



Fair Work (Digital Labour Platform Deactivation Code) Instrument 2024

I, Murray Watt, Minister for Employment and Workplace Relations, make the following instrument.

Dated 3 December 2024

Murray Watt
Minister for Employment and Workplace Relations

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Part 1—Preliminary

1 Name

This instrument is the *Fair Work (Digital Labour Platform Deactivation Code) Instrument 2024*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day after this instrument is registered; and (b) 25 February 2025.	25 February 2025 (paragraph (b) applies)

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Fair Work Act 2009*.

4 Simplified outline

Chapter 3A of the Act deals with minimum standards for certain workers (called regulated workers).

Regulated workers include employee-like workers who perform work through or by means of a digital labour platform.

Section 536LJ of the Act provides that the Minister must make a code to be known as the Digital Labour Platform Deactivation Code. This instrument is the Digital Labour Platform Deactivation Code.

An employee-like worker may be found to be unfairly deactivated from a digital labour platform if the Fair Work Commission is satisfied that the deactivation is not consistent with this Code (see paragraph 536LF(c) of the Act).

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5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) deactivated;
- (b) digital labour platform;
- (c) digital labour platform operator;
- (d) employee-like worker;
- (e) services contract.

In this instrument:

Act means the *Fair Work Act 2009*.

code process means the process, set out in Part 2, for deactivation of an employee-like worker from a digital labour platform.

deactivation warning: see subsection 8(1).

final deactivation notice: see subsection 14(5).

law enforcement or regulatory agency means:

- (a) the Australian Federal Police; or
- (b) a police force or a police service of a State or Territory; or
- (c) any other authority or person responsible for the enforcement of the laws of the Commonwealth or of a State or Territory.

preliminary deactivation notice: see subsection 11(1).

6 References to modification of access to digital labour platform

A reference in this instrument to the modification of an employee-like worker's access to a digital labour platform means a modification of access having the result that the worker is deactivated from the platform within the meaning of section 536LG of the Act.

Part 2—Code process for deactivation

Division 1—Application of code process

7 When code process for deactivation must be followed

- (1) To be taken to comply with this instrument, a digital labour platform operator must follow the code process in relation to the proposed deactivation of an employee-like worker, who is protected from unfair deactivation, from a digital labour platform if:
- (a) the operator is considering deactivating the worker from the platform; and
 - (b) the reason for the deactivation is:
 - (i) subject to subsection (2), a matter related to the worker’s conduct in performing work through or by means of the platform; or
 - (ii) a matter related to the worker’s capacity to perform work through or by means of the platform.

Note 1: To be protected from unfair deactivation from a digital labour platform, an employee-like worker must have performed work through or by means of the platform on a regular basis for at least 6 months (see paragraph 536LD(c) of the Act).

Note 2: For circumstances in which work is performed on a regular basis, see section 18.

- (2) The code process does not apply to the deactivation of an employee-like worker by a digital labour platform operator for serious misconduct by the worker.

Note 1: A deactivation that occurs because of serious misconduct of the person who is deactivated is not unfair (see subsection 536LH(2) of the Act).

Note 2: **Serious misconduct** has the meaning prescribed by the regulations (see section 12 of the Act).

Note 3: Subsections 536LH(3) and (4) of the Act also provide that certain short-term deactivations are not unfair.

Division 2—Deactivation warnings

8 Deactivation warning generally required before deactivation

- (1) Before deactivating an employee-like worker from a digital labour platform, a digital labour platform operator must give the worker a notice in writing (the **deactivation warning**) stating that the worker risks being deactivated from the platform for a reason related to the worker's conduct or capacity.
- (2) The deactivation warning must:
 - (a) specify the reason, relating to the employee-like worker's conduct or capacity, for which it is given; and
 - (b) state that the worker risks being deactivated from the digital labour platform if:
 - (i) the worker does not, within a reasonable time, remedy the matters that are the subject of the warning; or
 - (ii) the reason for giving the warning continues or is repeated; or
 - (iii) another issue, relating to the worker's conduct or capacity, arises; and
 - (c) state that the worker may seek assistance or support from a person (other than a lawyer acting in a professional capacity), who may be a delegate or an employee of an organisation, in relation to the deactivation warning.

