and diversity seriously. The 2021 Fairwork report foregrounds these socially responsible platforms as a future guide for users to ensure that they support platforms that take the plight of their workers seriously.

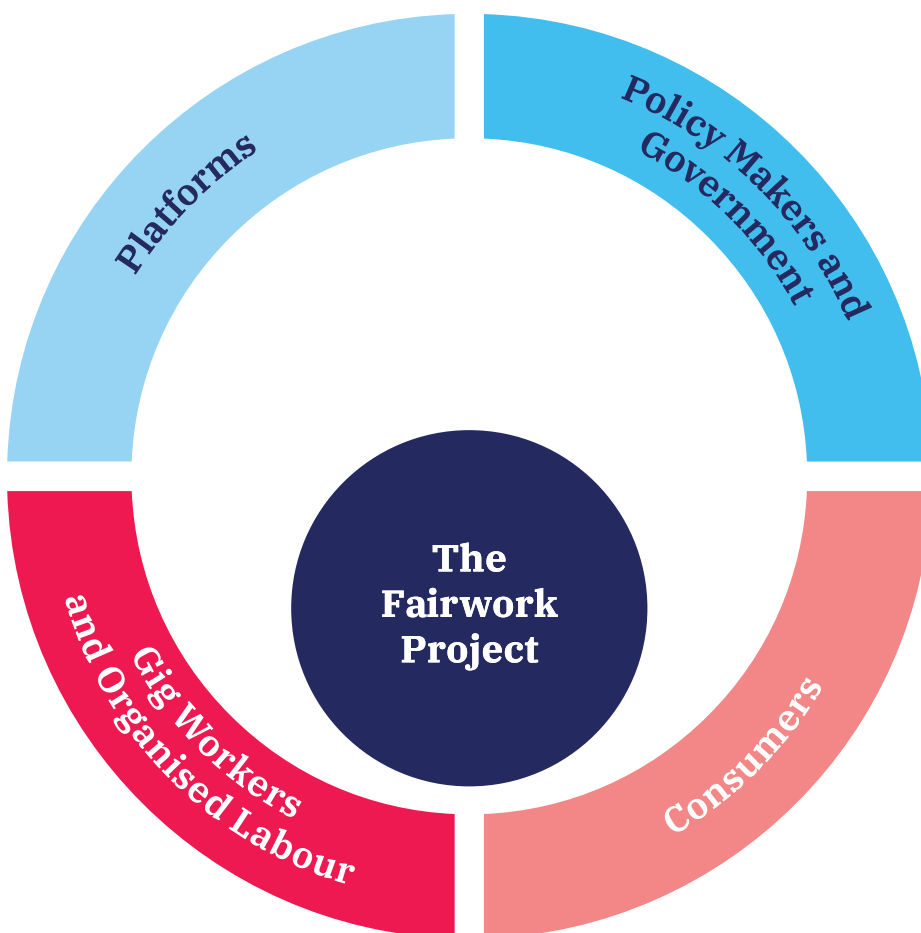


“The willingness of certain platforms to address worker vulnerabilities highlights the flexibility of the gig economy and the opportunities to design future platforms that take issues such as justice, responsibility and diversity seriously.”



Impact and Next Steps

This is the third annual round of Fairwork ratings for South African platforms, and we are seeing impact begin to build. As Fairwork's reach and visibility increases, we see four avenues for contributing to continued improvement in the South African gig economy.



