

Privacy International's Response to the ILO questionnaire on Realizing decent work in the platform economy

Privacy International (PI) welcomes the International Labour Organisation's (ILO) efforts towards the creation a new international labour standard to support decent work in the platform economy. Following its [report on platform economy](#) published earlier this year, and with the view to inform the forthcoming discussion on the standard at the 2025 and 2026 International Labour Conferences, PI shares its views on the challenges this economy creates towards the privacy, autonomy and decency of workers.

PI is an international non-governmental organisation, which campaigns against surveillance and data exploitation by governments and corporations. PI employs specialists in their fields, including technologists and lawyers, to understand the impact of existing and emerging technology upon data exploitation and our right to privacy.

Workers are facing unprecedented surveillance from their employers and the platforms they work for. Under the guise of productivity, efficiency and economic incentives, employers and platforms are deploying dehumanising and invasive surveillance tools. These tools redefine the relationship between workers and their employers, creating an imbalance of power as they capture and process workers' data to make decisions that can greatly affect them.¹ PI believes workers should not have to choose between their privacy and their jobs; and that the development, deployment and maintenance of these automated decision-making systems should be strictly regulated. The creation of an international labour standard to support decent work in the platform economy is an opportunity to address these challenges and ensure parity regarding treatment of workers worldwide; and the ILO is in a unique position to oversee the development of such standard and monitor its implementation.

To guarantee the effectiveness and relevance of a standard, PI encourages the ILO and its members to develop an instrument that takes the form of a Convention potentially together with accompanying guidance. PI believes that the instrument should focus on the defining characteristics of platform labour, namely its digital nature, heavy reliance on data and use of algorithmic management systems to organise work and workers alike. The instruments should

¹ See <https://privacyinternational.org/learn/workplace-surveillance-algorithmic-management> for the work we have previously undertaken in relation to these issues.



refrain from adopting a too narrow definition of digital labour platforms and digital platform workers and instead aim to address the challenges emerging from those practices, irrespective of employment classification or work qualification.

To that extent, Privacy International encourages the ILO and its members to develop an instrument that addresses these challenges through the following measures:

- **Obligation for platforms to provide transparency and explainability information about their systems, in particular with regard to automated-decision making systems that impact on the conditions of workers**

The lack of transparency and explainability afforded to workers plays a significant role in the current imbalance of power between platforms and workers. Platforms should be obliged to share information in an understandable form for workers including, but not limited to the purpose for deployment of an automated-decision making system; its parameters and their relative importance; and the origin and purpose of the data processed.

- **Obligation for platforms to operate regular monitoring and evaluation of automated decision-making systems and to provide testing and auditing access to those systems**

Platforms should ensure compliance and effectiveness of their automatic decision-making system, for example through Algorithm Impact Assessments. They should also ensure auditability of their systems by third parties, such as workers' representative and researchers, by offering controlled access through means such as API or sandboxed versions.

- **Obligation on platforms to operate meaningful human intervention in automated decision-making systems that impact on the conditions of workers**

In view of the numerous examples of decisions made by algorithms negatively impacting workers, safeguards should be put in place to ensure that automated decisions impacting the conditions of platform workers (such as account termination and suspension) must always incorporate meaningful human review.

- **Obligation on platforms to provide timely information to workers about the reasons for a decision taken by automated decision-making systems and to offer appropriate mechanisms for workers to be able to challenge adverse decisions**



To further limit the information asymmetry that characterises the platform economy, workers should be notified in a timely manner when a decision that impact them is made by an algorithm. Such notification should include relevant information as to why the decision was taken as well as means to challenge it.

- **Obligation on platforms to respect data protection rights by prohibiting abusive data processing**

Considering the high volume of data required for digital platforms to operate, ranging from the training of algorithm to the constant processing of workers' location data for location-based work, a number of data protection principles should be enshrined in this instrument to better protect workers. This is particularly important with regard to the processing of sensitive personal data, data relating to out-of-platform activities and private communications.

- **Application of the safeguards developed in the instrument to all workers**

The harms which Privacy International is primarily concerned with arise from automated monitoring or decision-making systems. These practices can be harmful and should be regulated whether they take place in digital labour platforms (both online and location-based) or any other form of employment or work relationship. What is key is how workers are being managed and treated, rather than the particularities of the service on offer.