Note 1: For **organisation** in paragraph (c), see section 12 of the Act.

Note 2: The worker may also appoint a person to provide the worker with support or representation (see section 16).

- (3) The deactivation warning must include sufficient information to enable a reasonable person in the position of the employee-like worker to understand the matters mentioned in subsection (2).

Note: In giving a deactivation warning, a digital labour platform operator is not required to disclose information about an individual if the operator considers, on reasonable grounds, that the disclosure may pose a risk to the safety or security of the individual (see section 17).

9 Exception—circumstances when deactivation warning not required

- (1) Despite section 8, a digital labour platform operator is not required to give an employee-like worker a deactivation warning before deactivating, under Division 3, the worker if the operator considers on reasonable grounds that the matter relating to the worker's conduct or capacity is such that:
 - (a) it warrants immediate modification or suspension of the worker's access to the digital labour platform; or
 - (b) it is not reasonable to expect the operator to allow the worker to continue to perform work through or by means of the platform.

Note: The following are examples of when subsection (1) might apply:

- (a) immediate suspension of an employee-like worker is required for health or safety reasons;
- (b) an employee-like worker loses a licence or accreditation and, as a result, has no legal right to perform the work;
- (c) an employee-like worker engages in fraudulent or dishonest conduct;
- (d) an employee-like worker's conduct is or will be referred to a law enforcement or regulatory agency.

- (2) For the purposes of subsection (1), one or more reports or complaints made to the digital labour platform operator may constitute reasonable grounds for the operator's opinion about the employee-like worker's conduct or capacity.
- (3) Subsection (2) does not limit the matters that may constitute reasonable grounds for such an opinion.

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Division 3—Process for deactivation

10 Application of Division

This Division applies if:

- (a) a digital labour platform operator is, under section 9, not required to give an employee-like worker a deactivation warning before deactivating the worker; or
- (b) a digital labour platform operator has given an employee-like worker a deactivation warning and the operator considers, on reasonable grounds, that deactivation of the worker is justified because:
 - (i) the worker has not, within a reasonable time, remedied the matters that were the subject of the warning; or
 - (ii) the reason for giving the warning has continued or been repeated; or
 - (iii) another issue, relating to the worker's conduct or capacity, has arisen.

11 Operator must give preliminary deactivation notice

- (1) If this Division applies, the digital labour platform operator must give the employee-like worker a notice (the *preliminary deactivation notice*) that specifies the following matters:
 - (a) the reason, relating to the conduct or capacity of the employee-like worker, for which the notice is given;
 - (b) that the digital labour platform operator is considering terminating the worker's access to the digital labour platform;
 - (c) that the worker has:
 - (i) a right to respond to the notice; and
 - (ii) a right to request a discussion with a representative of the operator; within a reasonable period specified in the notice;
 - (d) that the worker may appoint a person to provide the worker with support or representation (see section 16).
- (2) The preliminary deactivation notice must include sufficient information to enable a reasonable person in the position of the employee-like worker to understand the matters mentioned in subsection (1).

Note: In giving a preliminary deactivation notice, a digital labour platform operator is not required to disclose information about an individual if the operator considers, on reasonable grounds, that the disclosure may pose a risk to the safety or security of the individual (see section 17).

12 Modification or suspension of access to platform

- (1) If this Division applies, a digital labour platform operator may modify or suspend the employee-like worker's access to the digital labour platform.
- (2) The modification or suspension may take effect before or after the digital labour platform operator gives a preliminary deactivation notice.

