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THE ADECCO GROUP

# Delivery pending

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How to drive a better instant  
delivery platforms world of work

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# Foreword

At the Adecco Group, we aim to make the future work for everyone. This means that we are committed to ensuring that work can be done as quickly, efficiently, and nimbly as consumers want today, with the protections and job quality that workers also rightfully expect. The gig economy, and especially instant delivery, is an incredibly exciting space in this context. It shows us new opportunities to serve consumer needs and turn available work into real jobs. But the sector has been grappling with challenges regarding workers' expectations. In this paper, we are exploring those opportunities and challenges.

The gig- or platform economy is another illustration of the changed expectations of today's labour market stakeholders. It is increasingly clear though, that new expectations can only be met when all stakeholders also take up a new set of responsibilities. At the Adecco Group, we consider such a new set of expectations and responsibilities to constitute a New Social Contract. To achieve a New Social Contract, we believe that governments, companies and workers need to step up in equal manner. A successful path forward will create a new industry standard, bringing us closer to an employment landscape that sees all workers, not just some, have access to fair pay, flexibility, and social benefits.

The solutions proposed in this paper provide a range of options for creating a more balanced relationship between delivery platforms and affiliated workers. While the approaches vary, there is unanimous agreement between experts that the way forward must create a comprehensive solution that can be applied on a national scale, rather than the ad hoc, company-specific court rulings that have been seen to date, applying to some workers in a given market, while leaving out others who are essentially performing the same job. The win-win solution will be based on inclusive conversations, a comprehensive understanding of platform work and the stakeholders it affects, as well as an open mind to finding flexible solutions that work for couriers. Only then can we truly make the future work for everyone.

—Alain Dehaze  
CEO of the Adecco Group

# Table of Contents

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- 4 I. Executive Summary**
- 5 II. Introduction**
- 6 III. What are delivery platforms?**
  - The definition
  - The delivery platform business model, value chain and competitive landscape
- 8 IV. The Platform-Worker Relationship**
  - Workers' perspective
  - Platform perspective
  - Worker-platform relationship
  - A deeper dive: contracts, algorithms, and intermediaries
- 13 V. Delivery Platforms and Workers in Key Markets**
  - Case study: Delivery platform workers in Spain
- 18 VI. Regulating and Legislating Delivery Platforms**
  - The state of the policy conversation
  - The policy conversation: who to include?
  - Solutions: Reflecting today's flexible world of work
  - The way forward
- 24 VII. Annex**
  - Terminology and Abbreviations
  - Market Overview: Platform Workers and Regulatory Frameworks
  - References

# I. Executive Summary

Over the last 15 years, ongoing globalisation and digitalisation of many industries have contributed to a **proliferation of digital labour platforms, and instant delivery platforms** in particular. As such, this rise in number of both delivery platforms and affiliated workers has resulted in a more urgent need **to regulate the relationship between them**. Against this backdrop, this paper analyses the delivery platforms' business ecosystem through the lens of digital freelancers' working conditions, with the aim to identify and provide recommendations for solutions to help promote a responsible and flexible model that creates **a fairer relationship between delivery platforms and affiliated workers**. This paper also includes a market-by-market analysis of the policy conversation around delivery platform workers' conditions, and draws on the Adecco Group's decades of expertise in offering flexible work via the agency work model.

For the purposes of this paper, the focus on digital labour platforms is narrowed down to specifically examine instant delivery platforms, such as UberEats, Glovo, Delivery Hero, and Just Eat, among others. These delivery platforms act as an intermediary between the end user (customer), a supplier (such as a restaurant, grocery store, or other type of merchant), and the worker affiliated with the platform (rider or courier), charging a commission to put the three parties in contact for a service to be performed. Within the instant delivery business model and the value chain of the delivery process, operating margins are thin, often resulting in lower profits for merchants and less disposable income for delivery workers.

For platform workers, the most commonly cited benefits are flexibility in working hours, low barriers to entry, and easy access to income and work experience. While delivery riders may not see this work as a long-term career, they often find the work to be unpredictable and earnings heavily dependent on working parameters set by the platform. As independent contractors, workers also typically lack social benefits and protections that accompany direct employment. There is currently a lack of a consistent regulatory framework that sets parameters for a "fair" relationship between the platform and affiliated workers.

**The current state of the policy conversation** varies by country and has typically seen national or state-level courts making concrete legal decisions related to the platform-worker relationship, specifically workers' employment status, on a case-by-case or company-specific basis. The main considerations for policymakers come down to **conditions of platform work**, specifically job and income security for workers, as well as access to benefits and social protections, career development opportunities and the right to negotiate contracts.

Creating a **more balanced relationship between delivery platforms and affiliated workers**, while at the same time **maintaining business growth and worker flexibility**, will require an inclusive approach that results in a productive conversation at the policy level. Only this approach to the policy discourse, featuring riders, unions, platforms, workforce solutions providers and academia, will create a mutually beneficial outcome that produces win-win scenarios for both platforms and affiliated workers.

Given the inflexibility of today's employment regulations, policymakers now need to address the complex question of **how to redefine labour models for the digital age**, including those for instant delivery work, that provide workers with more options for economic stability, professional upward mobility, and certainty in their future. Effective solutions can include decoupling employment status from access to benefits, collective bargaining or cooperatives for negotiating platform workers' conditions, flexibility in contracts and employment models, government subsidies for platform workers' benefits, or leveraging workforce solutions firms to allow platform to hire workers on a more flexible basis without becoming their direct employers.

The solutions proposed in this paper provide a range of options for creating a more balanced relationship between delivery platforms and affiliated workers. Achieving this progress for today's delivery platform workers will require critical self-reflection from all parties involved – platforms, policymakers, workers, unions, associations and multilateral organisations. Without a cohesive approach and fair debate, workers will be left with the existing and fragmented policy approach that in the long run ends up being a lose-lose for all.

## This paper's recommendations for the way forward are:

1. **Social protection as the baseline for all forms of (platform) work**
2. **Clear criteria are needed to define worker status**
3. **The price for platform services should reflect the cost of social protection**

The Adecco Group considers that there are many opportunities for decent flexibility, either in employment – including agency work – or in self-employment, and the recommendations above should be key considerations in the ongoing policy debate.

# ii. Introduction

Over the last 15 years, ongoing globalisation and digitalisation of many industries have contributed to a proliferation of digital labour platforms and delivery platforms (DPs) in particular. The COVID-19 pandemic has certainly exacerbated this trend, with an unprecedented number of delivery platforms being used to fulfill essential needs that could not be carried out in-person due to lockdowns and restrictions across the world. For the end consumer, delivery services provide benefits such as speed in access to goods and services, convenience, and often, low prices. At the same time, beyond their role as service providers, delivery platforms have also become an essential source of revenue for many workers who lost their jobs because of the pandemic, want more flexibility in their work, or rely on platforms for additional income.

*“The rising number of both delivery platforms and affiliated workers have resulted in a more urgent need to regulate digital freelancers’ working conditions.”*

Vijay Jonnalagadda, Global Head of Sales and Tech Talent Solutions at Modis

Although working arrangements vary on a platform and market basis, many people working through DPs are classified as self-employed and thus have a high level of work flexibility, but also have limited access to social protection, unpredictable

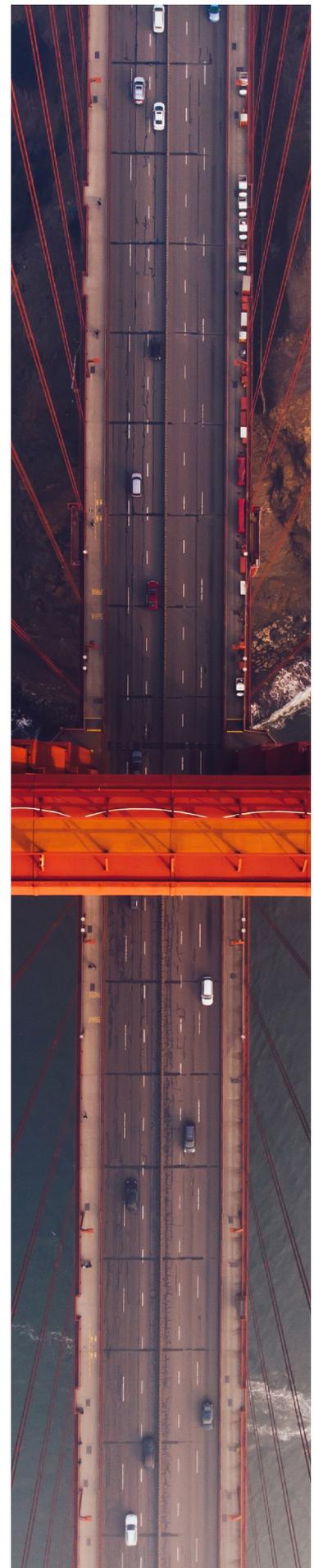
earnings, and low job security. In recent months, courts and governments across markets have set out to regulate the relationship between digital labour platforms and workers. However, the absence of best practices and models of references have generated a kaleidoscopic regulatory framework across markets, whereby in some countries workers affiliated to a specific platform have acquired full employment status while others, operating for the same platform but in another market, are still considered self-employed.

Against this backdrop, this paper, based on research conducted through primary sources, high-level expert interviews and literature reviews, intends to map and analyse the delivery platforms’ business model, working conditions for riders and couriers, the contractual relationship between delivery platforms and affiliated workers, as well as the regulatory frameworks that have emerged across global markets where this policy conversation is gaining traction. The aim of the paper is to identify best-practices and provide recommendations for solutions to help balance the social and economic risks faced by delivery platform workers with the benefits of platform work through a responsible and flexible model that creates a fairer relationship between delivery platforms and affiliated workers. In this aspect, the paper will also draw on the Adecco Group’s decades of expertise in offering decent flexible work via the agency work model.