The instrument should therefore seek to protect platform workers regardless of their employment status ensuring that they have access to the same level of rights and protections afforded to other workers by international labour Conventions and Recommendations.

More details on these measures and a more precise exposition of PI's position can be found in our response to the ILO questionnaire.

▶ Questionnaire

As noted in the introduction to this report, at its 347th Session (March 2023) the ILO Governing Body decided to place on the agenda of the 113th Session (June 2025) of the International Labour Conference a standard-setting item on decent work in the platform economy (double discussion).¹

Governments are requested to provide their views on the form, scope and content of the future standards by responding to this questionnaire, after consultation with the most representative organizations of employers and workers. Reasons should be given for their replies and the organizations consulted should be indicated. Governments are also reminded of the importance of ensuring that all relevant departments or ministries that have oversight or other functions connected to the platform economy are involved in responding to this questionnaire.

In order for the Office to take account of the replies to this questionnaire, governments are requested to submit their replies to the Office no later than 31 August 2024.

The questionnaire includes four possibilities for the type of instrument or instruments that could be adopted: a Convention; a Recommendation; a Convention supplemented by a Recommendation; or a Convention comprising provisions that would be mandatory and provisions that would provide guidance.

The questions are divided into thematic areas. Each thematic area includes both questions related to provisions that could be considered to be mandatory and questions related to provisions that could be considered to provide guidance. The provisions that could be considered mandatory would reflect principles, rights and obligations that are applicable to all digital platform workers as they address core aspects of decent work in the platform economy. The provisions that could be considered to provide guidance would deal with specific details of the implementation of the principles, rights and obligations, or aspects that are either not yet ripe for mandatory norms or more suitably addressed under non-mandatory norms. Governments are therefore invited to comment not only on the content of the possible provisions but also on whether they should be mandatory or provide guidance.

The structure of the questionnaire in no way limits the right of the International Labour Conference to decide on the most appropriate form of the instrument or instruments.

Furthermore, the questionnaire seeks constituents' views on whether the instrument or instruments should include a simplified and accelerated procedure for amending specific provisions in order to ensure their continued relevance in the light of technological, regulatory or operational developments impacting on work on or through digital labour platforms. Should there be support, the Office would prepare, ahead of the first discussion by the Conference, more detailed information on the possible design of an amendment procedure for this purpose.

Respondents are encouraged, where possible, to complete the questionnaire in electronic format and to submit replies to platformeconomy@ilo.org. Respondents may also submit their replies in hard copy to the Conditions of Work and Equality Department (WORKQUALITY) at the International Labour Office in Geneva.

¹ GB.347/PV(Rev.), para. 876.

I. Form of the international instrument or instruments

1. Should the International Labour Conference adopt an instrument or instruments concerning decent work in the platform economy?

Yes No

Comments

Growth in workplace surveillance and algorithmic management has been particularly prevalent within the platform economy. These practices can have significant negative impact on workers' rights, health and autonomy.² New international legally binding standards and agreements are needed to prevent workers' rights being eroded in new ways by new technologies such as those deployed by digital labour platforms. The ILO should take the lead on this front to ensure parity regarding treatment of workers worldwide and because of its ability to monitor ongoing improvement in standards through reporting requirements and robust oversight. Already a number of countries and regions are adopting laws relating to the platform economy, and the ILO should act to set a baseline for these emerging standards.

The borderless nature of digital infrastructure means that companies can outsource work such as dataset labelling and call centre management. Platform companies have also been able to spread their business models rapidly into new jurisdictions due to the lack of regulation at the global level. Global standards are therefore required to prevent exploitation and widespread deterioration in workplace conditions via a race to the bottom.

Management practices that replace meaningful human relationships with unaccountable algorithms based on intrusive and extensive data processing are particularly concerning. These undermine and subvert the promise of decent work because they can infringe privacy and break trust. The ILO should address this gap in its regulation by adopting an instrument that prevents harmful practice such as:

- Workers being forced to provide access to highly sensitive personal data – such as facial and emotional recognition and neurological monitoring – while at work;³
- The deployment of automated decision making (ADM) systems to make decisions that impact on the working conditions of platform workers including through the use of hidden profiling or scoring. This is taking place without any or adequate human review and due transparency so that workers

² Privacy International (PI), Workplace surveillance & algorithmic management,

<https://privacyinternational.org/learn/workplace-surveillance-algorithmic-management>.