- (3) If the digital labour platform operator modifies or suspends the employee-like worker's access to the digital labour platform, the operator must notify the worker, in writing, of the following matters:
 - (a) the time and day from which the modification or suspension takes effect;
 - (b) the consequences of the modification or suspension for the worker's access to the platform.
- (4) The matters under subsection (3) must be notified as follows:
 - (a) if the modification or suspension takes effect before the digital labour platform operator gives a preliminary deactivation notice to the employee-like worker—as part of the preliminary deactivation notice to be given to the worker as soon as reasonably practicable after the modification or suspension takes effect;
 - (b) if the modification or suspension takes effect at the same time as the preliminary deactivation notice is given—as part of the preliminary deactivation notice;
 - (c) if the modification or suspension takes effect after the preliminary deactivation notice is given—before the modification or suspension takes effect.

13 Steps after preliminary deactivation notice is given

Worker's response to preliminary deactivation notice

- (1) An employee-like worker may respond to a preliminary deactivation notice given to the worker by a digital labour platform operator.
- (2) The response must be given within the period specified in the preliminary deactivation notice, or within such longer period as is agreed between the operator and the worker.
- (3) The response may be in writing or may be given orally (including as part of the discussion mentioned below).

Discussion with operator's representative

- (4) The employee-like worker may, within the period mentioned in paragraph 11(1)(c), request the digital labour platform operator to make a representative of the operator available to discuss the preliminary deactivation notice.
- (5) If an employee-like worker makes such a request, the digital labour platform operator must make a representative available for the discussion within a reasonable time.
- (6) A person appointed by the employee-like worker for support or representation (see section 16) may participate in the discussion.

Operator to consider response and make inquiries

- (7) A human representative of the digital labour platform operator must consider the employee-like worker's response (if any), including the discussion (if any) between the worker and the digital labour platform operator's representative.

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- (8) The digital labour platform operator must make such further inquiries (if any) as are reasonably warranted after considering the employee-like worker's response.

Status of user reports or complaints

- (9) If:
- (a) a preliminary deactivation notice is issued to an employee-like worker after a report or complaint about the worker is made to the digital labour platform operator; and
 - (b) the report or complaint concerns a matter that, if true, would constitute a valid reason for the deactivation of the worker; and
 - (c) either:
 - (i) the worker's response to the notice under this section does not provide adequate information to address the report or complaint; or
 - (ii) the worker provides no response to the notice under this section;
- then, if the operator terminates the worker's access to the platform, the termination is taken, for the purposes of subsection 14(4), to be termination for a valid reason that the operator considers on reasonable grounds has been established.

14 Outcome of digital labour platform operator's consideration and inquiries

- (1) After giving a preliminary deactivation notice, and complying with any applicable requirements in section 13, a digital labour platform operator must decide whether to:
- (a) take no further action in relation to the employee-like worker; or
 - (b) terminate the worker's access to the digital labour platform.
- (2) The digital labour platform operator must, as soon as reasonably practicable, notify the employee-like worker in writing of the operator's decision.

Decision to take no further action

- (3) If the digital labour platform operator decides to take no further action in relation to the employee-like worker, the operator must lift any modification or suspension of the worker's access to the digital labour platform imposed under this Division.

Decision to terminate access

- (4) The digital labour platform operator may terminate the employee-like worker's access to the digital labour platform only if:
- (a) the reason for the termination is a valid reason; and
 - (b) the operator considers on reasonable grounds that the reason has been established.
- (5) If the digital labour platform operator decides to terminate the employee-like worker's access, the operator must, as soon as reasonably practicable, give the employee-like worker a written notice (the **final deactivation notice**) that:
- (a) states that the operator has decided to terminate the worker's access to the digital labour platform; and

- (b) specifies the reason for the termination; and
 - (c) specifies the time and day on which the termination will take effect (which may be immediately); and
 - (d) specifies when and how any final payments owing to the worker will be made.
- (6) The final deactivation notice must contain sufficient information to enable a reasonable person in the position of the employee-like worker to understand the matters mentioned in subsection (5).

Note: In giving a final deactivation notice, a digital labour platform operator is not required to disclose information about an individual if the operator considers, on reasonable grounds, that the disclosure may pose a risk to the safety or security of the individual (see section 17).