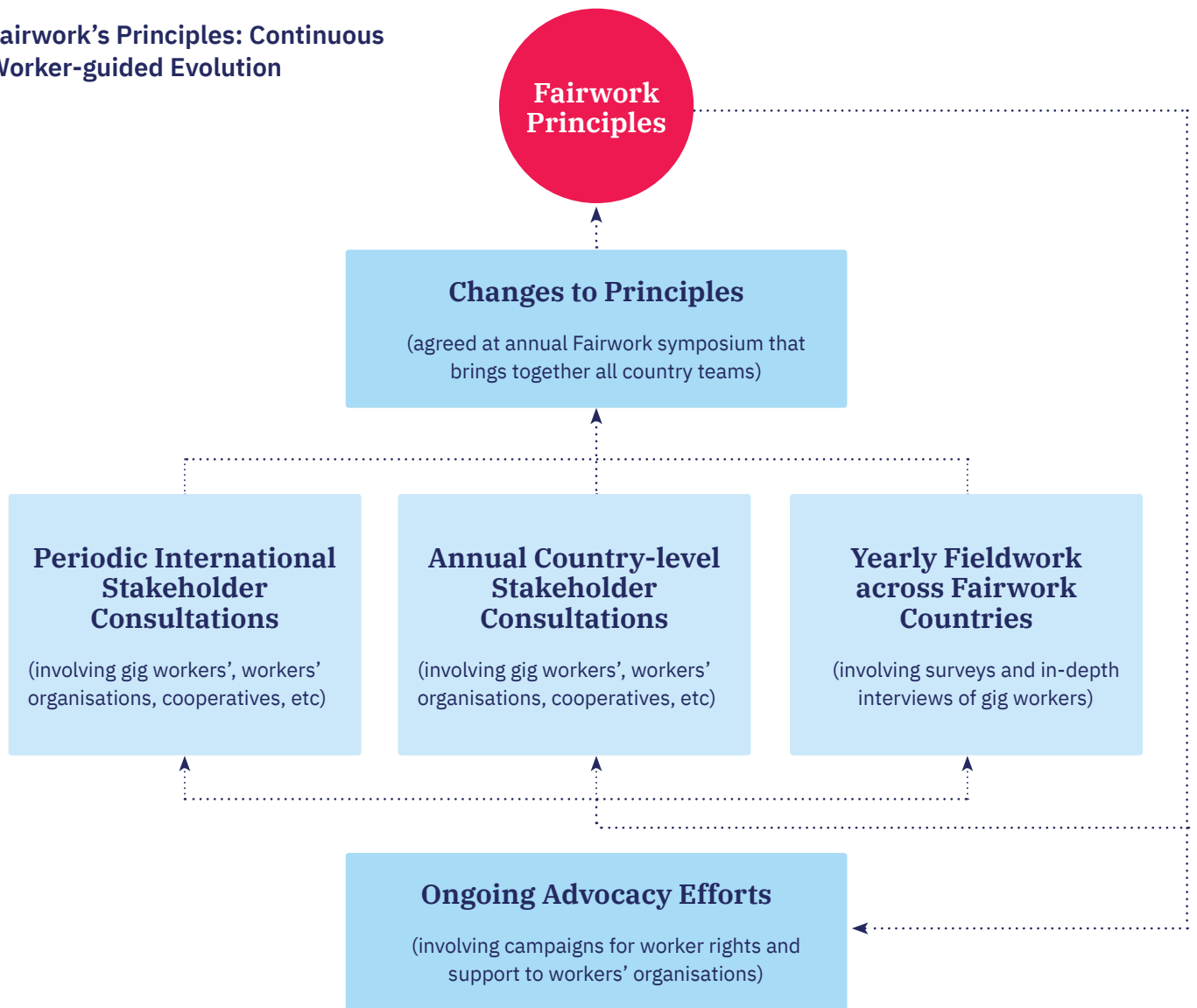
Fairwork's Pathways to Change

Our first and most direct pathway to improving working conditions in the gig economy is by engaging directly with platforms operating in South Africa. Many platforms are aware of our research, and eager to improve their performance relative to last year, and to other platforms. Platforms have the ability to improve conditions for their workers, while continuing to provide income opportunities. Where positive practices exist, Fairwork has had some success at seeing them encoded and formalised. GetTOD's conversion from UK to South African law as the legal framework identified in the contract is a positive step towards fair contracts. Similarly, SweepSouth's public commitments to equality, diversity and inclusion (EDI), as well as their recognition of collective bargaining rights are very strong supporters of fair management and representation.

In addition, the freelance platform NoSweat has created a non-technical version of their terms and conditions (T&Cs) to ensure that all workers have a thorough understanding of the contract they are committing to.²¹ This has served as a model for M4Jam to adopt a similar approach to their T&Cs, and a number of other platforms are likely to follow suit. Ensuring that all gig workers have access to their T&Cs in clear, non-legal language is an important factor in ensuring fair contracts and management.