## Delivery platforms

are an essential source of revenue for many workers who lost their jobs because of the COVID-19 pandemic.



# III. What are delivery platforms?

## The definition

For the purposes of this paper, the focus on digital labour platforms will be narrowed down to specifically examine instant delivery platforms (DPs). These delivery platforms act as an intermediary between the end user (customer), a supplier (such as a restaurant, grocery store, or other type of merchant), and the worker affiliated with the platform (rider or courier). The delivery platform charges a commission to put the three parties in contact for a service to be performed, in this case the delivery of a product such as a meal or groceries.

Instant delivery platforms are different from other online web-based platforms, where tasks or work assignments are performed digitally and remotely (for example legal or creative services). Instant delivery platforms have a “location-based” nature, which means that tasks are carried out in-person at a specified physical location by workers as an on-demand service. This also differentiates these platforms from

those operating in something like the hospitality sector, where work is generally not task-based, but hour- or shift-based. While specific payment structures for workers vary by platform, driver or courier pay is typically task-based, and can include a flat “per-order” payment rate, or a commission payment based on the value of the order delivered.

## The delivery platform business model, value chain and competitive landscape

The delivery platform model is a unique example of the hybrid economy that combines physical and digital services that are executed as a function of supply and demand. According to Mick Rix, a representative of the British Trade Union GMB, the delivery platform business model “is just a better way of connecting people in terms of services and supply,” which “has essentially replaced a phone call.” What makes the model particularly innovative, as Tom Hayes, Executive Director of BEERG, highlighted, is

the use of technology that allows the interaction between end customer, merchant and driver to be cheaper and faster for the consumer, and light on labour cost for the platforms facilitating the process.

While the definition of “delivery platforms” in the previous section is accurate, it is important to note that platforms don’t merely connect people and businesses. As delivery platforms have become more commonplace and widely used, the platform’s role as an intermediary has evolved to be a much more active participant in the relationship between the consumer, the supplier and the delivery worker. Often, the platform is doing much more than just connecting these parties, which does not neatly fit into the platform’s narrative of merely being a “connector.” As such, platforms are not just providing a technical solution for the purpose of delivery, but feel they also need to have some degree of accountability for the quality of the delivery service that the end customer experiences.





This level of accountability reflects how the business model for operating delivery platforms has evolved over time:

- **The “first generation”** model served more as a marketplace that connected the service and the customer, without the responsibility for the quality of the final service performed or goods delivered. For example, Task Rabbit is a platform that connects a person looking for a specific service (fixing a leaking pipe) and the service provider (plumber).
- **The “second generation”** model, which is the model that most delivery platforms now operate through, is one in which the delivery platform not only connects the customer to an end service or product

(a meal), but also provides logistical services (food delivery) and is responsible for the quality of the service that the end customer experiences. Under the second model, platforms also regulate the prices of the services provided to consumers.

Under the “second generation” model, a major challenge for delivery platforms is that business margins are typically low, and profitability becomes a question of reaching a high market share threshold. However, the delivery platform market is fragmented, competitive and lacking in customer brand loyalty, which makes it more difficult for platforms to reach profitability. According to Robert Räumle, head of policy development in the Policy Lab

Digital Working Society, a think tank in the German Federal Ministry of Labour and Social Affairs, the platforms’ quest for profitability can impact both the platform and the workers, “due to high competition, which might push platforms to lower their prices at first with the aim to establish a monopoly, and to then raise their price again and lower the workers’ fees or wages to increase profits.” Often times, this also results in higher commission charged to the merchant on the value of the final goods delivered. The value chain of the delivery process, which can include the platform, fleet management company, staffing firm, technology provider and payroll operator, means operating margins decline, often resulting in lower profits for merchants and less disposable income for delivery workers.

# IV. The Platform–Worker Relationship

According to Jochem de Boer, a former representative from the World Employment Confederation, platforms have “absurdly leveled the playing field” in making interaction, intermediation, matching and accessing the market extremely easy for all parties involved – consumers, merchants, and workers. As use of delivery platforms has become second nature to consumers across the globe, the delivery platform business model, specifically the relationship between the platform and delivery riders or drivers, has become a growing topic among the public, media, international organisations, the business community, and regulators. As part of this debate, it is important to examine this relationship, including benefits and drawbacks, from the perspective of both sides.

## Workers’ perspective

There are several commonly cited benefits for workers affiliated with platforms:



**Flexibility:** Delivery platform work provides drivers and riders with the ability to determine their own working hours to fit their needs and schedules without making rigid commitments. This benefit is especially important for those who cannot work traditional hours, such as parents or students. This is also why for many, delivery work is not a long-term career, but rather a limited-time opportunity. Women especially are turning to app-based gig work because of its flexible nature. According to recent surveys, 80% of women on DoorDash and 50% of women on UberEats said that ridesharing or delivery platforms provided them with the flexibility they could not get from other jobs.<sup>1</sup> Workers are also able to shift working between competitor platforms, which could rarely happen outside of the gig economy model.

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*“Platforms give some opportunities in terms of flexibility, and they often provide additional income to workers. I think, this is an opportunity especially for students, for example. At the same time, we must strike a balance between the risks and opportunities of this new kind of work.”*

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Sylvie Brunet, Member of the European Parliament



**Low barriers to entry:** Delivery platform work has a low skills and qualifications requirement; riders and drivers primarily need the ability to ride, drive and use a navigation app to complete the work successfully. The process for applying and being accepted to work on a platform is typically quick, simple, and provides workers with easy access to earning opportunities. Delivery platform work is also inclusive in its nature and can provide income to those who are often excluded from traditional skilled or professional jobs because of language gaps, lack of skilled qualifications, age, and legal or migration status.



**Access to income and work experience:** Delivery work is often a source of supplementary income for those who already have a full-time job, or for workers who find themselves out of work unexpectedly. This was especially true during the COVID-19 pandemic, when many lost their jobs and had to turn to alternative sources of income while demand for delivery platform services spiked due to lockdowns.



According to a professional from the DP sector, the **disadvantages** faced by delivery platform workers “are related to the non-standard nature of the work”.



**Irregular hours, unstable income and unpredictability:** Even when a rider signs on to work, income is not guaranteed as there are peaks and valleys in demand and some working hours are better compensated than others. Peak demand hours can be scarce, and according to a representative from Spain’s Asoriders, “there are almost never enough deliveries available to everyone that wants to be online at a given time.”



**Platform dependency:** According to a representative from the OECD, unlike traditional independent workers, workers affiliated with digital platforms can become completely economically dependent on a single platform company. In this respect, they do not always enjoy the full freedom of traditional independent workers, as the platforms can change working conditions, alter percentage of their revenues or impose new conditions with very little notice for workers.



**Lack of benefits:** Unless drivers and riders are directly employed by the platform, as independent contractors they lack the social security and protections, such as sick leave, vacation pay and access to pensions, that accompany direct employment. Independent contractors need to organize their own benefits, but may sometimes choose immediately disposable income over investing in social protection for their future. According to a representative from Delivery Hero, platforms “would love to do more and have more leeway to offer more benefits, but some regulatory frameworks are making this very difficult.” Legal frameworks, such as in markets like the U.S., that allow for legal action against companies for providing only certain benefits to workers only further discourage platforms from increasing benefits for riders and drivers.



**Lack of a consistent regulatory framework:** Current employment regulations are primarily designed for full time, direct employees, and delivery platform workers’ participation in the labour market is not fully recognised by existing regulatory frameworks. This leads to many delivery platform workers finding themselves in the “grey zone,” described by the OECD as “between dependent and self-employment,” leaving them without proper access to benefits and social protections.<sup>2</sup>



**Limited earning opportunities:** In addition to the challenges listed above, riders and drives are also responsible for affiliated costs of their work, including paying for gas and car insurance, as well as the depreciating value of the tools of their work (vehicle or bike). DP work also offers fewer opportunities for professional training and career perspectives that can advance workers in their earning capacity. According to Spain’s Asoriders, an association representing delivery riders, “the worker turns out to be the weakest link in this chain of work. They do not decide the price of their labour; they must provide the tools to work; even when hired, they do not have a stability in the work because of the market supply and demand shifts.”

## Platform perspective

For platforms, there are two core benefits of engaging with riders and drivers:



**Ability to capture large swaths of labour market at a low cost:** Enabled by technology, platforms can both quickly create jobs and access the labour market to fill those jobs. According to a former Postmates executive, the platform saw an 84% spike in applications to join the platform when COVID-19 shut down the economy and many were out of work. Even in times of crisis, platforms can generate income with minimum investment and risk due to the currently autonomous nature of the worker-platform relationship.



**Elastic nature of labour supply:** This easy and inexpensive access to the labour market allows platforms to stay nimble in responding to peaks and valleys in demand. Platforms can have a sizable fleet of workers at their disposal without generating additional expenses by simply pushing notifications to workers and incentivizing them to get online.

As mentioned earlier, one of the biggest challenges for platforms is keeping their business sustainable and making their operations as efficient as possible to approach the profitability threshold while also paying workers a considerable wage. To be successful, platforms must also keep all players in their ecosystem happy: riders need to feel that they are being paid well, merchants and restaurants that they are getting a fair commission, and that the platform is approaching profitability. The highly competitive nature of delivery platform work often results in bargain offers and a low price for the end consumer, the cost of which is absorbed by the platform, the merchant and the delivery driver. Furthermore, promotions are unilaterally determined and managed by the platform, giving drivers or restaurants little choice but to adhere to the new price.

