



GMS Flash Alert

Employment Law

2023-250 | December 21, 2023



European Union – Employment Status of Platform Workers

On 13 December 2023, the European Parliament and Council reached a provisional agreement that aims to improve working conditions for persons performing “platform work.”¹ Platform workers in this context are individuals who perform tasks for customers through a digital platform. Digital platforms “match” customers and individuals performing the tasks in question.

If implemented, the Platform Work Directive will be the first-ever set of European Union-rules on algorithmic management and use of artificial intelligence in the workplace.

The agreed text will now have to be formally adopted by both Parliament and Council to enter into force.

WHY THIS MATTERS

A new European directive on working conditions for platform work, if adopted, will stipulate how employment status is determined for individuals working through digital platforms. This will help ensure that platform workers are not classified as self-employed when they are in fact employees who should enjoy the full extent of labour rights and entitlements.

Companies that are working with self-employed contractors and similar structures should monitor developments in the area of platform work, because these rules may impact the employment status of their current and future contracts with individuals they classify as self-employed.

Background

The European Commission’s analysis from 2021 showed that there are 28 million platform workers in the EU and

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93 percent of these are currently classified as self-employed.² Further, the analysis revealed that there are more than 500 digital labour platforms active and by 2025 it is expected that this sector will employ 43 million people.

Digital labour platforms are present in several sectors, including ride-hailing, food delivery, data encoding, and translation.

Proposed Directive on Platform Work: Highlights

Employment Status

The rules introduce a presumption that an employment relationship is triggered when two out of a list of five indicators of control or direction are present, including control over working schedule, freedom to organise work, and remuneration.³ Member states can expand the list of indicators that trigger an employment relationship.

Companies will have to demonstrate that the worker in question is self-employed, because otherwise the worker will be classified as employed.

Transparency

Individuals working through a digital platform currently do not have access to information about how algorithms work or how their behaviour affects decisions taken by automated systems. The new rules will provide this information to individuals and their representatives.

Monitoring

Digital platforms will be prohibited from taking certain important decisions such as dismissal and decisions to suspend an account, without human oversight. There will be mandatory assessment of the impact of a decision taken or supported by automated monitoring and decision-making systems.

Data Protection

The proposed directive will forbid digital platforms from processing certain types of personal data, including personal beliefs, private exchanges with colleagues, or when a worker is not at work.

Digital platforms will also have to transmit information about self-employed individuals in their employ to the competent national authorities and to representatives of individuals performing platform work, such as trade unions.

Intermediaries

It will not be possible for a digital platform to circumvent the rules by using intermediaries.

MEIJBURG & CO. INSIGHTS

It is expected that the proposed directive for improving working conditions in platform work will eventually be adopted. In its arguments why this directive is necessary, the European Commission mentioned, among other things, that numerous cases have been processed in courts of the EU member states concerning the employment status of platform workers and the majority of the cases resulted in reclassification of the individuals from self-employed to employed persons.⁴

Companies that are using services that are performed by self-employed individuals through digital platforms should follow this development closely and may wish to consider assessing if those individuals in their employ have correctly-assigned employment status.

It is reasonable to expect that, if adopted, this directive will contribute to more scrutiny around assessments of employment status generally.

Some critics say that the outcome of this directive, if adopted, will benefit the fiscal interest of those member states that have set taxes on service provision lower than employment.⁵ It has been suggested that the expected increase in reclassification of workers from self-employed to employed will increase revenue from taxes and social security contributions.

The EU Commission estimated in its impact assessment analysis that currently more than 5 million individuals working in the platform economy are wrongly classified as self-employed. Further, it indicated in the impact assessment that reclassification of platform workers from self-employed to employed could raise EUR 3.98 billion annually in tax and social security contributions.⁶

FOOTNOTES:

- 1 European Parliament: [*Platform work: deal on new rules on employment status*](#), 13 December 2023.
- 2 European Commission: [*Executive Summary of the Impact Assessment: Proposal for a Directive on improving working conditions in platform work*](#), 9 December 2021.
- 3 European Commission: [*Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work*](#), (9.12.2021)
- 4 See footnote 3.
- 5 European Commission: [*Feedback from BOLT*](#), 14 February 2022.
- 6 European Commission: [*Commission Staff Working Document, Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council On improving working conditions in platform work*](#), (9.12.2021).

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Contact us

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