

Platform work – next stage in evolution of employment 2/10/23



Senior Associate, PwC Legal
Edgars Rinkis

Over time, employment has gone through various stages of evolution. The EU is now standing in the doorway to the gig economy stage¹ and has started drafting rules on platform work. While platform work in Latvia is mainly associated with the food delivery sector, technological advances are expected to make platform business relevant for manufacturing and services as well.

Statistics suggest that platform work is on the increase. In 2021, 28 million people were identified in the EU doing work for one or more digital platforms. This number is expected to reach 43 million by 2025. The EU lawmaker has resumed work on legislative proposals that were originally drafted in 2018 and 2021. The proposed rules are concerned with protecting the rights and social security of workers.²

While adopting rules on platform work is still a matter of political choice, we can identify their main characteristics based on the drafts and legislative efforts.

Terms and definitions

There is no clear-cut definition for this type of work as yet, and the draft directive only offers an early attempt at defining it. Platform work means work that is organised through a digital platform under a contract between the platform and an individual (whether or not that individual has a contract with the customer as well).

The main characteristics have been agreed for identifying a digital platform. This is an individual or entity that provides services described as follows:

- a. The services are completely or partially carried out remotely, by electronic means (e.g. a website or a mobile app).
- b. The services are provided at the customer's request.
- c. The services involve organising work that is carried out by individuals, whether online or at a certain place.

Without evaluating these characteristics individually, a key element of platform business that distinguishes it from the classical work organisation is the algorithmic management of work. For example, an algorithm might organise platform work in the food delivery sector as follows:

- Person A (the customer) approaches a digital platform for a meal.
- The platform's algorithm selects delivery person B from a list of individuals having an agreement with the platform (based on criteria such as their distance, costs and rating).
- The delivery person confirms the order and receives information for delivery.
- The delivery person delivers the meal to the customer.
- The digital platform makes payment to the delivery person.

Since the delivery person provides a service to the customer but has a service agreement with the

platform, no employment relationship can be identified between the platform and the delivery person. Given the delivery person's economic dependence on the platform, this is legally a grey area that needs solutions prescribed by the directive, but aligning the different interests has turned out to be a challenge.

The interests of platforms and workers are not aligned with the lawmaker's obligation

Platform organisers say algorithmic management has allowed them to create new jobs and offer consumers better and cheaper services by providing transparency and fair play in areas of employment that suffer from a lack of efficiency and transparency and the whims of superiors. Workers are free to choose the timing and amount of work. On the other hand, the procedure for awarding work is ambiguous and workers are unclear about the algorithm's conditions and unable to access social security in case of sickness, for example. It is these latter aspects the EU has undertaken to address.

The directive drafted in 2021 provides for an option to reclassify persons employed by platforms as employees within the meaning of national labour law. Yet acquiring employee status would mean not only finding legal protection and social security but also losing the freedoms of platform work. However, the lawmaker has now shifted away from equalising workers to addressing the legal relationship between platform and worker.

This topic is expected to stay relevant for a long time, with platform work becoming increasingly popular as a model of employment. An adequate set of rules could promote this employment trend and modernise labour law, while over-regulation might slow the industry down significantly or even eliminate it. A solution that fully meets the interests of all the parties is unlikely to be found and compromises are inevitable, so the digital platforms and their workers should prepare themselves for this model moving closer to an employment relationship.

¹ While there is no single statutory definition of the gig economy, for employment purposes this concept essentially denotes a labour market that relies on temporary and part-time positions filled by self-employed or freelance workers rather than full-time employees.

² While platform workers are not granted employee status, an "employee" includes a platform worker for this article's purposes.