

# Employment revolution awaits online platforms

## I. New regulations to cover digital online platforms

In accordance with the Directive, a digital online platform is defined as a natural or legal person providing a commercial service, which meets all of the following conditions: is provided, at least in part, at a distance through electronic means, such as a website or a mobile application; is provided at the request of a service recipient; involves, as a necessary and essential component, the organization of work performed by individuals for payment, irrespective of whether such work is performed online or at a specified location; involves the use of automated monitoring or decision-making systems.

## II. EU defines those covered

Platform work is a form of employment as part of which organizations or individuals use an online platform to reach other organizations or individuals for the purpose of resolving specific problems or providing specific services in exchange for payment. This means that the new directive is significant for all those employed by digital platforms, i.e. not only food delivery couriers or taxi drivers, but also, for example, translators, messengers, copywriters, programmers, photojournalists or graphic designers. Currently, the vast majority of these people have the status of self-employed. The Directive replaces this with a mutable (i.e. rebuttable) presumption that an employment relationship exists.

The Directive on improving working conditions in platform work was adopted at a meeting of the Employment, Social Policy, Health and Consumer Protection Council (EPSCO) in Brussels. The Polish Ministry of Labor has already announced its quick enactment, even though the EU has allowed two years for its implementation.



### III. Anyone can be considered employee once specific conditions met

Under the Directive, based on a legal presumption, platform workers would be automatically considered to have an employment relationship (rather than be self-employed), if their work relationship with the platform meets at least 2 of the 5 criteria listed in the Directive. These are: setting the limits of remuneration; supervising, including electronically, the performance of work; controlling the distribution or assignment of tasks; controlling work conditions and restricting the freedom to organize one's work, as well as rules on the appearance or conduct of workers. Moreover, under the agreed wording, workers can add more criteria to the list in the form of local regulations.

### IV. The more control, the greater the employment relationship presumption

The Directive stresses that the freedom to choose working hours or periods of absence, to refuse tasks, use subcontractors or substitutes or to work for third parties is a hallmark of genuine self-employment, but does not in itself determine its existence. As a result, the effective placing of restrictions on such rights to organize one's work, in particular the freedom to choose one's working hours or periods of absence, to accept or refuse tasks or to use subcontractors or substitutes, by imposing several conditions or through a system of penalties, including by limiting access to work or by using client review systems as a tool to control and impose penalties or to assign tasks, should also be considered an element that indicates controlling and directing the performance of work.

## V. Electronic verification of work constitutes controlling and directing

Under the Directive, verification of the quality of work, including through electronic means, is considered an element that indicates controlling and directing the performance of work. This list is not exhaustive and all other significant elements may indicate that a digital platform controls and directs the performance of work. At the same time, digital platforms should be able to design their technical interfaces in a way that will ensure that the measures or rules that are required by law are not interpreted as supervising the performance of work.

## VI. Presumption of employment to be included in national law

The Directive provides that Member States should have implementing regulations that ensure the application of a favorable presumption when reclassifying misclassified online platform workers, including the presumption that the employment relationship is for an indefinite time, there is no trial period, and the platform worker is employed full time. What is more, where a digital platform challenges an administrative or judicial decision defining the employment status of an online platform worker, the proceeding resulting from the challenge should have no suspensive effect on that decision.



## VII. Personal data processing to be considerably limited

Under the new regulations, workers will have to be informed of the use of automated monitoring and decision-making systems. In addition, digital labor platforms will not be able to process certain types of personal data, such as: data on the emotional or psychological state of platform workers; private conversations; data that make it possible to predict actual or potential actions of trade unions; data that make it possible to draw conclusions on the racial or ethnic origin of a worker, his/her migration status, political opinions, religious beliefs or health; biometric data (aside from those used to authenticate). In accordance with the new regulations, these systems will have to be monitored by authorized persons with special protection from adverse treatment. Human monitoring is also to cover important decisions, such as account suspension.



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## VIII. Enterprise test required for implementation

The Directive clarifies the existing obligations of digital online platforms to report work to national authorities. Platforms would also have to report key information on their operations and on those who use them to provide work. The Directive requires Member States to ensure that: adequate powers to perform inspections are granted to the relevant authorities under national law; information on fictitious self-employment, including the results of previous inspections, is collected and processed in order to effectively implement this Directive; and that there is sufficient staff with the qualifications and skills necessary to perform such inspections effectively. Owing to the high number of misclassifications, labor inspectors should be required to perform proactive inspections.



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