

Information for citation:

Shesteryakova, I. V. & Shesteryakov, I. A. (2022) Labor on Online Platforms: Theoretical and Practical Issues. *European and Asian Law Review*. 5 (1), 32–37. DOI: 10.34076/27821668_2022_5_1_32.

UDC 34 340.13

BISAC LAW 054000 LAW / Labor & Employment, LAW 051000 LAW / International

DOI: 10.34076/27821668_2022_5_1_32

Research Article

LABOR ON ONLINE PLATFORMS: THEORETICAL AND PRACTICAL ISSUES

IRINA V. SHESTERYAKOVA

Moscow State Linguistic University, Institute of International Law and Justice

ORCID ID: 0000-0002-2526-9925

IGOR A. SHESTERYAKOV

Moscow State Linguistic University, Institute of International Law and Justice

ORCID ID: 0000-0002-7183-0584

Labor on online platforms has increasingly gained momentum in the recent years. However, there are still disputes regarding the nature of the established relations, such as whether such relations should be considered employer-employee, self-employed, civil law, etc. Foreign courts are recognizing these relations as labor relations more and more often, but the courts of the Russian Federation do not see it that way. As a result, workers on online platforms are still lack guarantees and benefits provided by labor law standards. The use of online labor has gained momentum particularly in the context of the COVID-19 pandemic. However, this is not only connected with development of delivery services or taxis. This area also includes IT work such as web design, financial consulting, social media marketing, handling documentation, administration, creative professions, blogging, teaching online, medical work, etc. This format of employment provides the opportunity to combine work with family duties, looking after children or parents, staying at home, and working in the most convenient time. Also, this work format provides the employer with extra opportunities for business expansion and cost savings such as saving on office rental costs, utility bills, etc. However, online work blurs the lines between work time and time for rest, puts the observation and guarantee of health and safety requirements, standards of social assistance and social security of workers under question.

Key words: *gig economy, worker, online platform, employer, international standards*

Introduction

Work on online platforms is becoming more and more popular. Thus, the need arises to define what sector of legal regulation for labor this category of workers belongs to. These labor relations have triggered new concepts and created a need to accept new standards of labor legislation. They are associated with the issues of using time for work and rest, resolving problems with labor protection, workers' social security, training and re-training, and the ability to receive medical and social assistance. Nowadays, an interdisciplinary approach to labor research of the abovementioned worker categories seems to be necessary, specifically when it comes to international labor standards. Modern digital platforms are ecosystems. Employers see them as an opportunity to find a worker or workers they need, no matter their place of residence. A worker has a chance to work for several employers, and it's a chance to get training or re-training. This system has extensive networks of interaction with corporations and enables the recruitment of workers in various industries to create industry-wide workforce ecosystems. Such an ecosystem allows everyone's interests

to be taken into account. Both for the employee looking for work and for the employer looking for a 'quality' worker and planning to develop their business, organize re-training of employees, etc. The goal of the research is to identify the sectoral affiliation of workers' labor on online platforms. Objectives: define the term 'gig worker', develop special features that allow the sectoral nature of labor relations of online workers to be established, examine special features of online workers' labor, formulate the main prospects of development for legal regulation of online workers' labor. Hypothesis: currently, the term 'gig worker' or 'platform worker' has no commonly understood concept, therefore, it needs to be created and codified. Workers on online platforms need these relations to be recognized labor relations, which will give them the opportunity to have labor rights and receive guarantees established by labor legislation.

Materials and methods

Digitalization and the development of online technologies allow us to discuss the opportunity to use the following methods when researching the issue of legal regulation for labor relations of workers employed on online platforms.

1. Description. In order to identify the attributes of labor relations on online platforms, these relations need to be examined and described as a legal phenomenon. Description as a method implies collecting data and analyzing their characteristics. Description allows us to analyze the phenomenon in question from different points of view, in different situations and for different categories of workers. This method is used both for Russia and for other countries.