³ See for example: Nick Keppler, 'This Company Wants to Help Your Boss Monitor Your Brainwaves at Work' (Vice Motherboard, 21 September 2020); Jane Croft, 'Leisure centres scrap biometric systems to keep tabs on staff amid UK data watchdog clampdown' (The Guardian, 16 April 2024); Kat Roemmich, Florian Schaub and Nazanin Andalibi, 'Emotion AI at Work: Implications for Workplace Surveillance, Emotional Labor, and Emotional Privacy' (Proceedings of the 2023 CHI Conference on Human Factors in Computing Systems) <https://dl.acm.org/doi/fullHtml/10.1145/3544548.3580950>; Edward Ongweso Jr, 'Amazon's New Algorithm Will Set Workers' Schedules According to Muscle Use' (15 April 2021) <https://www.vice.com/en/article/z3xeba/amazons-new-algorithm-will-set-workers-schedules-according-to-muscle-use>; Tom Simonite, 'This Call May Be Monitored for Tone and Emotion' (19 March 2018) <https://www.wired.com/story/this-call-may-be-monitored-for-tone-and-emotion/>.

and their representatives are prevented from understanding decisions that may affect them and which may result in discrimination;⁴

- Employers processing worker data when they are not at work or being paid – and basing workplace decisions on this data;⁵
- Lack of accountability and transparency from major companies relying on microwork or gig economy platforms.⁶

2. If so, should the instrument or instruments take the form of:

(a) a Convention?

(b) a Recommendation?

(c) a Convention supplemented by a Recommendation?

(d) a Convention comprising mandatory provisions and provisions providing guidance?

Comments

We consider that a Convention should form the core of the ILO's response. As the platform economy continues to spread across the world and supplant traditional work relationships, the existing corpus of labour law, established at the ILO and national levels, no longer offers workers with sufficient protection.

As we address below, the platform model is expanding not only within and across Members, but also in new sectors based on technological evolution and change. Content creators, moderators, and micro-

⁴ See for example: Naiara Bellio, 'Food deliver service Glovo: tracking riders' private location and other infringements' (Algorithm Watch) available at <https://algorithmwatch.org/en/glovo-tracking-riders-location-infringements/>; Worker Info Exchange, 'Managed by Bots' (WIE 2021) <https://www.workerinfoexchange.org/wie-report-managed-by-bots>; Clea Skopeliti, "'I feel constantly watched": the employees working under surveillance' (The Guardian, 30 May 2023) <https://www.theguardian.com/money/2023/may/30/i-feel-constantly-watched-employees-working-under-surveillance-monitoring-software-productivity>; Jodi Kantor and Arya Sundaram, 'The Rise of the Worker Productivity Score' (The New York Times, 14 August 2021), <https://www.nytimes.com/interactive/2022/08/14/business/worker-productivity-tracking.html>;

⁵ Annie Palmer, 'Amazon uses an app called Mentor to track and discipline delivery drivers' (CNBC, 12 February 2021) <https://www.cnn.com/2021/02/12/amazon-mentor-app-tracks-and-disciplines-delivery-drivers.html>; Stephanie Lee, 'Workplaces Are Tracking Their Employees' Sleep' (Buzzfeed News, 6 January 2017) <https://www.buzzfeednews.com/article/stephaniemlee/work-wellness-program-of-the-future-will-track-your-sleep>.

⁶ Josh Dzieza, 'AI is a Lot of Work' (The Verge, 20 June 2023) <https://www.theverge.com/features/23764584/ai-artificial-intelligence-data-notation-labor-scale-surge-remotasks-openai-chatbots>; Adrienne Williams, Milagros Miceli and Timnit Gebru, 'The Exploited Labor Behind Artificial Intelligence' (Noema, 13 October 2022) <https://www.noemamag.com/the-exploited-labor-behind-artificial-intelligence/>; Niamh Rowe, 'Millions of Workers Are Training AI Models for Pennies' (Wired, 16 October 2023) <https://www.wired.com/story/millions-of-workers-are-training-ai-models-for-pennies/>; Matteo Wong, 'America Already Has An AI Underclass' (The Atlantic, 26 July 2023) <https://www.wired.com/story/millions-of-workers-are-training-ai-models-for-pennies/>.

workers are all new categories of worker who are all subject to similar working conditions to more established groups of platform workers, such as those in the 'gig economy'.