Fairwork's theory of change also draws on the understanding that human empathy is a powerful force. Given enough information, many consumers will be intentional about the platforms they choose to interact with. Our yearly ratings give consumers the ability to choose the highest scoring platform operating in a sector, thus contributing to pressure on platforms to improve their working conditions and their scores. In this way, we enable consumers to be workers' allies in the fight for a fairer gig economy. Beyond individual consumer choices, our scores can help inform the procurement, investment and partnership policies of large organisations. They can serve as a reference for institutions and

Fairwork’s Principles: Continuous Worker-guided Evolution



companies who want to ensure they are supporting fair labour practices.

We also engage with policy makers and government to advocate for extending appropriate legal protections to all platform workers, irrespective of their legal classification. In late 2019, for example, Fairwork engaged with senior officials in the Department of Employment and Labour on creating a floor of legally enforceable rights for South African gig workers. Similarly, the Code of Good Practice, developed with Fairwork partners and presented at the South African Society for Labour Law (SASLAW) conference in Johannesburg on November 6th 2020, illustrates how South African law can be interpreted and applied in order to give better protection to the rights of platform workers in accordance with Constitutional principles. In coming years, Fairwork will continue our

policy advocacy efforts to help ensure that workers’ needs and platforms’ business imperatives are effectively balanced.

Finally, and most importantly, workers and workers’ organisations are at the core of Fairwork’s model. First, our principles have been developed and are continually refined in close consultation with workers and their representatives (see Diagram 2). Our fieldwork data, combined with feedback from workshops and consultations involving workers, informs how we systematically evolve the Fairwork principles to remain in line with their needs. Second, through continual engagement with workers’ representatives and advocates, we aim to support workers in asserting their rights and requirements in a collective way.

A key challenge in the gig economy is that workers are often isolated, atomised, and placed in competition with one another. The platform work model presents challenges for workers to connect and create networks of solidarity. But many of the workers we talked to are already starting to organise. First and foremost, we are seeing the emergence of worker-initiated and -run whatsapp and Facebook groups. Interviewees have all highlighted the importance of these networks for information sharing and discussion of working conditions.

The vast majority of those we interviewed also said they would want to join a union if one existed. Our principles can provide a starting point for envisioning a fairer future of work, and setting out a pathway to realising that. Principle five in particular, on the importance of fair representation, is a

crucial way in which we aim to support workers to assert their collective agency.

There is nothing inevitable about poor working conditions in the gig economy. Notwithstanding their claims to the contrary, platforms have substantial control over the nature of the jobs that

they mediate. Workers who find their jobs through platforms are ultimately still workers, and there is no basis for denying them the key rights and protections that their counterparts in the formal sector have long enjoyed. Our scores show that the gig economy, as we know it today, already takes many forms, with some platforms

displaying greater concern for workers' needs than others. This means that we do not need to accept low pay, poor conditions, inequity, and a lack of agency and voice as the norm. We hope that our work – by highlighting the contours of today's gig economy – paints a picture of what it could become.

The Fairwork Pledge:

As part of this process of change, we have introduced a Fairwork pledge. This pledge leverages the power of organisations' procurement, investment, and partnership policies to support fairer platform work. Organisations like universities, schools, businesses, and charities who make use of platform labour can make a difference by supporting the best labour practices, guided by our five principles of fair work. Organisations who sign the pledge get to display our badge on company materials.

The pledge constitutes two levels. This first is as an official Fairwork Supporter, which entails publicly demonstrating support for fairer platform work, and making resources available to staff and members to help them in deciding which platforms to engage with.

A second level of the pledge entails organisations committing to concrete and meaningful changes in their own practices as official Fairwork Partners, for example by committing to using better-rated platforms where there is a

choice. More information is available on the Pledge, and how to sign up, on the Fairwork website.²²



Appendix:

Fairwork Scoring System






The five Principles of Fairwork were developed through an extensive literature review of published research on job quality, stakeholder meetings at UNCTAD and the ILO in Geneva (involving platform operators, policy makers, trade unions, and academics), and in-country stakeholder meetings held in India (Bangalore and Ahmedabad), South Africa (Cape Town and Johannesburg) and Germany (Berlin). This appendix explains the Fairwork scoring system.