2. Comparison. For the purposes of this research, this method needs to be used in the following areas: 1) to compare the identified attributes of labor relations with international standards, and 2) to compare the existing relations arising during work on online platforms with their equivalents abroad. It will enable the identification of features in common with international standards and analyzing positive and negative experiences of legal regulation for labor on online platforms in other countries. This method is used to examine international agreements, particularly documents from the International Labor Organization and the European Union, the standards of labor legislation in other states as well as judicial decisions from other states regarding the recognition of online workers' relations as labor relations.

Results

The conducted research has allowed us to come to the following conclusions:

1. There are more and more workers on online platforms. In Russia, this tendency was not mainstream until the COVID-19 pandemic. However, as an example, over 35 % of the working population is employed in this field abroad in the USA. Such a growth in people working in these conditions has required introducing some changes to the existing national legislation of most states.

2. Neither in Russia nor in other countries does a legal concept of an 'online worker', 'platform worker' or 'gig worker' exist, so the researched material has allowed us to formulate an authoritative definition of who such a worker is.

Discussion

1. Work on Online Platforms

Platform employment is a dynamically developing format that can serve as either full-time job or a part-time one. Though existing statistical data do not allow us to estimate the size of this segment of economy precisely, it can be said that in the last decade it has grown exponentially in terms of both population engagement and money turnover. Platforms are mediators and facilitators of the service delivery process. While not being employers, nowadays they have already become an integral element of the labor market infrastructure. Essentially, platforms' function is to match supply and demand, and in this sense they do not hire workers, but help them by providing a convenient venue to search of employment, clients and customers. In this context, those employed through platforms should be considered as the platforms' partners that provide supply of services within the ecosystem created by the platforms (Sinyavskaya et. al., 2021: 4).



According to Owl Labs research¹, 16 % of companies have been completely eliminated across the world. The same research has shown that about 62 % of workers aged 22–65 say that they work remotely, at least from time to time. The survey by Owl Labs has shown the following: distance workers save 40 minutes per day on average on commuting; since 2020, people have started videoconferencing by 50 % more often than before COVID-19; 23 % of the respondents would agree to have their salaries reduced by 10 % if they could work from home permanently; people save by staying at home while working; only 20–25 % of companies partially compensate equipment and furniture for home offices; 81 % of respondents believe that their employer continues to support working from home after COVID-19; 59 % of respondents have said that they would most likely choose the employer that offers working from home than the one that doesn't.

However, in this case the issue is working from home, not work on online platforms. It should be noted that the number of workers in the gig economy is growing, their area of activity is expanding, too. In August 2021, Pew Research Center² held a poll among the adult population of the USA and found out that 16 % of Americans had at some point earned money working on online platforms by at least one of the following means: ride hailing apps; purchase or delivery of food products, household appliances; doing household chores such as cleaning, assembling furniture or performing assignments; deliveries from restaurants or stores using an application; using their personal car to deliver parcels via a mobile app, or a website such as Amazon Flex, etc. Earnings through these applications or websites depend on a few factors, primarily age, race and ethnic background, as well as family income. Three out of ten young people aged 18–29 have earned money using online platforms, but this share falls to 18 % among individuals aged 30–49, and even lower among individuals aged 50 and older. Aside from workforce composition, the research also identifies many ways people choose to work over the Internet and to integrate this work into their lives. Gig workers consider it not their main source of income, but a part-time job. And only a relatively small number of people that have done this kind of work over the last year say that they spend over 30 hours on it during a routine week.

The World Bank ascribes three outsourcing categories varying in qualification levels and time expenditures on carrying out operations to the gig economy: micro-work, freelance and business process outsourcing. In fact, gig employment covers a wider range of areas of activity. Since it provides for the execution of short-term orders at predetermined rates, it's also called 'the 1099 economy'. Strict criteria for a 'short period of work' and contracts based upon this period are yet to be worked out. Gig economy agents can work for more than a year under renewed agreements while being considered executors of short-term contracts. The major means of communication in this model is technological platforms where users can be considered employed in the gig economy. Labor platforms link workers with employers, and capital platforms link owners of assets with leaseholders. The first of the abovementioned categories includes Uber, Task Rabbit, Swiggy, Zomato, etc. Users of these platforms can attend to one or several customers at once. For example, a food delivery courier is registered on Swiggy and Zomato, and in their remaining time works part time as an Uber driver. In its turn, aggregators often have a multiservice setup. Thus, Uber, which specializes in passenger services, also organizes a food delivery service (Uber Eats). Capital platforms include Airbnb which serves as a mediator for lease of premises, as well as Zipcar and Hertz that provide car rental services (Banik & Padalkar, 2021: 21).