As set out above in our answer to question 1, the platform model is premised on the opaque and unaccountable data exploitation of workers, which is already causing significant harms that cannot fully be addressed through existing national and international regulations.

A Convention provides the ILO with the opportunity to establish a new overarching legal framework with treaty status that addresses the novel work relationships created by the platform economy. A Convention has the potential to provide clear and legal binding safeguards for workers as the obligatory ratification process under article 19(6) of the ILO Constitution means that the instrument could be ratified across Member states. A Convention would therefore go the farthest in ensuring that platforms are subject to specific enforceable obligations and workers can access effective remedies in order to address the harms arising from the platform economy, including in relation to the opaque and unaccountable uses of worker data. Moreover, it is the only option that would incorporate regular reporting and oversight regarding implementation, which is vital given the pace of technological change as well as regional differences in relation to the make-up and functioning of the platform economy.

A Convention would also allow for a degree of flexibility, which would enable national level implementing legislation to take regional specificities in the operation of the platform economy into account. As such, it may be useful for non-binding guidance to accompany a Convention (along the lines of option (d)) to allow for necessary flexibility of application to respond to the potential emergence of new technologies and approaches in this area. Some aspects (such as how best to communicate AI supported decisions) may also benefit from fuller explanation than is possible in legally binding language.

II. Preamble

3. Should the Preamble of the instrument or instruments recognize that the growth of the platform economy, including the expansion of digital labour platforms, has increased opportunities for job creation and work-related income and for enterprise and business development, while noting at the same time that it is significantly transforming the way work is organized and performed, with challenges for achieving decent work in the platform economy?

Yes No

Comments

[Click or tap here to enter text.](#)

4. Should the Preamble of the instrument or instruments recall that international labour Conventions and Recommendations apply to all workers, including digital platform workers, unless otherwise provided?

Yes No

Comments

It is essential that digital platform workers are not treated as a second or sub-class of worker and that all rights that workers have also apply to digital platform workers. Falsely treating platform workers as

self-employed or otherwise denying them established workplace rights has been behind much of the problematic practice that has characterised the exploitative nature of platform work since its inception.⁷

At the same time, many of the protections foreseen by this instrument (including against workplace surveillance and algorithmic management) should also apply to all workers equally, whether working for digital platforms or not. It is highly likely that techniques pioneered within platform work will find their way into more traditional employment structures unless and until they are prohibited.

5. Should the Preamble of the instrument or instruments underline that the specificities of work on or through digital labour platforms make it desirable to supplement the general standards by standards specific to digital platform workers, to enable them to fully enjoy their rights and to promote fair competition?

Yes No

Comments

Click or tap here to enter text.

6. Should the Preamble of the instrument or instruments acknowledge the significance of the implications on working conditions of the use of algorithms for organizing, supervising and evaluating work on or through digital labour platforms?

Yes No

Comments

Algorithms have been used for almost all types of management decision within digital platforms. This includes uses for the purposes of making recruitment decisions, to allocate work,⁸ to determine pay,⁹ and even to terminate/de-activate workers' accounts.¹⁰ The preamble should acknowledge that using algorithms in this way can have negative consequences for all involved because being able to explain and understand the reasons behind management decisions is essential to constructive workplace relations and communication. The significance of this emerging practice is therefore considerable and risks a systematic and pervasive undermining of trust, transparency and collaboration between employers and workers.

7. Should other considerations be included in the Preamble of the instrument or instruments?

Yes No

Please specify

⁷ See for example: Williams, Colin and LLOBERA VILA, MIREIA and Horodnic, Adrian, Tackling Undeclared Work in the Collaborative Economy and Bogus Self-Employment (March 7, 2020). Available at SSRN: <https://ssrn.com/abstract=3707054> or <http://dx.doi.org/10.2139/ssrn.3707054>.