Each Fairwork Principle is divided into two thresholds. Accordingly, for each Principle, the scoring system allows one 'basic point' to be awarded corresponding to the first threshold, and an additional 'advanced point' to be awarded corresponding to the second threshold (see Table 1). The advanced point under each Principle can only be awarded if the basic point for that Principle has been awarded. The thresholds specify the evidence required for a platform to receive

a given point. Where no verifiable evidence is available that meets a given threshold, the platform is not awarded that point.

A platform can therefore receive a maximum Fairwork Score of ten points. Fairwork scores are updated on a yearly basis; the scores presented in this report (see Page 11) were derived from data pertaining to the 12 months between March 2020 and March 2021, and are valid until March 2022.

Table 1 Fairwork Scoring System

Principle	Basic point		Advanced point		Total
 Fair Pay	1	+	1	=	2
 Fair Conditions	1	+	1	=	2
 Fair Contracts	1	+	1	=	2
 Fair Management	1	+	1	=	2
 Fair Representation	1	+	1	=	2

Maximum possible Fairwork Score





Principle 1: Fair Pay

Threshold 1.1 – Pays at least the local minimum wage after costs (one point)

Platform workers often have substantial work-related costs to cover, such as transport between jobs, supplies, or fuel, insurance, and maintenance on a vehicle.²³ Workers' costs sometimes mean their take-home earnings may fall below the local minimum wage.²⁴ Workers also absorb the costs of extra time commitment, when they spend time waiting or travelling between jobs, or other unpaid activities necessary for their work, which are also considered active hours.²⁵ To achieve this point platforms must demonstrate that work-related costs do not push workers below local minimum wage.

The platform must satisfy the following:

- Workers earn at least the local minimum wage, or the wage set

by collective sectoral agreement (whichever is higher) in the place where they work, in their active hours, after costs.

In order to evidence this, the platform must either: (a) have a documented policy that guarantees the workers receive at least the local minimum wage after costs in their active hours; or (b) provide summary statistics of transaction and cost data. In case of (b), the platform must submit:

- An estimate for work-related costs, which are then checked by the Fairwork team through worker interviews; and,
- A weekly earnings table for any three-month period over the previous twelve months, in the format shown in Table 2. This is a two-way relative frequency table, which should contain information on the percentages of workers whose average weekly take-home earnings and active hours are distributed.

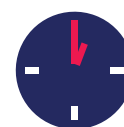
Threshold 1.2 – Pays at least a local living wage after costs (one additional point)

In some places, the minimum wage is not enough to allow workers to afford

a basic but decent standard of living. To achieve this point platforms must ensure that workers earn a living wage.

The platform must satisfy the following:

- Workers earn at least a local living wage, or the wage set by collective sectoral agreement (whichever is higher) in the place where they work, in their active hours, after costs.^{27,28}



Principle 2: Fair Conditions

Threshold 2.1 – Mitigates task-specific risks (one point)

Platform workers may encounter a number of risks in the course of their work, including accidents and injuries, harmful materials, and crime and violence. To achieve this point platforms must show that they are aware of these risks, and take steps to mitigate them.²⁹

The platform must satisfy the

Table 2 Weekly earnings table²⁶

		WORKER EARNINGS AFTER COSTS (E)			
		$e < M$	$M \leq e < 1.5M$	$1.5M \leq e < 2M$	$2M \leq e$
ACTIVE HOURS (H)	$h < 0.9F$ (part-time)	%	%	%	%
	$0.9F \leq h < 1.2F$ (full-time)	%	%	%	%
	$1.2F \leq h$ (full-time plus overtime)	%	%	%	%

Notes: h = Average active hours worked by worker per week; e = Average weekly earnings of worker; F = the number of hours in a local standard working week; M = the local weekly minimum wage, calculated at F hours per week.

following:

- There are policies or practices in place that protect workers' health and safety from task-specific risks.