The gig economy goes beyond the provision of periodic, one-time services to a consumer. Platforms also work in the b2b segment and allows you to find executors for non-major projects at a given company, or for jobseekers, to find a project in another city or even another country³.

By summarizing statistical data, survey results, and the opinions of scientists, positive and negative aspects of work on online platforms can be identified:

¹ Statistics on Remote Workers that Will Surprise You (2022). Available at: <https://www.apollotechnical.com/statistics-on-remote-workers/#:~:text=Statistics%20on%20remote%20workers%20reveal,to%20an%20Owl%20labs%20study> [Accessed: 9 March 2022].

² Pew Research Center. Available at: https://www.pewresearch.org/internet/2021/12/08/the-state-of-gig-work-in-2021/pi_2021-12-08_gig-work_0-01/ [Accessed: 9 March 2022].

³ Platform Employment: Progress or Returning to the 19th Century. Available at: <https://trends.rbc.ru/trends/sharing/61fa98119a79470a7a1997b7> [Accessed: 9 March 2022].

Table 1. Comparative Analysis of Work on Online Platforms

Positive	Negative
A chance to earn money quickly ⁴	Gig work doesn't solve unemployment issues
Flexibility: an opportunity to control when and how much work to do	Gig workers don't have any labor guarantees, e.g. such as an annual paid leave, labor protection, social partnership
An opportunity to control one's schedule	Higher chances of being infected with COVID-19
The work is usually short-term, so you can change platforms quickly	Precarious employment relationships
You can combine several platforms	Low workforce cost
Opportunities for trans-border work	A narrow range of worker skills
	Problems with social partnerships and trade unions

Therefore, platform workers are workers with flexible working hours employed in the gig economy based on short-term contracts without being on the company's staff.

2. Platform Workers: Practical Issues

There are several megatrends today: rapid development of innovations and technologies; a change of size, age structure and location of the world population; changes in the balance of power between developed and developing countries; impending loss of fossil fuels; extreme weather conditions, a rising sea level; and a water deficit. All these things affect the labor market and, ultimately, work in the gig economy⁵.

It appears necessary to turn attention to the following issues that require resolution:

The use of information data. There is much concern about safety of gig worker's personal data nowadays because of increased frequency of cyber attacks on various companies.

A human-centered approach. Since definition of the term 'gig workers' remain vague, a question about the sectoral affiliation of these relations arises. In Russia such workers are considered individual entrepreneurs or self-employed. However, it does not mean that everyone who works on cloud platforms is officially employed, so quite a large percent of workers remains in a sort of 'grey' sector of economy. In foreign countries this issue is addressed in different ways as well, and the courts never deliver identical judgements regarding platform workers, such as considering some relations labor ones (e.g., those of food delivery workers) and others are not (e.g., taxi workers) (Defosse, 2021). For instance, in 2018, the Court of Cassation (one of France's courts of last resort)⁶ recognized the relations of Take Eat Easy workers (a food delivery company) as labor relations. The Court proceeded from the fact that there were certain criteria to recognize relations as labor relations, such as the fact that the work was to be done in the interests of the employer-platform; workers were to be monitored by the platform (a system of geolocation on bikes, calculation of distance in kilometers, etc.); the platform had to pay remuneration to workers and to hold them liable (a charging scheme). In a similar way, the issue with workers at Deliveroo and Uber was addressed, which allowed them to settle the matter of severance payment in the workers' interest. However, later on not all courts delivered similar judgements regarding platform workers, therefore leaving their legal status unclear.

