Platform worker status: case law and regulatory developments 2/15/24

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While rules on platform work have yet to be passed, the legal frameworks of the EU lawmaker and of the Court of Justice of the European Union (CJEU) are living parallel lives. March 2024 saw new yet converging reference points from both directions, and the sharp-eyed reader can start wondering whether platform workers (food delivery couriers) are employees or self-employed.

Courier status

We have written before about case law in the Netherlands, where food delivery couriers were recognised as employees, and about the opposite outcome of litigation in the UK, where the court did not find employee status. The seemingly ambiguous case law might be crystallised by the latest developments in Finland and Sweden, where the courts recognised Wolt couriers to be contractors, not employees. Although these rulings are not final, the court arguments provide an overview of key aspects.

Sweden has ruled that the couriers are not employees because they are not employed by Wolt, they are not provided with a minimum wage, and they are not required to fulfil orders to a specified minimum. The couriers have the right to decide whether to work or not, and rejecting orders has no consequences. The couriers are also permitted to assign their job duties to other persons.

Finland ruled on a similar case involving Wolt couriers in late February. The findings are also similar – the court finds the couriers are not doing this work in person and they can delegate it to a replacement or subcontractor. The court also found the work is not run by the company and the couriers do not have specified working hours and are not required to accept orders. Wolt supervising the provision of services and determining the couriers' remuneration is not sufficient in the court's eyes to treat them as employees.

The national court findings and the lawsuit outcomes are consistent with the CJEU criteria for determining legal status, i.e. a courier cannot be recognised as employee if he is permitted to:

- Use subcontractors or replacements to provide the services
- Accept or reject tasks or unilaterally determine the maximum number of tasks
- Provide services to third parties, including those competing with the particular platform
- Set his own working hours and tailor them to his own needs, not the platform's

The EU lawmaker has decided this issue in parallel by reaching agreement on the platform work directive. A proposal for this directive requires the member states' national laws to prescribe the presumption that platform workers are employees. The platforms will then be required to rebut this presumption according to the legislation and EU case law. So these criteria will be the deciding factor in determining the status of couriers, while the Swedish and Finnish lawsuits outline the potential stance of other national courts in resolving this issue.

Compared with the original versions of the legislation, the lawmaker has demonstrated a more flexible

approach that makes avoiding responsibility impossible for employers that abuse their platform to hide employment. A more flexible approach actually fits in with the desires of platform workers. This claim is supported, for example, by an internal Wolt survey that heard 78% of 6,811 couriers say they would stop making deliveries if any statutory restrictions were imposed to prevent them from setting their own working hours, the way they work, and tasks they do.

The legal framework for platform work has emerged after a series of compromises. The presumption laid down by the draft directive makes the platforms liable to demonstrate their couriers are not employees. The ability to show that operations meet the criteria laid down by the CJEU will play a big part in this process, as evidenced by lawsuits in Sweden and Finland.