Threshold 2.2 – Actively improves working conditions (one additional point)

Beyond minimising risks that workers may face to their health and safety in the course of their work, platforms have the ability to proactively improve health and safety and working conditions. This may be through provision of training, wellbeing initiatives, health insurance, and other measures. To achieve this point platforms must demonstrate a proactive effort to improve workers' experiences.

The platform must satisfy the following:

- There is a documented policy (or policies) that promotes the health and safety of workers or improves working conditions, going beyond addressing task-specific risks.



Principle 3: Fair Contracts

Threshold 3.1 – Provides clear and transparent terms and conditions (one point)

The terms and conditions governing platform work are not always clear and accessible to workers.³⁰ To achieve this point the platform must demonstrate that workers are able to understand, agree to, and access the conditions of their work at all times, and that they have legal recourse if the platform breaches those conditions.

The platform must satisfy ALL of the following:

- The party contracting with the worker must be identified in the

contract, and subject to the law of the place in which the worker works.

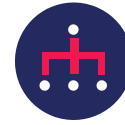
- The contract is communicated in clear and comprehensible language that workers could be expected to understand.
- The contract is accessible to workers at all times.
- Every worker is notified of proposed changes in a reasonable timeframe before changes come into effect; and the changes should not reverse existing accrued benefits and reasonable expectations on which workers have relied.

Threshold 3.2 – Does not impose unfair contract terms (one additional point)

In some cases, especially under 'independent contractor' classifications, workers carry a disproportionate amount of risk for engaging in the contract. They may be liable for any damage arising in the course of their work, and they may be prevented by unfair clauses from seeking legal redress for grievances. To achieve this point, platforms must demonstrate that risks and liability of engaging in the work is shared between parties.

Regardless of how the platform classifies the contractual status of workers, the platform must satisfy BOTH of the following:

- The contract does not include clauses which exclude liability for negligence nor unreasonably exempt the platform from liability for working conditions.
- The contract does not include clauses which prevent workers from effectively seeking redress for grievances which arise from the working relationship.



Principle 4: Fair Management

Threshold 4.1 – Provides due process for decisions affecting workers (one point)

Platform workers can be vulnerable to sudden termination (deactivation), and loss of income, often without due process. Workers may be subject to unfair penalties or disciplinary decisions and may lack the ability to contact the platform to challenge or appeal them. To achieve this point, platforms must demonstrate that workers can meaningfully appeal disciplinary actions.

The platform must satisfy ALL of the following:

- The contract includes a documented channel for workers to communicate with a designated representative of the platform; and,
- The contract includes a documented process for workers to appeal disciplinary decisions or deactivations; and,
- The platform interface features a channel for workers to communicate with the platform; and,
- The platform interface features a process for workers to appeal disciplinary decisions or deactivations; and,
- In the case of deactivations, the appeals process must be available to workers who no longer have access to the platform.

Threshold 4.2 – Prevents discrimination and promotes equity (one additional point)

The majority of platforms do not actively discriminate against particular groups of workers. However, they may

inadvertently exacerbate already existing inequalities through their design and management. To achieve this point, platforms must show that they have policies to minimise risks of users discriminating against workers, and that workers are assured that they will not be disadvantaged through management processes. If a traditionally disadvantaged group is significantly underrepresented on their platform, steps are taken by the platform to identify and remove barriers to inclusion.

The platform must satisfy ALL of the following:

- It has a policy which guarantees that the platform will not discriminate against persons on the grounds of race, gender, sex, sexual orientation, gender identity, disability, religion or belief, age or any other status which is protected against discrimination in local law; and
- Where persons from a disadvantaged group (such as women) are significantly underrepresented among its workers, it has a plan to identify and remove barriers to access by persons from that group, resulting in improved representation; and
- It takes practical measures to promote equality of opportunity for workers from disadvantaged groups, including reasonable accommodation for pregnancy, disability, and religion or belief; and
- If algorithms are used to determine access to work or remuneration, these are transparent and do not result in inequitable outcomes for workers from historically or currently disadvantaged groups; and
- It has mechanisms to reduce the risk of users discriminating against any group of workers in accessing and carrying out work.