⁸ SA Mathieson, 'Can work allocation algorithms play fair?' (Computer Weekly, 15 February 2019) <https://www.computerweekly.com/feature/Can-work-allocation-algorithms-play-fair>

⁹ See discussion of dynamic pay and pricing systems below.

¹⁰ Worker Info Exchange, 'Dutch & UK courts order Uber to reinstate 'robo-fired' drivers' (WIE 14 April 2021) <https://www.workerinfoexchange.org/post/dutch-uk-courts-order-uber-to-reinstate-robo-fired-drivers>

The preamble should also recall: the need for strong and enforced data protection rules when at work; the limitations of relying on worker consent for intrusive surveillance practices at work; the importance of transparency and accountability; that technical novelty or difficulty cannot be invoked to justify non-compliance with legal rights; and that transparent and reasoned communication is essential to harmonious human relationships, including in the workplace.¹¹

III. Definitions

8. For the purposes of the instrument or instruments, should the term “digital labour platform” mean a natural or legal person that provides, through digital tools such as a website or an application, a service involving the performance of work by a person for remuneration, irrespective of whether that work is performed online (online digital labour platforms) or in a specific geographic location (location-based digital labour platforms)?

Yes No

Comments

As the International Labour Office (the Office) recognises in its 2024 normative gap analysis, “online and location-based platforms share commonalities that are suited to a common set of principles in an instrument”.¹² PI agrees that the defining characteristics of such platforms are not the circumstances under which work is performed by workers but rather the organisation, distribution and remuneration of work through digital means. As defined by the European Union in recital 5 to the Platform Work Directive: “By means of algorithms, the digital labour platforms organise, to a lesser or greater extent – depending on their business model – the performance of the work, its remuneration and the relationship between their customers and the persons performing the work”.

Establishing a definition of digital labour platform that encompasses this specificity rather than focusing on the condition in which work is delivered by workers is key to ensuring the instrument will serve to the highest number of workers. While online and location-based work differ with regard to several attributes and both warrant specific protections and needs, the instrument should aim to address the shared characteristics of the platforms, in particular their digital nature, and heavy reliance on data collection, algorithms and automated decision-making systems.



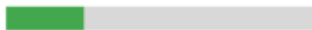
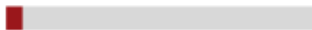

Such a definition would allow for the instrument to be relevant for both existing and future digital platforms that do not strictly meet the conditions of “online” or “location-based” work. One such example is that of content creators performing work on platforms such as Youtube, Instagram, Tiktok, OnlyFans or Twitch. PI research¹³ found that content creators viewed the relationship between creators and platforms as similar to the one between gig workers and the platform they use.

¹¹ We provide our recommendations in relation to data protection safeguards concerning platform work as well as how transparency and accountability should be effected by platforms in response to specific questions below.

¹² International Labour Organization, A normative gap analysis on decent work in the platform economy, GB.347/POL/1, 2023, https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_869158.pdf.

¹³ Privacy International, ‘Creating content in the gig economy: a risky business’ (26 January 2023) <https://privacyinternational.org/long-read/5013/creating-content-gig-economy-risky-business>.