In Spain, the relations of Deliveroo workers were also recognized as labor relations⁷. Additionally, Deliveroo was ordered by the court to pay 1.3 million euros as unpaid social contributions after the

⁴ About at least a half of surveyed workers refer to their wish to get extra money (56 %) or a need to cover expenses or changes in their income (52 %) as the main reasons why they have taken up such jobs in the last 12 months.

⁵ The Future of the Labor Market. Contradiction of Trends that Will Generate the Work Environment in 2030. Available at: <https://www.pwc.ru/publications/workforce-of-the-future-rus.pdf> [Accessed: 9 March 2022].

⁶ Cour de cassation, civile, Chambre sociale, 28 novembre 2018, 17–20.079, Publié au bulletin. Available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000037787075/> [Accessed: 9 March 2022].

⁷ See, for example, the Decision of the Madrid Court STSJ M 1/2020 – ECLI:ES:TSJM:2020:1. Available at: <https://www.poderjudicial.es/search/AN/openCDocument/53b1b1721a75d34a10b129baa45c19bf179e3f439af7b2cc> [Accessed: 9 March 2022].



Court of the 24th Social Tribunal in Barcelona established that 748 suppliers had been workers with labor contracts. The issue was completely settled after a decision of the Supreme Court of Spain unanimously declared drivers as wagedworkers to put a stop to controversial decisions⁸. Recently, Spain has settled the matter by accepting a special law (Riders' Law)⁹ according to which drivers and food delivery workers are recognized neither as self-employed nor independent contractors, but workers with labor contracts. It was a result of a three year long collective agreement, made on March 10, 2021, between the CCOO union trade (Workers' Commission) and UGT (General Union of Workers), the CEOE employers' organization (Spanish Confederation of Business Organizations) and CEPYME (Spanish Confederation of Small and Middle-Sized Enterprises) and the government of Spain. According to the Minister of Labor of Spain, due to the efforts of inspectors, 16,794 individuals managed to legitimize their working status. It had an economic effect amounting to 29 million euros¹⁰. It should be noted that the Law legally binds enterprise platforms to inform food delivery workers about specificities of their labor relations, since their work is closely connected with the operations of artificial intelligence which helps to establish the interaction algorithm for the platform and delivery driver. In Spain, it is thought that adoption of the law will have an effect on similar relations in other industries as well, since the use of artificial intelligence is becoming practically ubiquitous.

It appears that the Law in question will not only influence Spanish national legislation, but can serve as a model for other states, and not just European ones. In this case, one may talk of the human-centered approach stated in the ILO Centenary Declaration in 2019.

Some countries have also adopted court decisions to recognize relations of platform workers as labor relations. However, Spain is the only place that has a special law regarding platform workers. It should be noted that judicial practice, however, tends to act in favor of workers and gig workers to recognize their relations as labor relations, which is, for instance, proved by legal precedents regarding Uber workers in Austria and the United Kingdom (Doyle, 2021).

In Australia, judicial practice also relied upon the fact that platform workers were self-employed, but *Diego Franco v Deliveroo Australia Pty Ltd (U2020/7066)* was the first one where the court acknowledged the wrongfulness and unlawfulness of the dismissal of an employee by recognizing that relations between the worker and the platform had been labor relations (Fraser, Smith & Yeung, 2021).

Some countries chose another path. For example, in Belgium, platform workers are not granted any kind of special status in accordance with labor legislation. These workers can be either wagedworkers or self-employed; it all depends on the contract between the worker and the company platform. Belgian courts mostly consider these workers self-employed. In Chile, for instance, judicial practice is based on the idea that platform workers are freelancers. A similar position can be seen in Malaysian judicial practice. However, it should be noted that such workers have no right to compensation for sick leave or payment for time spent in quarantine if they test positive for COVID-19 (Majeed & Hassan, 2022).