Principle 5: Fair Representation

Threshold 5.1 – Includes freedom of association and worker voice mechanisms (one point)

The right of workers to freely associate is enshrined in the constitution of the International Labour Organisation and the Universal Declaration of Human Rights.³¹ To achieve this point platforms must demonstrate that they observe this right, by ensuring that workers can collectively communicate their wishes and concerns to the platform. They must not hamper or prevent workers' freedom of association, or penalise workers for associating or expressing demands.

The platform must satisfy the following:

- There is a documented process for the expression of worker voice.

Threshold 5.2 – Recognises collective body that can undertake collective representation and bargaining (one additional point)

For workers to meaningfully have a voice in determining their working conditions, they must be able to bargain with the platform through a collective or representative body. The platform must recognise this collective body, and make itself available for good faith negotiations. In most cases, such bodies do not yet exist in the platform economy. Where that is the case, the platform should publicly state its willingness to recognise a collective body if one is formed.

The platform must satisfy BOTH of the following:

- Publicly recognise an independent, collective body of workers or trade union and not have refused

to participate in collective representation or bargaining; If such a body does not exist, it must:

- Sign a public statement of its willingness to recognise a collective body of workers or trade union.

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23. Work-related costs include direct costs the worker may incur in performing the job. This may include, for instance, transport in between jobs, supplies, vehicle repair and maintenance, fuel, road tolls and vehicle insurance. However, it does not include transport to and from the job (unless in-between tasks) nor taxes, social security contributions or health insurance.
24. The ILO defines minimum wage as the "minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract." Minimum wage laws protect workers from unduly low pay and help them attain a minimum standard of living. The ILO's Minimum Wage Fixing Convention, 1970 C135 sets the conditions and requirements of establishing minimum wages and calls upon all ratifying countries to act in accordance. Minimum wage laws exist in more than 90 per cent of the ILO member states.
25. In addition to direct working hours where workers are completing tasks, workers also spend time performing unpaid activities necessary for their work, such as waiting for delivery orders at restaurants and travelling between jobs. These indirect working hours are also considered part of active hours as workers are giving this time to the platform. Thus, 'active hours' are defined as including both direct and indirect working hours.
26. The rows represent workers who work part-time, full-time, and more than full-time. The percentages in each row should add up to 100%. The table is to be filled with four columns of data: Column [2] with the percentages of part-time, full-time, and full-time with overtime workers who earn less than the minimum weekly wage (X), and so on until Column [5].
27. Where a living wage does not exist, Fairwork will use the Global Living Wage Coalition's Anker Methodology to estimate one.
28. In order to evidence this, the platform must either: (a) have a documented policy that guarantees the workers receive at least the local living wage after costs in their active hours; or (b) provide summary statistics of transaction and cost data. In case of (b), the platform must submit: (1) An estimate for work-related costs, which are then checked by the Fairwork team through worker interviews; and, (2) a weekly earnings table for any three-month period over the previous twelve months, in the format shown above.
29. The starting point is the ILO's Occupational Safety and Health Convention, 1981 (C155). This stipulates that employers shall be required "so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health", and that "where necessary, adequate protective clothing and protective equipment [should be provided] to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health."
30. The ILO's Maritime Labour Convention, 2006 (MLC 2006), Reg. 2.1, and the Domestic Workers Convention, 2011 (C189), Articles 7 and 15, serve as helpful guiding examples of adequate provisions in workers' terms and conditions, as well as worker access to those terms and conditions.
31. See the ILO's Freedom of Association and Protection of the Right to Organise Convention, 1948 (C087), which stipulates that "workers and employers, without distinction, shall have the right to establish and join organisations of their own choosing without previous authorisation" (Article 2); "the public authorities shall refrain from any interference which would restrict the right or impede the lawful exercise thereof" (Article 3) and that "workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority" (Article 4). Similarly the ILO's Right to Organise and Collective Bargaining Convention, 1949 (C098) protects the workers against acts of anti-union discrimination in respect of their employment, explaining that not joining a union or relinquishing trade union membership cannot be made a condition of employment or cause for dismissal. Out of the 185 ILO member states, currently 155 ratified C087 and 167 ratified C098.



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