## Worker-platform relationship

The discussion of delivery platform work, its benefits and challenges is a natural transition to a core question about the relationship between the delivery platform and its affiliated workers: **Is it fair?**

In most discussions, this question of fairness primarily relates to worker compensation and benefits. According to critics, the relationship is unfair for 3 main reasons:

**1. Most of the risk is transferred to workers.** Platforms' revenue is typically not affected by the number of riders or drivers who are working on a given evening; however, the more workers are competing for a finite number of deliveries, the lower their income can be.

**2. By using algorithms, platforms have access to a significant amount of data and can acquire a dominant position over workers.**

The algorithm determines how and when a worker has access to earning opportunities and exerts a relatively high level of control over a worker's earning potential.

**3. Contractual arrangements cannot be negotiated as most delivery platform workers are considered self-employed without contracts.**

As self-employed they do not have rights to collective bargaining, but in the platform economy, they also do not have the freedom to set their own rate, as most self-employed workers can.

As counter arguments, parties that are in favor of the current arrangement between delivery platforms and workers point to:

**1. Fair pay.** Platform representatives point out that worker compensation is often higher than regulated minimum wage rates and comes with the additional benefit of flexibility. However, most platforms admit that there is room for improvement in safety nets and training opportunities that could be provided to drivers and riders.

**2. Easy access to earning opportunities.** Advocates of platform work point out that platforms create work that allows drivers to elevate their household income through easily accessible opportunities that would not have otherwise existed without the platforms themselves.



## A deeper dive: contracts, algorithms, and intermediaries

There are typically two types of contractual arrangements for delivery drivers and riders working through platforms:

– **Self-employment:** The worker typically does not have access to social security benefits; workers also do not have the ability to decide the price of their work, but instead they can accept or decline individual tasks as they see fit. This is the contract model that is typically used by most delivery platforms.

– **Employed:** The worker is fully entitled to worker benefits according to national regulations; the worker is also guaranteed a set income based on time worked – but workers are expected to work for a pre-agreed amount of time. This is the approach employed by Just Eats’ delivery model Scoober, which directly hires riders through a contract that grants an hourly salary, employment insurance, social security according to the local legislation, free use of equipment of vehicle allowance, and the company’s signature orange clothing.

There is an in-between model emerging in markets like the U.K., in which delivery drivers are considered workers and get access to certain rights and social securities, which has created the controversial question of new classifications for workers. According to critics, introducing a new classification

would only create more confusion between employment statuses and further expand the legal grey zone within which many platform workers are already operating. According to Christian Poppe, global public policy manager with Delivery Hero, “We are very much convinced that the freelance model is generally the right model to conduct operations successfully and sustainably, but we believe that in a lot of markets there is not enough room to complement today’s freelance model with additional benefits.” More progressive ideas are needed to enable platforms to provide affiliated workers with more safety nets and benefits, while maintaining their own flexibility and efficiency to be profitable. Most recently, Glovo announced a “Couriers Pledge” initiative, which will create clearer pay structures and provide social rights for the company’s couriers, including expanded insurance coverage for accidents, sick leave, and parental leave. The company has noted that it will be logistically difficult to implement the pledge in all markets where it operates due to the varying regulations from country to country.

When discussing contracts, the question of platform control over its workers is one that has been important in defining the level of employment and worker autonomy. Courts have argued that the more control a platform has over a worker – for example through its algorithm, which often determines a driver’s opportunity for work – the closer that rider or courier is to being a direct employee

of the platform. The algorithms deployed by platforms can be managerial and interventionist in nature, and according to Sylvie Brunet, Member of the European Parliament, “it is difficult to have transparent algorithms and there is an information imbalance” that can negatively affect the worker. Platform workers who do not have the autonomy to accept or reject assignments, organize their work in a way that fits their lifestyle or the freedom to work for more than one platform are considered “bogus self-employees,” and should legally have the same protections as employed workers. However, according to platform representatives, the degree of control that platforms have over workers is not unreasonable, as the platform is ultimately responsible for the end customer experience and quality of service they receive.



The idea of new  
**classifications**  
for workers has become  
**controversial**  
across markets.



As such, a potential way to mitigate “bogus self-employment” has been by using intermediaries, such as workforce solutions providers, to navigate the relationship between the platform and its affiliated workers. Through intermediaries, riders or drivers continue to work for platforms while employed, with certain benefits, by another company. These companies already operate within a regulatory framework that aligns with the scope of employment they are providing, including wage protections, and avoids the question of whether a rider or driver is a platform employee or not (they are not).

This arrangement removes the legal grey area mentioned earlier and gives couriers the opportunity to work within parameters dictated by national law that agencies already operate within. According to Vijay Jonnalagadda, Global Head of Sales and Tech Talent Solutions at Modis, within this regulatory framework, which differs by country, there are three possible contract arrangements between platforms and affiliated workers, with a workforce solutions firm acting as an intermediary:

- 1. Flexible placement:** This follows a traditional agency work arrangement in which the workforce solutions firm employs drivers that are then placed on assignment to a platform (or a fleet management company on behalf of the platform). The platform indicates the number of manhours it needs which are then provided by the workforce solutions firm. Workers are directly employed by the workforce solutions firm, but benefits are billed back to the platform or fleet management company.
- 2. HR and data processing services:** Under this contract, the workforce solutions firm does not employ the rider or driver, but instead provides a support structure

for the delivery platform from a workforce management perspective. These services can include driver screening, HR-related onboarding to the platform, and payroll processing. In this scenario, the platform is the employer of record and is responsible for providing benefits to affiliated workers. However, several time-consuming workforce management tasks are outsourced to HR experts.

- 3. Full outsourcing model:** With the full outsourcing model, the worker’s employment journey is fully taken on by the workforce solutions firm, including recruitment and selection, billing and payment, as well as benefits such as pensions, paid time off, and training opportunities – similarly to the flexible placement model. In this scenario however, the delivery platform has a contract based on set performance indicators with the workforce solutions firm, which in turn has to make its own assessment of how and when to deploy a certain number of riders.

According to supporters of the intermediary solution, staffing agencies present an opportunity to clarify the relationship between platform and workers and can play a central role for some location-based platforms. Workforce solutions agencies have experience in providing employment and human resource management, and already specialise in the flexible solutions that both platforms and workers are looking for. This use of intermediaries is already widespread in the Middle East for fleet management, as well as in China, where platforms rely on agencies to provide their workforce. While the solution will vary depending on the regulatory framework in countries of operation, it is one that would remove the administrative burden from delivery platforms while allowing them to engage with drivers and riders in a more transparent way.

# v. Delivery Platforms and Workers in Key Markets



**22%**

of adults in Europe and North America performed platform delivery work from 2015 to 2019.<sup>3</sup>

**1 in 10**

of the EU bloc's labour market have worked through digital platforms.<sup>4</sup>

**11%**

of the EU workforce provided a service through digital platforms at least once.<sup>4</sup>

Of that 11%, **3 million** people rely on digital platforms for their primary source of income, **9 million** as their secondary source, and almost **7 million** as an occasional source of income.

**55 million**

people consider themselves gig workers in the US, representing 34% of the workforce.<sup>5</sup>

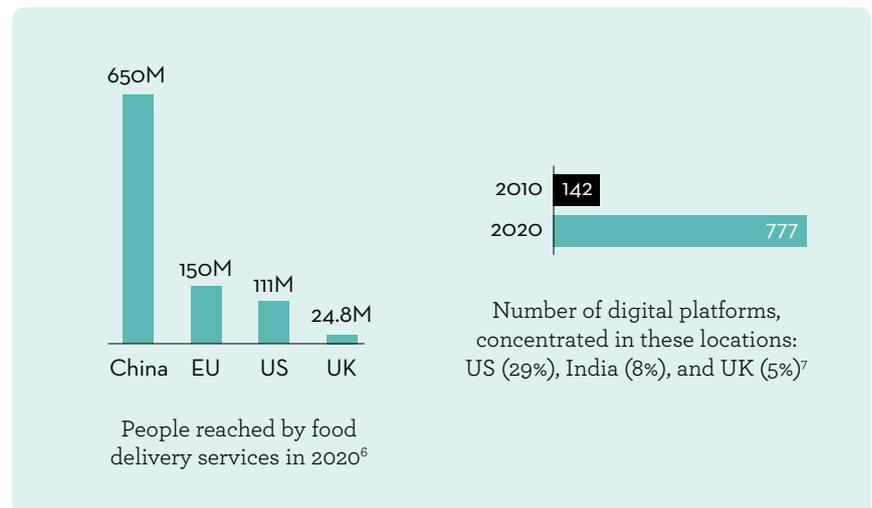
**183%**

increase of food deliveries in Southeast Asia in 2020.<sup>6</sup>

The COVID-19 pandemic has had uneven effects on the gig economy, with delivery platforms gaining unprecedented traction and becoming a fundamental service in North America, Europe and Asia amid lockdowns and limited movement for many. Data shows there was a rapid growth in demand for delivery platform services.

The flexible nature of delivery work makes determining the exact number of workers affiliated with platforms at the global level almost impossible. The graphic below provides an overview of available data on gig and delivery platform workers.