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Division 4—Matters relating to code process generally

15 Time frame for conducting code process

A digital labour platform operator must use reasonable endeavours to ensure that:

- (a) a process required to be conducted in accordance with this Part is carried out within a reasonable time frame; and
- (b) an employee-like worker is given a reasonable time to exercise the worker's right of response under section 13.

16 Representation of employee-like workers

- (1) An employee-like worker may appoint a person (other than a lawyer acting in a professional capacity) to provide the worker with support or representation in relation to the deactivation of the worker, under this Part, from a digital labour platform.
- (2) The person may be a delegate or an employee of an organisation.

Note: For *organisation*, see section 12 of the Act.

17 Information disclosure and law enforcement or regulatory obligations

- (1) Nothing in this Part requires a digital labour platform operator to disclose any information about an individual if the operator considers, on reasonable grounds, that the disclosure may pose a risk to the safety or security of the individual.
- (2) Nothing in this Part requires a digital labour platform operator to contravene:
 - (a) a lawful direction given by a law enforcement or regulatory agency to the operator; or
 - (b) any obligations that the operator has in relation to the protection of personal information (within the meaning of the *Privacy Act 1988*).

Part 3—Matters relating to deactivation generally

18 Circumstances in which work is performed on a regular basis

- (1) This section sets out, for the purposes of paragraph 536LJ(2)(a) of the Act, some circumstances in which work is taken to be performed by an employee-like worker on a regular basis.

Note: To be protected from unfair deactivation from a digital labour platform, an employee-like worker must have performed work through or by means of the platform on a regular basis for at least 6 months (see paragraph 536LD(c) of the Act).

- (2) An employee-like worker who completes, on average, 60 hours of paid work each month through or by means of a digital labour platform is taken to perform that work on a regular basis.
- (3) An employee-like worker who completes, on average, paid work on 3 days of each week through or by means of a digital labour platform is taken to perform that work on a regular basis.
- (4) A reference in this section to time spent completing paid work is a reference to the time spent in undertaking the work for which the employee-like worker is entitled to be paid.

Note: An effect of this subsection is that time spent waiting for work, or between tasks constituting the work, is not counted.

- (5) An employee-like worker may be taken to perform work on a regular basis through or by means of a digital labour platform even though the worker elects, in some weeks, not to perform any work through or by means of the platform.
- (6) This section does not limit the circumstances in which work is taken to be performed by an employee-like worker on a regular basis.

19 Matters that may constitute a valid reason for deactivation

- (1) A matter set out in any of the following subsections may constitute a valid reason for the deactivation of an employee-like worker from a digital labour platform if it arises in the course of, or in relation to, the worker performing work through or by means of the platform.

Note: If the matter constitutes serious misconduct, the digital labour platform operator is not required to follow the code process in relation to deactivation of the employee-like worker (see subsection 7(2)).

Failure to meet platform obligations

- (2) The employee-like worker fails or refuses to meet one or more of the following requirements, to the extent that the requirement is reasonable and is known to the worker as a result of communication from the digital labour platform operator or otherwise:
- (a) the requirements of the worker's services contract with the digital labour platform operator;
 - (b) the conditions of use of the digital labour platform;

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- (c) the operator's standards or requirements in relation to quality, service level or performance;
- (d) the operator's code of conduct for the platform;
- (e) any other legally binding requirements on the worker's use of the platform not mentioned in an earlier paragraph of this subsection.

Health and safety matters

- (3) The employee-like worker engages in inappropriate physical or verbal conduct including, without limitation, conduct of a violent, threatening, harassing, discriminatory, sexual or abusive nature.
- (4) The digital labour platform operator considers on reasonable grounds that:
 - (a) the employee-like worker fails or refuses to comply with a work health and safety duty of the worker; or
 - (b) deactivation of the employee-like worker is necessary to protect the health and safety of any person.
- (5) The performance of work through or by means of the digital labour platform requires the employee-like worker to drive a motor vehicle and, in doing so, the worker engages in unsafe driving practices (including speeding).