In some countries, gig workers have a hybrid status where platform workers are recognized self-employed, but some contributions to social security are provided, for example, in Columbia, a law has been adopted¹¹ to provide for contributions platform workers' social security depending on the number of working hours. A flexible system was created, in accordance with which contributions can be paid either by days or by hours.

Conclusion

Therefore, after examining of judicial practice and the opinions of scientists that specialize in labor, laws and regulations, the conclusion can be drawn that there are different approaches to the definition of platform workers' legal status in different countries. One can identify the following main approaches:

⁸ See more: Decision of the Supreme Court of Spain: STS 2924/2020 – ECLI:ES:TS:2020:2924. Available at: <https://www.poderjudicial.es/search/openDocument/05986cd385feff03> [Accessed: 9 March 2022].

⁹ Riders' law. Available at: <https://www.eurofound.europa.eu/nl/data/platform-economy/initiatives/riders-law> [Accessed: 09 March 2022].

¹⁰ El Pais. Available at: https://english.elpais.com/economy_and_business/2021-05-12/spain-approves-landmark-law-recognizing-food-delivery-riders-as-employees.html [Accessed: 9 March 2022].

¹¹ Decreto 1174 de 2020. Available at: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=140490> [Accessed: 9 March 2022].

1) gig workers are recognized wageworkers; 2) platform workers are recognized as self-employed or freelancers; 3) workers with an independent contractor agreement for the provision of services; 4) hybrid workers.

It can be said that a new category of workers has been established specifically for the gig economy, and these workers are freelancers by status (independent workers), though platforms provide some labor guarantees, such as benefit payments, without recognizing these workers as wageworkers.

The unclear legal status of online platform workers testifies the fact that in the near future, it will be necessary to accept the Convention of the International Labor Organization regarding the activities of these workers. The suggested convention is to be based on the ILO Employment Relationship Recommendation, supplemented with new conditions that can capture the specificities of legal regulation of this worker category as well as issues of health and safety requirements, and social and medical support.

References

- Banik, N. & Padalkar, M. (2021) Spreading Gig Economy: Trends and Effects. *Foresight*. 15 (1), 19–21.
- Defossez, D. (2021) The Employment Status of Food Delivery Riders in Europe and the UK: Self-employed or Worker? *Maastricht Journal of European and Comparative Law*. Available at: <https://journals.sagepub.com/doi/full/10.1177/1023263X211051833> [Accessed: 9 March 2022].
- Doyle, L. (2021) The European Commission Has Published Draft Legislation Aimed at Supporting Gig Economy Workers, but How Will This Impact the UK? Available at: <https://www.lexology.com/library/detail.aspx?g=43f69d3b-dce1-4975-9d3d-5e98ecdfa7f1> [Accessed: 9 March 2022].
- Majeed, S. & Hassan, N. A. (2022) Gig Workers: Where Do They Stand? Available at: <https://www.lexology.com/library/detail.aspx?g=692b80ba-6f6f-4d63-bd49-6fe2875d6563> [Accessed: 9 March 2022].
- Sinyavskaya, O. V., Biryukova, S. S., Aptekar, A. P., Gorvat, E. S., Grishchenko, N. B., Gudkova, T. B., Kareva, D. E. (2021) Platform Employment: Definition and Regulation. Moscow, National Research University Higher School of Economics, Institute of Social Policy.

Information about the authors

Irina V. Shesteryakova – Doctor of Juridical Sciences, Associate Professor, Head of the Department of National Security and Law Enforcement, Institute of International Law and Justice, Moscow State Linguistic University (Moscow, Russian Federation, e-mail: irinashesteryakova@mail.ru).

Igor A. Shesteryakov – Candidate of Juridical Sciences, Assistant Professor, Associate Professor of the International Law Department, Institute of International Law and Process, Moscow State Linguistic University, (Moscow, Russian Federation, e-mail: igor.shesteryakov@mail.ru).

© I. V. Shesteryakova, 2022

© I. A. Shesteryakov, 2022

Date of Paper Receipt: March 11, 2022

Date of Paper Approval: April 13, 2022

Date of Paper Acceptance for Publishing: May 6, 2022