Despite this growth, the status of workers affiliated to a delivery platform is contested for multiple reasons, especially because of the lack of social security and protections. Globally, legislative solutions, where available, lean towards reclassifying digital platform workers as platforms' direct employees, rather than freelancers – although court rulings are not unanimous and may even contradict each other across jurisdictions. But this goes only so far; some jurisdictions are experimenting with a special hybrid status for delivery workers, and many others have simply not yet started to consider the issue fully.





## Platform Workers: Global Highlights



- 1 European Union:** European regulation on platform work is expected by the end of 2021 by the European Commission, granting platform workers access to some social protections.
- 2 United Kingdom:** Uber drivers are classified as workers, with rights such as a minimum wage, holiday pay and a pension plan.
- 3 India:** Minister of Finance has asked to extend social security benefits to platform-dependent workers, which has yet to be enforced.
- 4 China:** Government agencies have published new guidelines to protect riders' basic labour rights.
- 5 Latin America:** Delivery platforms have grown more than 30% in 2020, reaching a value of \$6.8 billion.
- 6 Chile:** A special regulation recognising platform workers as employees has been recently approved and is now under discussion in the Senate.
- 7 North America:** Numerous legal fights are taking place to classify delivery platform workers as employees.
- 8 United States:** Delivery platform worker conversation gaining traction in states like California, Massachusetts and New York.
- 9 Canada:** Consultation launched for a bill to provide forms of social security and protection to workers affiliated to platforms.

In the **European Union**, according to Tom Hayes, the Delivery Platforms labour model “is coming to an end [as] European member states are practically all saying that these workers are employees”. Although labour regulation is normally a national competence, the EU is expected to follow this line. According to a European Parliament initiative report adopted in September 2021, workers affiliated to platforms should have access to social protection, a healthy and safe working environment, fair and transparent working conditions, as

well as granted the possibility for collective bargaining.<sup>8</sup> Moreover, to facilitate the correct classification of platform workers, the Parliament agreed that the burden of proof should be reversed: when challenged, it should be up to platforms to prove when there is no employment relationship rather than leaving it up to individual workers to prove there is an employment relationship. A European regulation on platform work should be published by the end of 2021 by the European Commission, which has collected input from social partners

during the mandated two phases of consultation in 2021, including on issues such as employment status, benefits, automated management and general working conditions. According to Menno Bart, Senior Public Affairs Manager with the Adecco Group, “the legislation will have to take into consideration the Parliament’s approach, but also find common ground and harmonise priorities across all EU member states. Doing so will require an open mind on the side of policymakers.”

According to a platform representative, the EU path presents a risk of overregulation, which will result in less offerings on platforms and less opportunities for workers and retail partners to be connected to new income streams. This could “cripple the industry and make it regress back to the ‘generation one’ marketplace model,” which is already happening in Spain as a result of the new Rider Law that mandates direct employment for platform delivery workers. Under similar laws, restaurants could once again be responsible for directly employing delivery drivers, which most retail and restaurant partners do not want to, and cannot afford to do.



At time of writing, Portugal is the latest country considering legislation similar to Spain’s Rider Law, with a bill that would assume a worker to be **directly employed by the platform** when there is evidence of a relationship between the platform, the delivery worker and the end customer.

In countries like the **United Kingdom**, change is happening on a company-by-company basis. In March 2021, Uber reclassified approximately 70,000 of its drivers after a Supreme Court ruling, granting drivers workers’ rights such as a minimum wage and holiday pay. In September 2021, the company also announced that it would begin contributing 3% of a driver’s earnings into a pension plan. However, not all platforms are following suit. According to GMB National Officer Mick Rix, most British citizens working through platforms still don’t have access to benefits and forms of social welfare. To date, while one third of British workers have some experience of working at least once a week on a platform, the Independent Workers’ Union of Great Britain (IWGB) has reported that the number of platform workers enduring forms of abuse is on the rise, with 9 out of 10 reporting to have suffered physical assaults, incidents, or harassment at work.<sup>10</sup> According to Rix, what the U.K. is lacking at the moment is the political will to create change. While he does not think a new status to define gig workers is necessary, political forces, such as a body directed by the Treasury, “could intervene at any time to sort things out and apply an existing criterion that would distinguish direct employees from self-employees.”

In the **Asia Pacific** region, the regulation of DP workers’ status is more kaleidoscopic than in the EU. Although the Asia Development Bank report on Asia Economic

Integration praised digital platforms for generating new, more modern and flexible forms of employment and entrepreneurship, public and political debates for introducing more stringent regulations are taking place.<sup>11</sup> In **India**, where an average of 10 million workers are affiliated with delivery platforms, the Supreme Court has filed a litigation presented by the Federation of App-based Transport workers (IFAT) in October 2021, maintaining that DP workers are employees and should have access to social security benefits. The litigation comes after a statement made by the Minister of Finance in February 2021 to extend social security benefits to platform-dependent workers, which has not yet come into force. In **China**, where delivery platform such as Meituan can count on 3 million affiliated workers delivering up to 27 million food orders per day, the State Administration for Market Regulation (SAMR) and six other government agencies have published new guidelines to protect riders’ basic labour rights. The Guidelines call for online platforms to ensure their affiliated workers earn a decent salary, above the country’s minimum wage, are freed from unreasonable demands placed upon them by algorithms and have access to social security and a place in a union. The Guidelines seem to respond to a social protest in China called Tang Ping, meaning “lie flat,” against the precarious conditions and long working hours faced by many Chinese workers.



In the last five years, the number of adults in England and Wales working for gig economy companies has reached

**4.4 million**

an increase from 6% in 2016 to almost

**15% in 2021**

of workers paid by platforms such as

**Uber,  
Deliveroo  
and  
Amazon  
Flex.**

Within this time frame, the proportion of the workers carrying out platform work at least once a week has more than

**quadrupled**

in delivery and driving.<sup>9</sup>

In **Latin America**, the COVID-19 pandemic allowed delivery platforms to grow more than 30% in 2020, reaching a value of 6.8 billion U.S. dollars. The delivery platform market is expected to grow, even more, with only 12% penetration in the region and huge competition in the local ecosystem, where once-startup companies such as iFood or Rappi have now become giant players.<sup>12</sup> Rappi is also developing services apart for food delivery, while iFood has recently merged with Domicilios, becoming one of the biggest companies in the region. To date, due to the lack of specific labour legislation and clear political responses, the definition of the employment or self-employment status of DP workers has often been left in the hands of Courts across Latin America. However, in Chile, a special regulation on gig workers has been recently approved by the Chamber of Deputies and is now under discussion in the Senate.<sup>13</sup> The law recognises DP workers as platform employees, providing them with access to social security and protection.

In **North America**, numerous legal fights are taking place to classify DP workers as employees. In the United States, according to a former platform executive, “state and federal authorities have not yet updated the social safety net or labour laws for a new reality where millions of Americans no longer fit into the binary categories of W-2 employees or independent contractors.” In November 2020,

Proposition 22 (Prop. 22), officially known as the “App-Based Drivers as Contractors and Labour Policies Initiative,” was approved in California by 58% the citizens. The measure countered California Assembly Bill 5 (AB5)<sup>14</sup> that mandated gig workers be classified as employees and instead formalises gig workers’ status as independent contractors. The measure was backed by many platform companies such as Uber, Lyft and Doordash among others, with a record investment of up to \$200 million spent for the ballot initiative. However, in August 2021, a court judge ruled the measure unconstitutional. As of writing, Prop. 22 is still effective, with its proponents appealing the judge’s ruling.<sup>15</sup> The delivery platform-worker conversation is also gaining traction in states like Massachusetts and New York, both of which are aiming to introduce additional protection for platform workers.

In **Canada**, following pressure from social parties, Uber has proposed the development of a social fund to cover its affiliated workers’ retirement, life insurance, dental care and education benefits. Such benefits will depend on the affiliated workers’ reaching the platforms’ working hours threshold, and payment would be proportional to the number of hours worked.<sup>16</sup> However, the social fund was perceived as way to overcome the current social security issues affecting platforms’ affiliated workers. To date, it seems that Canada is leaning more towards the EU than

the US approach when it comes to regulating the gig-economy. In spring 2021, the government launched a consultation for a bill to provide forms of social security and protection to workers affiliated to platforms and Erin O’Toole, Leader of Canada’s Conservatives, has proposed ensuring access to employment insurance benefits for workers affiliated to platforms.

Most recently, to reflect the global conversation about workers’ rights, the G20 announced an agreement on social protections in today’s changing world of work, including those working through digital platforms. While the text of the agreement was initially agreed to in June 2021 at the Labor Ministers’ Summit, it is now an official annex to the G20 leaders’ communique, released in late October 2021. The communique states the G20’s aim is “to allow all persons to benefit from the employment opportunities offered by digital platforms while promoting decent work and access to adequate social protection for all,” including by improving regulatory frameworks, promoting access to benefits, and avoiding competitive disadvantages for both workers and employers. While the statement may not lead to immediate implementation, the language serves as a clear indicator of the direction the global conversation is heading in regarding benefits and protections for digital platform workers.<sup>17</sup>





## Delivery platform workers in Spain

As a result of a tripartite collective bargaining agreement reached in March 2021, in May 2021, the Spanish cabinet approved a “Rider Law,” which requires online delivery platforms operating in the country to classify, under certain circumstances, their couriers as direct employees rather than independent contractors. The above-mentioned presumption of employment status, followed the September 2020 Spanish Court decision that a rider affiliated with Glovo was an employee. Moreover, the final provision of the Rider Law requires platforms to apply maximum transparency in the use of algorithms, clarifying how the latter might impact workers’ conditions and hiring decisions, and notifying workers of the algorithms’ parameters.