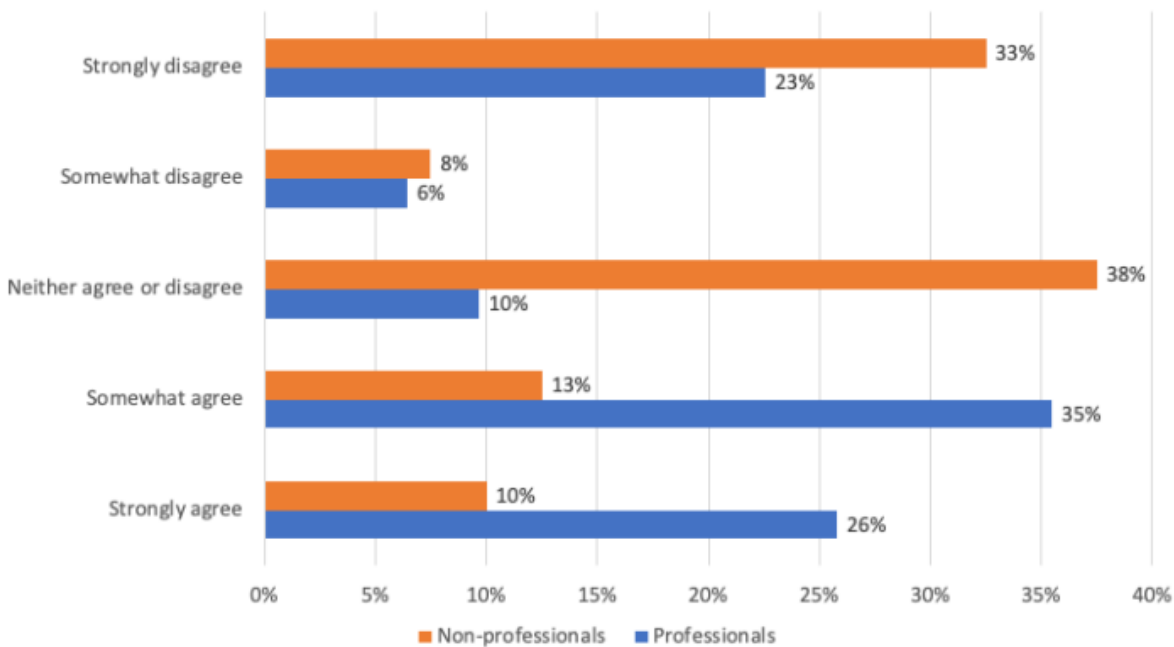
I think the relationship between content creators and platforms is similar to the one between gig workers and the apps/platform they use (e.g.: Deliveroo, Uber, Fiverr, TaskRabbit...)

Answer Choices	Responses		
Strongly agree		32.39%	23
Somewhat agree		28.17%	20
Neither agree or disagree		25.35%	18
Somewhat disagree		5.63%	4
Strongly disagree		8.45%	6

Extract from PI's research on content creators' relation to the gig economy

The same research also found that professional content creators (who made most of their income through platforms) considered themselves as working for the platform on which they made the most money despite not having any form of formal employment relationship with it.

I consider myself as working for the platforms on which I make the most money



Second extract from PI's research on content creators' relation to the gig economy

Finally, and crucial to the purpose of the instrument or instruments, the majority of content creators surveyed in this study indicated that they wanted to see better communication and transparency about important decision-making processes. This demand particularly echoes the desire of platform workers who are submitted to opaque decision making systems. Content creators face similar systems

and decisions in the form content promotion, content demotion (shadowbanning¹⁴), content moderation and account suspension¹⁵.

Without disregarding the difference between the business model of content creation platforms and delivery platforms or microwork platforms, the increasing recognition that content creation is a real career path¹⁶ and the clear reliance of these platforms on algorithm and automated decision-making systems should be a clear indication that digital labour platforms can and will take different shapes in the future.

Global interest for Artificial Intelligence (AI) and Generative AI have also provoked a surge in demand for data labelling, the exercise of labelling content including text, images, videos, with the view to train machine learning algorithms on this data. Data labelling present yet another type of platform work where automatic decision-making systems have a disproportionate impact on workers and their working conditions. PI has published an explainer exposing these challenges and their significance in the gig economy context.¹⁷

PI therefore believes the instrument should aim to tackle the challenges arising from digital labour platforms by focusing on their shared commonalities rather than the quality and type of work performed by platform workers. As such, we agree with the definition advanced in this question.

9. For the purposes of the instrument or instruments, should the term “intermediary” mean a natural or legal person that provides access to work on or through a digital labour platform, by subcontracting or otherwise?

Yes No

Comments

Click or tap here to enter text.

10. For the purposes of the instrument or instruments, should the term “digital platform worker” mean a person who is employed or engaged to work on or through a digital labour platform,¹⁸ regardless of their employment status or whether they work formally or informally?