Misuse of information

- (6) The employee-like worker misuses information about the following persons obtained by the worker in performing work through or by means of the digital labour platform:
 - (a) the digital labour platform operator;
 - (b) a customer or client of the platform;
 - (c) another employee-like worker who performs work through or by means of the platform;
 - (d) any other member of the public.

Fraud, dishonesty or deliberate damage

- (7) The employee-like worker engages in fraudulent or dishonest conduct, including theft of property.
- (8) The employee-like worker deliberately causes damage to another person's property.

Breach of law or regulatory requirements

- (9) The employee-like worker engages in conduct that results in the referral or report of the worker's conduct to a law enforcement or regulatory agency.
- (10) The employee-like worker:
 - (a) fails or refuses to comply with a mandatory industry code of conduct that applies to work performed through or by means of the digital labour platform; or
 - (b) engages in conduct that causes, or may cause, the digital labour platform operator to breach such a code of conduct.

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- (11) The digital labour platform operator is requested by a law enforcement or regulatory agency to remove the employee-like worker from performing work through or by means of the digital labour platform.

Licensing, accreditation and screening requirements etc.

- (12) The employee-like worker fails or refuses to comply with a licensing or accreditation requirement that is:
- (a) necessary to perform work through or by means of the digital labour platform; and
 - (b) administered or enforced by a law enforcement or regulatory agency.
- (13) The employee-like worker loses a licence or accreditation necessary for the worker to perform work through or by means of the digital labour platform.
- (14) The employee-like worker fails or refuses to maintain the worker's tools or equipment so as to meet relevant licensing or accreditation requirements.
- (15) The employee-like worker fails or refuses to comply with a mandatory screening or registration requirement necessary to perform work through or by means of the digital labour platform.

Inactivity

- (16) The employee-like worker fails or refuses to perform work through or by means of the digital labour platform for which payment is made to the worker for such period that the digital labour platform operator must deactivate the worker to comply with a requirement of a law enforcement or regulatory agency.

No limitation on valid reasons

- (17) This section does not limit the matters that may constitute a valid reason for the deactivation of an employee-like worker from a digital labour platform.

20 Communications relating to deactivation

- (1) A digital labour platform operator must ensure that, except as otherwise provided in this instrument, all communications and information relating to the code process and the deactivation of an employee-like worker from the digital labour platform are made in writing using one or both of the following methods:
- (a) the platform;
 - (b) an appropriate alternative method determined by the operator acting reasonably.
- (2) If the digital labour platform operator uses the digital labour platform for communications and information, the operator must ensure that the employee-like worker has sufficient access to the platform to enable the worker to access and respond to the communications and information.

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21 Data and platform access following reinstatement

Scope

- (1) This section applies if a digital labour platform operator takes any of the following action in relation to the deactivation of an employee-like worker's access to a digital labour platform:
 - (a) removes a modification;
 - (b) lifts a suspension;
 - (c) reinstates the worker's access to the platform after having previously terminated such access.

Full reinstatement required

- (2) The digital labour platform operator must ensure that, as soon as reasonably practicable after the operator takes the action mentioned in subsection (1):
 - (a) the employee-like worker has the same access to the digital labour platform (including to data and information relating to the worker's performance of work through or by means of the platform) that the worker had immediately before the deactivation; and
 - (b) in a case where the deactivation affected the worker's status or ranking on the platform—the worker retains a status or ranking no lower than that held by the worker immediately before the deactivation.

22 Record keeping for worker data and deactivation processes

- (1) A digital labour platform operator must make and keep records of the following matters to the extent that the operator considers reasonably necessary to demonstrate compliance with this instrument:
 - (a) data relating to the work performed through or by means of the digital labour platform by an employee-like worker;
 - (b) the processes followed, and the decisions made, in relation to the deactivation of each employee-like worker from the digital labour platform.
- (2) The records must be kept for so long as the digital labour platform operator considers reasonably necessary to demonstrate compliance with this instrument.
- (3) To the extent that the records are or include personal information within the meaning of the *Privacy Act 1988*, the records must be collected, used and disclosed only in accordance with that Act.