This law is the result of months of consultations between the trade unions CCOO (Workers’ Commission) and UGT (General Workers’ Confederation), the employer organisations CEOE (Spanish Confederation of Business Organisations) and CEPYME (Spanish Confederation of Small and Medium Enterprises), and the Spanish government. The law came into force on 12 August 2021, allowing platform companies a 90-day transition period to comply with all the requested measures, such as registering all delivery riders in the General Social Security Regime and paying monthly social security contributions on their behalf.

However, some have noted that the 3-month-probation period was too long, and have accused platform companies of creating loopholes around the new law that allow them to continue operating without significantly changing their business models. According to Spain’s Asoriders, the Rider Law presents great limitations for both platforms and workers. **“By having to hire the couriers directly, the fleet’s size will be reduced to the minimum necessary to operate, without the ability to cover unforeseen peaks of high demand. In addition, the final customer will have to wait longer.”** Already in June 2021, Asoriders, together with the Professional Association of Autonomous Riders (APRA) stressed in an open letter that many riders affiliated to platforms were in favor of remaining self-employed.<sup>18</sup> **In an interview, an Asoriders member shared that, beyond the media attention that the law has received, it has not had any positive effects on riders.** The government created a law that is not on par with new tools and working relationships of the digital market.

Critics also point to the law as an example of **“populist politics that can ruin a growing sector before it even gets off the ground.”**<sup>19</sup> The law, indeed, will force

platforms to leave the market (such as Deliveroo, which, in July 2021 announced its plan to cease its operations in Spain), subcontract to other companies, or go back to the “first generation” marketplace model. It will also affect riders. An analysis conducted by the Spanish Association of Digital Economy (Adigital) shows that the law will result in a reduction of delivery platforms operation across Spain, with 23.000 riders (76% of total) losing their income. At the same time, it estimates that restaurants will lose up to 250 million euros in potential revenues from delivery meals.

### Delivery platforms operating in Spain have responded to the Rider Law in various ways:

- **Just Eat** has complied with the requirements of the new Rider Law and negotiated with UGT and CCOO the first collective agreement in the delivery sector in Spain, a development that could serve as an example for organizing labour relations for delivery workers.
- **Glovo** announced that it will hire 2,000 workers in Spain by the end of 2021. However, the company has also introduced a “connect at any time” and a bidding system in which the rider sets the price of their service, and the user decides if they will pay it or not. According to the company, these features will provide the “flexibility, autonomy and independence” for workers, aiming to have a group of genuine self-employed workers perform part of the work. Critics have described this as a workaround to the Rider Law. Glovo is also hiring additional workers through staffing agencies. Both the CCOO and UGT have filed complaints stating that Glovo’s new model does not abide by Rider Law.
- In August 2021, **Uber Eats** announced that it will also subcontract its fleet of delivery people through staffing agencies and third companies. Riders operating as independent contractors received a message stating that they would no longer be allowed to provide delivery services through the platform, resulting in a class action lawsuit filed against the company over the layoffs of self-employed workers.

According to Bettina Schaller, Senior Vice President of Global Public Affairs for the Adecco Group, “the responses by platforms, as well as affiliated workers, have demonstrated the ripple effects that legislation like the Rider Law can have on an industry in one market. While it is too early to measure the Law’s full effects, thus far, it appears to have created more harm than good for both platforms and workers.”

# vi. Regulating and Legislating Delivery Platforms

## The state of the policy conversation

The state of the policy conversation varies by country and has typically seen national or state-level courts making concrete legal decisions related to the platform-worker relationship, specifically workers' employment status, on a case-by-case or company-specific basis. As mentioned earlier, attention and public scrutiny of the platform-worker relationship has significantly increased due to the rapid growth in demand for platform services. This scrutiny, vocalised by the public, media outlets and workers themselves, increased urgency for policymakers and has created the necessary momentum for the policy conversation to move from policy convergence, development and discussions towards policy standard setting at an expedited pace.

In general, the focus of policy conversation is based on the following key considerations:

### 1. Misclassification of delivery workers' employment status:

According to a representative from the OECD, "the bottom line is that a number of platform jobs are not platform jobs, they are misclassified" and do not represent the workers' commitment to their platform-affiliated work. To build a truly fair system there is an absolute need to reduce misclassification to allow "de facto employees" that are currently labeled independent contractors to have access to benefits and social security that are primarily associated with full-employment status.

**2. Worker reclassification:** A third category of workers would add an in-between option to just "employee" and "self-employed" recognition. This could include an intermediate class of workers who are self-employed but provide their services as part of a profession or business undertaking carried out by another party and receive some level of protection (such as minimum pay and holiday pay).

### 3. Giving delivery platform workers a choice:

Policymakers are also examining creating a framework of exemptions that allow each worker affiliated with a platform to choose whether they want to remain independent or be directly employed by the platform.

**4. Collective bargaining:** Especially in the EU, part of the policy conversation focuses on the need to allow workers affiliated with delivery platform to collectively bargain their contracts, even if they are technically self-employed. According to Sylvie Brunet, a Member of the European Parliament from France, "the possibility to have collective bargaining is one of the ways to improve the working conditions of platform workers. There is potential for innovative approaches to open up new avenues for social dialogue and organisation via digital solutions."

**5. Leveling the playing field:** Today's policy frameworks don't look at the holistic picture of the labour market in ensuring that all forms of work are provided with the same benefits, and all employers are held accountable in a consistent way. To prevent unfair competition, policymakers are considering regulating platforms in the same way as other employers, such as workforce solutions companies or private companies, both of which are obligated to provide a certain degree of benefits and protections to their workers.



The main considerations for policymakers come down to conditions of platform work, specifically job and income security for workers, as well as access to benefits and social protections, career development opportunities and the right to negotiate contracts. While the move to regulate the platform-worker relationship is encouraged by parties like international organisations, associations representing riders and drivers, other voices are more cautious about potential implications. According to Joseph Fuller of Harvard Business School, “policymakers need to be careful about how they intrude in these commercial relationships” without a full understanding of the platform business model and the system effects of what they are advocating.

A former public affairs executive from Postmates agrees that regulations “may be well-intentioned but also have the prospect of yielding unintended consequences, unless new rules reflect a deep understanding of the platform technology and workers’ relationship to those platforms. Otherwise, regulation could have the debilitating impacts of potentially depriving workers of jobs and income opportunities, reducing platform availability, or even restricting consumer choice by driving further consolidation ultimately denying consumers the services they depend on.” According to an OECD representative, to be effective, “governments’ policies should not be a simple cut-paste of previous approaches implemented as a reaction. Regulation should keep the business attractiveness for platforms and for workers” and reflect the realities of today’s more flexible world of work.

## The policy conversation: who to include?

To create a more balanced relationship between delivery platforms and affiliated workers, while at the same time maintaining business growth and worker flexibility, will require an inclusive approach that results in a productive conversation at the policy level. In addition to policymakers driving the discourse, this approach needs to include:



**Riders:** According to several experts interviewed for this paper, riders’ voices are the most underrepresented in the current policy conversation. Instead, one of the main drivers of this discourse are unions claiming to represent self-employed platform workers. However, many riders do not engage in unions. An effective way to represent riders’ voices that are not linked to unions would be to engage with rider-specific associations, who can collectively represent the riders’ interest and priorities.



**Unions:** Regardless of the above, unions should not be left out of the policy conversation and can offer a complementary voice to representing delivery platform workers’ perspectives, provided they are recognised as a representative body.



**Platforms:** According to Sylvie Brunet, MEP, “Platform workers and platforms alike need to be properly organised and represented in order to facilitate social dialogue and collective bargaining.” Platforms themselves also feel that they are being shut out of important consultations, specifically at the EU level. In 2021, the Instant Delivery Platforms Coalition was formed by UberEats (U.S.), Deliveroo (U.K.), Bolt (Estonia), Delivery Hero (Germany), Glovo (Spain) and Wolt (Finland) to make sure their voices are heard. In September 2021, the group registered Delivery Platforms Europe with the EU’s transparency register to be able to officially weigh in on the upcoming European Commission’s initiative on platform workers’ rights.



**Workforce solutions providers:** As mentioned by a labour industry specialist, workforce solutions providers “have that expertise in providing flexibility in combination with security; they have also tailored those tools to provide protections for a very stable working relationship.” As human resource management experts, it is beneficial to include workforce solutions firms in a policy conversation that centers on work contracts, benefits, social protections, and flexibility.



**Academia:** Think tanks and leading universities can provide valuable input to help policymakers make well-informed decisions that are based on research-based and data-driven insights.

According to a former Postmates executive, the private sector should “approach government and worker advocates as **collaborative partners** not adversaries” while adhering “to principles of stakeholder capitalism.” Furthermore, according to a representative of Spain’s Asoriders, “Delivery drivers must be heard. Companies must be listened to, but they must abide by the law and generate payments according to the reality of the work that couriers exercise.” Key elements of a productive policy conversation are training, employability and assurance to create a solution that protects individuals rather than contracts. Only an inclusive approach to the policy discourse will create a productive conversation between partners working together towards a mutually beneficial outcome that produces win-win scenarios for both platforms and affiliated workers.

## Solutions: Reflecting today's flexible world of work

Today's reality is that employment regulations are inflexible to the ways of work, technological advancements and lifestyle changes that have emerged over the last decade and a half. Policymakers now need to address the complex question of how to redefine labour models for the digital age, including those for instant delivery work, that provide workers with more options for economic stability, professional upward mobility, and certainty in their future. For effective solutions, legislators "must understand platform work, how it develops, what type of relationships it establishes, and how to regulate those relationships while taking into account the great advantages they create."<sup>20</sup>

Benefits, social protections and training opportunities for digital platform workers are the most important factors listed in expert interviews conducted as part of this project. Herewith are recommended solutions for creating fairer working conditions for DP workers, encompassing the views of policymakers, labour unions, platform workers, platforms, and workforce solution providers.

### Decoupling employment status from benefits

Disassociating the legal employment status from a certain set of benefits will give platforms more flexibility in creating benefits package offerings (such as pensions, insurance, paid leave, training and equipment) without having to directly employ riders or drivers. This solution is not necessarily creating a third "in-between" worker classification but updating the freelance and employee statuses in a regulatory context to allow for easier access to relevant benefits; thereby shaping a **"human-centered, not contract-centered approach."**<sup>21</sup> According to a

platform representative, "a freelance model with additional benefits is something that we would like to see." Robert Röchle of Germany's Federal Ministry of Labour and Social Affairs echoes the sentiment, arguing "there is no additional benefit to a third way, such as a specific status for platform workers. Instead, the way forward should be to consider the application of certain basic rules, such as increased social protection, even for self-employed platform workers." Creating a regulatory framework that allows for a provision of more benefits for platform workers without direct employment would be a win-win for the industry: workers would receive more protections while maintaining flexibility, platforms would maintain the core structures of their business model, and barriers to entry into the industry would not be significantly increased.

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*"What is making platforms hesitant to do more in terms of benefits is the fundamental risk of reclassification of workers... Decoupling the legal status from question of benefits will be a key priority in finding a smart way to address this."*

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Christian Poppe, Global Public Policy Manager, Delivery Hero

### Collective bargaining

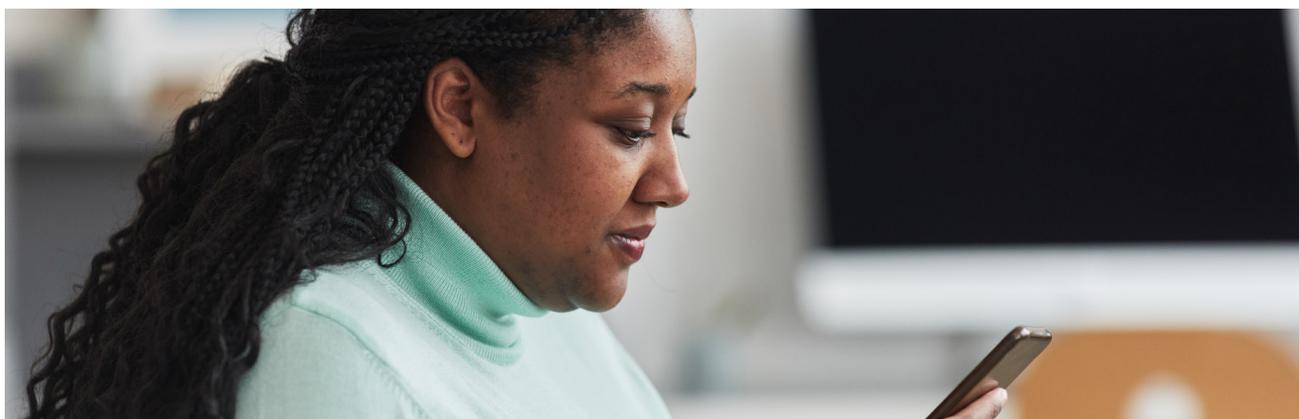
For Robert Röchle, collective bargaining is a necessary step to letting platform workers negotiate their working conditions. Traditional employees, who are typically in a weaker structural position than their employers, have representative trade unions and labour laws that can protect them. The self-employed generally cannot negotiate collective bargaining agreements. However, as self-employed platform workers are particularly vulnerable, there is

a strong argument that they should be able to benefit from collective bargaining. A representative from Spain's Asoriders agrees, noting that the precariousness of delivery work is "not improved with direct hiring, and the impossibility of negotiating fair prices for the work done." Collective bargaining by groups of couriers would guarantee worker representation and allow them to reach a legal agreement with delivery companies, including a negotiated rate for their work. However, it is important to note that collective bargaining typically only addresses the issue of worker pay rates, not access to social benefits.

As of today, in most countries collective bargaining by platform workers is still considered to be anti-competitive behavior, as it may lead to price setting among competitors. The European Commission is currently working on a Proposal that looks at allowing collective bargaining across Europe. If agreed upon early next year, the need for the sector to consider collective bargaining would become a reality across Europe as soon as 2023-2024.<sup>22</sup>

### Flexibility in contracts and employment models

A mixed model of employment is another potential path forward for the industry. Under this model, platforms would have a smaller group of direct employees who can cover the general flow of delivery demands; at the same time, platforms would also have separate agreements with freelancers to cover high peaks in demand without fully employing the riders. The specific conditions for these groups would have to be different, as the freelancers should have the freedom of genuine self-employed. Platforms should thus consider creating different types of contracts to offer workers, providing access to various benefits based on the number of hours a worker invests in the service offering.



## Cooperatives

A cooperative is an autonomous organisation or business that is jointly owned and democratically controlled by its members. Cooperatives are different from collectives, in which members have equal decision-making power. Traditionally, cooperatives have been used in the food and agriculture sector to negotiate and set prices between producers, allowing smaller farmers to have equal power in decision-making as bigger producers. According to proponents of cooperatives, this model can be translated to platform work and workers, allowing smaller platforms to negotiate the price and worker arrangements they believe would work best for the industry. According to the Platform Cooperativism Consortium, “platform cooperatives are an alternative to venture capital-funded and centralized platforms, putting stakeholders before shareholders” and can provide an alternative to “platform capitalism” in which a few major companies set standards for the industry. Already cooperatives are prominently leveraged by the taxi industry in Brazil to ensure consistent rights for drivers; across the EU, the Smart Coop enables a collective entrepreneurship experience for independent workers by taking on administrative tasks that are often burdensome for the self-employed. Through this model, independent delivery services could come together to provide a counterbalance to larger platforms such as DoorDash, UberEats and

other major market players and begin a conversation that would aim to rebalance prices, economic models for their business and the competitive landscape of the industry. While this approach could be disruptive to the industry, the worker-platform relationship could be reexamined as part of the industry-wide conversation to determine what a win-win scenario would look like for both sides.

## Leveraging workforce solutions firms

Outside of the policy realm, engaging with workforce solutions firms allows platforms to hire workers on a more flexible basis without becoming their direct employers. Staffing firms are labour market experts and can take on the traditional responsibilities typically faced by employers and provide the human resource management expertise that platforms fundamentally lack – and don’t want to take on. These firms already operate within an established regulatory framework that guarantees platform workers certain rights, benefits and social protections, as well as the potential for training opportunities and economic mobility. This well-regulated agency work model facilitates the flexibility of and access to a diverse jobs market, enabling workers to remain independent or self-employed without compromising their social rights and employment protections. Workforce solutions firms also operate as outsourcing partners to platforms, taking on the last mile delivery for platforms.

While engaging with a workforce solutions firm would come at a cost for the platform, this cost would not be reflected on workers’ profits, and would instead be passed on to the final consumer in the form of slightly elevated service prices.

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*“It is time for policymakers to start acting, and start engaging and codifying. And in this, also recognising that some solutions don’t need to be reinvented, such as staffing.”*

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Jochem de Boer, former representative of the World Employment Confederation

## Increasing the revenue of platform workers

The current model allows end-users to benefit from a service offered with high flexibility at low cost. The behavior is one of no loyalty for the platform, leading to high competition in the market. Today, the lowest price wins every single day. One way to create a win-win for consumers, platforms and workers is to subsidise some benefits the workers should receive. Another route is to drive the willingness of consumers to pay a higher price for a sustainable product or service delivered by the worker. Legislation may be the solution for putting an end to free price setting by platforms (and thus driving prices down), mandating all platforms to set the same costs, passing on the latter unilaterally to consumers.

Regardless of the recommendations above, all experts consulted for this work agree that **training opportunities** need to be built into the solution moving forward. According to the **Adecco Group CEO Alain Dehaze**, today “the lifetime of skills is four to five years, which creates a need to make sure

that upskilling and employability become a more efficient part of the worker protection mechanism.” In today’s world of work, people find themselves transitioning in the labour market more frequently and need opportunities to update and enhance their skills to be successful in the rapidly changing labour

market. To ingrain this element into workers’ lives moving forward, policymakers can involve a variety of social partners, especially the agency work sector, to increase access to dual learning schemes, bipartite funds, and opportunities for training on the job.

## Where have policies been successful?



While platform workers in Austria fall into the “self-employed” category, they are entitled to certain benefits under the “free service contract” model. This model, called “Freie Dienstnehmer” allows independent workers to organize their own insurance, which covers social security, pension, health, and accident provisions. Operating within this model, companies like Delivery Hero allow workers to choose to be an employee or a freelancer, with more than 95% choosing the freelance model.



Under the current labour law, platform workers are not assigned a specific legal status. However, platform workers are able to receive support from unions due to unions’ extensive rights in Belgium. For example, in 2018 the Confederation of Christian Trade Unions, Belgium’s largest trade union federation, set up United Freelancers to support self-employed workers, riders’ groups and collectives.



France is one of the first countries in the EU to move towards forms of collective bargaining and has started to have some specific representation of platform workers. In April 2021 the French government adopted an Order providing for the creation of a system of collective representation for independent workers in the digital platform sector. In 2022, French platform workers will be able to elect national representatives to engage in negotiations with platform companies.



# The way forward

As stakeholders look to navigate their way to the most appropriate framework for the instant delivery platforms industry and move to policy standard setting, the Adecco Group continues to add its labour market expertise to the discussion by advocating for three guiding principles that best meet the needs of all parties at stake:

1

## Social protection as the baseline for all forms of (platform) work

Competition between platforms should not be at the expense of social protection for workers. In most countries, there are plenty of opportunities to organise decent flexibility for all platform workers when they are employees – including the agency work model. Equally, for those workers who truly appreciate the freedom that comes with self-employment, there are usually options for them to organise their own safety nets as they see fit. While this freedom for freelancers is important, governments should consider ways to protect vulnerable groups of self-employed by creating universal basic protection, or an obligation for the self-employed to buy into social protection systems.

Some markets today have a third worker status, between employees and self-employment – such as the UK. Time will tell what the benefits of introducing a third category really are.

2

## Clear criteria are needed to define worker status

Not all riders are self-employed, not all riders are employees. In most jurisdictions, especially in Europe, the difference between employment and self-employment lies in the autonomy of the worker versus the level of hierarchy exercised by the client or employer. Specific criteria might differ slightly between countries, but often mirror elements of the “Yodel-criteria”<sup>23</sup>: the ability to accept or reject assignments, the ability to set working hours, non-exclusivity to one platform, and the ability to use subcontractors or substitutes. In other jurisdictions, particularly in the US, the focus is more on the “periphery vs. core activities” criteria.

Regardless of which criterium is used to determine worker status, this requires an assessment of the specific situation of one platform’s relationship with the worker. The fact that a platform operates digitally cannot be seen as a determining factor.

3

## The price for platform services should reflect the cost of social protection

This paper has alluded to the very slim margins that the delivery platform ecosystem operates on. Many freelance riders today may not have the financial means to invest in organising their own safety nets. Whichever way social protection is organised, it will bring some additional costs. It is also clear that none of the stakeholders involved currently have the financial leeway to absorb these costs, and so the only way to maintain profitability for all stakeholders involved will likely be to increase the price for the end consumer.

As pointed out by Kevin Roose of the New York Times in June 2021, platforms have already begun to raise prices on consumers as their initial venture capital funding runs out and they begin to aim for profitability.<sup>24</sup> This will only happen however if there is a level playing field, and all platforms face similar cost structures. If some continue to undercut the market, it is likely that the riders will be the ones who are ultimately losing out.

The solutions proposed in this paper provide a range of options for creating a more balanced relationship between delivery platforms and affiliated workers. At the core of these solutions is the need to have the interests of all, not just some, workers in mind when designing a world of work that guarantees a certain degree of benefits and social protections. Achieving this progress for today’s delivery platform workers will require critical self-reflection from all parties involved – platforms, policymakers, workers, unions, associations and multilateral organisations. Without cohesion and fair debate, workers will be left with the existing and fragmented policy approach that in the long run ends up being a lose-lose for all.

# Terminology and Abbreviations

## **Self-employed worker**

According to the World Bank, self-employed workers are those workers who, working on their own account or with one or a few partners or in cooperative, hold "self-employment jobs" where the remuneration is directly dependent upon the profits derived from the goods and services produced by the worker. A self-employed worker, often referred to as an "independent contractor," does not work for a specific employer who pays them a consistent salary or wage in exchange for their hours, but instead earns an income by contracting with a client (business or consumer) directly in exchange for a certain output or outcome.

*For the purposes of this paper, "self-employed," "freelancer," "independent workers" and "independent contractors" will be used interchangeably.*

## **Full-time employment status**

While the definition for "full-time employee" is more controversial, according to the Organisation for Economic Co-operation and Development (OECD), it is a person that typically works 30 hours a week or more.<sup>25</sup> Furthermore, a full-time employee is typically one who is directly employed by the trade or business that is paying their wages or salary, often accompanied by social benefits and protections such as paid holiday and sick leave.

*For the purposes of this paper, "full-time" and "direct" employees will be described interchangeably.*

## **Workforce solutions firm**

A company that provides services to help workers fulfill their employment potential and connects them with labor opportunities. These firms typically offer a variety of solutions, including flexible placement (or agency work), permanent placement by outsourcing and managed services across all sectors. Workforce solutions firms (WSF) are also known as staffing agencies, temporary work agencies, or private employment services. These terms and the abbreviation "WSF" will be used interchangeably throughout this paper.

## **Digital labour platform**

According to the International Labour Organisation (ILO), a digital labour platform is one where work is outsourced through an open call to a geographically dispersed crowd ("crowdwork"), and location-based applications (apps) which allocate work to individuals in a specific geographical area, typically to perform local, service-oriented tasks such as driving, running errands or cleaning houses.<sup>26</sup> The definition of a digital labour platform does not explicitly include the employment status of workers, who can either be self-employed or employed.

*Given this paper's focus on instant delivery digital platforms, the term "delivery platform" will be used interchangeably with "platform," and abbreviated throughout as "DP."*

## **Delivery platform workers**

For the purposes of this paper, delivery platform workers will be used interchangeably with "workers," "riders," "couriers" and "drivers."

# Market Overview

## Platform Workers and Regulatory Frameworks

Country	Delivery worker legal status	Access to benefits and social protections	State of policy conversation
<b>Australia</b>	Courts classify platform workers as independent contractors	Digital platforms do not need to guarantee minimum wage or overtime pay, provide workers compensation or leave	Policymakers increasingly aware labour laws and regulations need to be re-examined in the context of gig work
<b>Austria</b>	No regulations addressing platform workers' legal status	Through independent contractor programme (Freie Dienstnehmer) platform workers can organise their own insurance (which covers social security, pension, health, and accident provisions)	December 2021 European Commission Paper will drive forward legal conversations on rights for platform workers
<b>Belgium</b>	Employee rights are determined on a case-by-case basis	In 2018 the Confederation of Christian Trade Unions (CSC) set up United Freelancers to support self-employed workers, riders' groups and collectives	December 2021 European Commission Paper will drive forward legal conversations on rights for platform workers
<b>Brazil</b>	Worker status is determined by the platform	No benefits are currently granted	Government is in beginning stages of policy discussion following delivery worker protests in Sao Paulo in July 2021
<b>Canada</b>	Gig workers currently considered independent contractors	Independent contractors do not have protections such as the right to collective representation or occupational health and safety protections	Consultations for a bill on provision of social security and protections for platform workers launched in spring 2021
<b>Chile</b>	Worker status is determined by the platform	No benefits are currently granted	Beginning stages of policy discussion following a November 2020 court ruling that a driver for PedidosYa was an employee
<b>China</b>	Government recognises platform workers as a new form of employment; pushing for increased benefits and status	New guidelines to protect riders' basic labour rights published, including decent salary, freedom from unreasonable demands, access to social security and a place in a union	Large scale and policymaker attention turning to providing enhanced rights for delivery platform workers
<b>European Union</b>	EU regulations on platform work expected by end of 2021; EU opposes creating a separate category for platform workers to avoid over-regulation	December 2021 report is likely to grant certain basic rights to platform workers; benefits and protections will likely be determined by the platform	The European Commission is releasing a report December 8, 2021, to create a more unified approach for protection of certain basic rights for platform workers

## VII. ANNEX

Country	Delivery worker legal status	Access to benefits and social protections	State of policy conversation
<b>France</b>	Legal status of delivery workers is determined on a case-by-case basis	Platform workers are mainly considered self-employed	April 2021 Order provides for the creation of system of collective representation for independent workers in the digital platform sector; increased capacity to negotiate expected in 2022
<b>Italy</b>	Legal status of delivery workers is determined on a case-by-case basis	Benefits are determined by how the platform defines their employment status	The Court of Milan ruled riders working for different digital platforms cannot be considered as occasional independent workers and must be reclassified as employees
<b>Japan</b>	Gig delivery platform workers are viewed as short-term independent contractors	Employment benefits traditionally linked to employment tenure and frequent bonuses; currently no employment benefits for platform workers	Delivery workers can join accident compensation insurance programmes
<b>Netherlands</b>	Employee rights are determined on a case-by-case basis	Benefits are determined by how the platform defines workers' employment status	Uber drivers ruled as employees; delivery workers covered by a collective agreement for taxi drivers
<b>Singapore</b>	The Singaporean government provides guidance on standards for platforms, but has not set regulations; gig economy workers not recognised as employees	Gig workers can credit portion of salary to a MediSave account; can receive benefits such as insurance coverage for disability and injury through National Delivery Champions Association	Government is finding ways to make it easier for gig delivery platform workers to have protection; no specific regulation in discussion
<b>Spain</b>	Platform delivery workers are mandated to be fully employed by the platform	The new law grants riders legal protections and benefits of full employees	Rider Law has been fully implemented since August 12, 2021
<b>United Kingdom</b>	Mixed. Uber drivers are considered workers; workers affiliated with other platforms are still considered self-employed	Those who acquired the status of "workers" have access to some forms of benefits and social security	February 2021 court ordered Uber to classify its drivers as workers; no indication this will set precedent for industry at large
<b>United States</b>	The gig delivery platform workers are viewed as independent contractors by the platform	Benefits are left at the discretion of the platform	Legal debate is taking place on a state-by-state basis to classify gig workers as employees, most strongly in California, Massachusetts and New York



In Australia, court judgments classify platform workers as independent contractors.<sup>27</sup> Therefore, digital platforms do not need to guarantee a minimum wage or overtime pay, provide workers compensation, leave and certain taxes, and can essentially end the working relationship at their convenience.

- Employee-interest groups have brought accusations against companies such as Uber and Deliveroo for exploiting on-demand gig workers, specifically in cases of on-the-road injuries and pay rates below standard minimum wage (\$19 per hour).<sup>28</sup>
- While there is no active regulation for platforms, policymakers seem aware that there are labour laws and regulations that need to be re-examined in the context of gig work, including several inquiries and discussion papers into on-demand workforce arrangements (2020). An earlier Senate Inquiry (2017) recommended that the Fair Work Act cover all workers, giving them access to labour standards, minimum wages and conditions established under the Act.<sup>29</sup>

**Recent developments:**

- May 2021: the Fair Work Commission concluded that a rider for Deliveroo was an employee, not a contractor. In the same month, Menulog, a food delivery platform, announced that it would be making “a shift towards an employment model...in order to enhance the life standards of couriers.”
- In June 2021, the Senate Committee on Job Security’s interim report on on-demand platform work in Australia recommended that the government expand its definitions of ‘employment’ and ‘employee’ in the Fair Work Act 2009 to capture new and evolving forms of work.



China’s 14th Five Year Plan used language to praise the platform market’s healthy development. The plan’s “digital economy” chapter suggests that regulation of the platform economy must increase, and the Chinese government has become more proactive in its efforts to regulate working conditions in the platform economy.

- Overall, China has surprised analysts for taking aggressive action against the tech companies. China’s Human Resource Ministry summoned ten of the country’s largest digital platforms including Didi Global and Meituan to improve conditions for tens of millions of contract workers. This has proven effective, as Meituan has offered to facilitate trade unions (unlike in the US and Europe, Chinese trade unions are not self-organised but operated under a party-controlled body). So, even though the Chinese state is considering more rights for gig delivery platform workers, they are not increasing their direct representation.

**Recent developments:**

- In July 2021, China’s Ministry of Transport and six other state agencies ordered online platforms to ensure food delivery riders earn above the country’s minimum wage, are freed from unreasonable demands placed upon them by algorithms, and have access to social security and a place in a union. This regulation was aimed at large firms such as Meituan, a shopping platform that depends on delivery riders for its business success.
- In September 2021, Alibaba announced that it would donate \$15.5 billion to “common prosperity” in China by 2025, including funds that would provide insurance protections for gig workers in the country. In the same month, Chinese ride-hailing company Didi Chuxing and e-commerce firm JD.com announced that they would establish unions for their staff, an unexpected move as the Chinese government’s scrutiny of tech giant’s treatment of workers has gained traction in Chinese media.



Delivery platform workers' legal status in France is still ruled on a case-by-case basis. However, the gig workers are gaining a stronger and more collective voice through union representation. Starting in 2022, French platform workers will be able to elect national representatives to engage in negotiations directly with the platform companies.

- The traditional test for employee status relies upon the notion of a “link of subordination.” According to established case law (Cass. Soc., 13 November 1996, n° 94-13.187), this link exists if the worker performs their duties under the instruction and supervision of the company and can be sanctioned for misconduct or poor performance.
- Regions and cities are however increasingly looking to regulate platform workers' status, possibly leading to future policy debates. Expectations for workers claiming employee status are rising.

#### **Recent developments:**

- In February 2021, a Paris labour court ordered Deliveroo to pay damages for “concealed work” to a rider who was paid by the hour, ruling that the arrangement made him an employee.
- In April 2021, an order was issued to allow for partial union representation for delivery workers.
- In September 2021, it was announced that Deliveroo and three of its former directors are to appear in a Paris court in March 2022 to answer to charges of “undeclared labour,” opening the possibility that its many couriers could claim employee status.



Traditionally, Italy has had an aggressive government stance on workers' rights. Recent protests in Italy demanded change and raised the public's expectations for the government to re-evaluate policies related to delivery platform workers.

- Prime minister Mario Draghi's new coalition government is working together with Spain to draw up new regulation for workers on digital platforms and pushing for co-ordination on gig workers' rights across the EU.

#### **Recent developments:**

- In September 2021, The Court of Milan ruled that riders working for different digital platforms (Foodinho, Glovo, UberEats, JustEat and Deliveroo) cannot be considered as occasional independent workers and must be reclassified as employees.<sup>30</sup> The Milan court fined food delivery platforms 733 million euros for violating employment safety law and said riders should be hired on a quasi-employee basis. The court ruling could set a precedent for delivery workers' status in Italy.



The Japanese labour market has a unique employment structure; its employment benefits have traditionally been linked to employment tenure and frequent bonuses. However, as the market for non-traditional work and short-term labour contracts has grown, the Japanese economy is beginning a slow transformation of heightened economic liberalism.

- The freedom of delivery platform workers has been labelled as an “illusory freedom” in Japan, slightly changing workers mechanisms within the nation. Labour unions have voiced their concerns about lack of accident insurance to Uber Eats, which have allowed for slow changes to begin taking place.<sup>31</sup>

### **Recent developments:**

- In June 2021, the labour ministry’s Labour Policy Council approved a proposal to allow bicycle-based delivery staff for Uber Eats and similar service platforms to join workers’ accident compensation insurance programmes (covering medical costs for people who are injured during work and leave compensation). This marks a slow transformation for the start of delivery workers being able to join accident compensation insurance programmes.



Officially, gig economy workers in Singapore are not recognised as employees under the Singapore’s Employment Act or Industrial Relations Act and platform operators are not liable for their welfare.<sup>32</sup> In March 2017, the Minister for Manpower formed the Tripartite Working Group (TWG), consisting of officials from the Ministry of Manpower (MOM), Singapore National Employers Federation (SNEF) and National Trades Union Congress (NTUC), to identify major challenges faced by self-employed persons (SEPs) and make recommendations to address them.

- The recommendations by the TWG highlighted four areas of concern, including payment-related disputes, loss of income due to prolonged illness or injury, lack of access to healthcare and retirement savings plans, and a lack of occupation-specific competency frameworks.
- Following the pandemic, public sentiment is shifting in favour of granting more protections to platform workers. In August 2021, during the National Day Rally, Prime Minister Lee Hsien Loong acknowledged that delivery workers lack basic job protection and maintained they should be granted access to the Central Provident Fund (CPF) contributions, union representation and a basic salary. The Prime Minister invited the Ministry of Manpower (MOM) to intervene on the workers’ behalf.



In the UK, employment law recognises three types of worker classifications:

- Employed under a contract of employment: receives the highest level of employee protection
- Self-employed in a business on their own account: no protection
- Self-employed, but provide their services as part of a profession or business undertaking carried on by someone else: some level of protection (e.g.: minimum pay and holiday pay).

### **Recent developments:**

When it comes to gig workers, the UK currently lacks regulations that tackle exploitative employment practices and provide legal clarity on workers' status. However, the British Government has yet to legislate many of the key provisions.<sup>33</sup> Organisations such as the App Drivers & Couriers Union (ADCU) have been using the legal system to secure increased protections for platform workers. However, courts have been ruling on gig workers status with different outcomes. For instance, when it comes to Uber and Deliveroo, which are the most popular platforms in the UK, courts came out with two different rulings.<sup>34</sup>

- In February 2021, the UK Supreme Court set a precedent ordering Uber to classify its more than 70,000 drivers as workers (not independent contractors) and to provide a minimum hourly wage, holiday pay, and pensions rights; however, Uber affiliated drivers do not benefit from full UK employment rights (such as the right not to be unfairly dismissed, the right to a redundancy termination payment, etc.). In September 2021, Uber announced it will set up a pension fund for its drivers and it will pay 3% of each driver's earnings into a pension pot.
- In July 2021, a UK Court ruled riders affiliated to Deliveroo cannot be classified as workers, as Deliveroo business model provides them with full flexibility. According to Deliveroo, this was the fourth Court ruling, after one by the Central Arbitration Committee and two at the High Court, stating that its affiliated workers cannot be considered employees.



The United States has not yet updated its traditional regulatory structure to accommodate the prevalence of gig work, specifically the social safety nets or labour laws for a new reality where millions of Americans no longer fit into the binary categories of W-2 employees or independent contractors.

- Before the CARES Act of 2020, gig workers were not eligible for unemployment insurance; the pandemic exposed the lack of access to benefits (such as paid leave, food assistance and Medicaid) that gig workers typically have.

#### **Recent developments:**

- Over the last several months a number of legislative battles have taken place between delivery platforms and states like California, New York and Massachusetts; this patchwork approach to attempted regulation of the platform-worker relationship is expected to remain the norm unless there is specific regulation at the federal level.
- In 2019, California legislators passed a law (California Assembly Bill 5, AB5)<sup>35</sup> requiring companies like Uber to employ their drivers. In response, Uber and Lyft accelerated a push for a “third way” of working, known as Proposition 22, which classifies gig workers separately without granting employee status. In 2021, California Judge, Frank Roesch protected the 2019 conclusion and ruled that this initiative violated the states’ constitution.<sup>36</sup>
- Similarly, Uber, Lyft, and DoorDash are fighting a Massachusetts attorney general lawsuit to classify gig workers as employees under the Massachusetts law. The companies filed a ballot proposal earlier in August of 2021 to preserve their independent contractor business model.
- In September 2021, a package of legislation from the New York City Council was passed to set minimum pay and improve working conditions for couriers employed by app-based food delivery services like Grubhub, DoorDash and Uber Eats. Nevertheless, delivery workers will still be classified as independent contractors who are ineligible for workers’ compensation or unemployment benefits.

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## VII. ANNEX

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