Yes No

¹⁴ “Shadowbanning is real: Here’s how you end up muted by social media” - <https://www.washingtonpost.com/technology/2022/12/27/shadowban/> (The Washington Post, December 2022)

¹⁵ “Behind Instagram and TikTok’s Censorship of Sex Workers” - <https://www.34st.com/article/2021/05/tiktok-instagram-shadowban-censor-sex-workers-fosta-sesta> (34th Street, May 2021)

¹⁶ A survey of 2,000 US adult found that a majority (58%) believe content creation jobs should be taken just as seriously as other fields of work. “More than half of Americans believe content creation should be treated as a real job” - <https://swnsdigital.com/us/2022/09/more-than-half-of-americans-believe-content-creation-should-be-treated-as-a-real-job/> (SWNS Digital, 7 September 2022)

¹⁷ PI, Humans in the AI loop: the data labelers behind some of the most powerful LLMs’ training datasets, <https://privacyinternational.org/explainer/5357/humans-ai-loop-data-labelers-behind-some-most-powerful-llms-training-datasets>, 15 August 2024.

¹⁸ Work on or through a digital labour platform covers a wide array of activities performed with the use of a digital intermediating tool such as a website or an application. It includes for instance work through ride-sharing applications and work on microtask platforms. The intermediating role of technology serves to differentiate it from other kinds of work undertaken by individuals for digital labour platforms, such as clerical work.

Comments

As identified in the footnote accompanying the question, the key element in the definition should be the intermediating role of technology: in particular where that technology involves surveillance (whether automated or otherwise) and automated decision-making. Any worker whose workplace rights and conditions are controlled, affected or influenced by decisions made or supported by algorithmic means should be protected.

The information provided in question 8 on the relationship between content creators and the platforms on which they publish content reinforces the necessity of a definition of digital platform workers not limited by employment status or informality. In a time where careers on Youtube are most sought after by children in the US than being an astronaut¹⁹ and where the content creator market is in constant expansion²⁰, consideration for other types of digital platform labour characterised by algorithmic management is essential.

Similar to the mechanisms observed in the gig economy, content platforms' core service relies on the intermediation between content creators and content consumer through technology. Changes in those technologies, like content suggestion algorithms, can dramatically affect creators whose livelihood depend on content visibility and accessibility for consumers. Sudden and surprising policy changes can also affect content creators, rendering years or work to build an audience and a community useless if the content produced suddenly does not comply with the new policy. By way of an example, in 2021 OnlyFans announced that they would ban sexually explicit content from their platform²¹. While the decision was quickly reversed, creators had to contend with the reality of a platform that does not operate in their interest and can cut their revenue streaming from one day to the other. In 2023, Reddit also introduced changes that required third party apps to pay to access its platform (whereas previously access had been free).²² Content creators had in many cases depended on these apps to build their audiences, which enabled viewers to access content on their mobile devices.

Such imbalance of power is a characteristic of the relationship between digital platform workers and platforms, with limited opportunities for workers to input on important decisions, lack of transparency on how the algorithms deployed function and limited recourses and rights when they are affected by those decisions and changes.

¹⁹ A survey asked 3,000 kids ages 8 to 12 to choose from five professions to answer which they wanted to be when they grew up: astronaut, musician, professional athlete, teacher, or vlogger/YouTuber. 30% of US and UK kids picked YouTuber as a first choice. "American kids want to be famous on YouTube, and kids in China want to go to space: survey" - <https://www.businessinsider.com/american-kids-youtube-star-astronauts-survey-2019-7?op=1&r=US&IR=T> (Business Insider, 17 July 2019)

²⁰ The global [digital content creation market size](https://www.grandviewresearch.com/industry-analysis/digital-content-creation-market-report) was valued at USD 25.6 billion in 2022 and is estimated to expand at a CAGR of 13.5% from 2023 to 2030. "Digital Content Creation Market Size, Share & Trends Analysis Report By Component, By Content Format (Textual, Graphical, Video, Audio), By Deployment, By Enterprise Size, By End-user, By Region, And Segment Forecasts, 2023 – 2030" - <https://www.grandviewresearch.com/industry-analysis/digital-content-creation-market-report>

²¹ "The OnlyFans Porn Ban Reversal Does Not Reassure Creators" - <https://www.wired.com/story/onlyfans-reverse-porn-ban-creators/> (Wired, 25 August 2021)

²² <https://www.bbc.co.uk/news/technology-65877280>.

Digital platform worker should therefore mean a person performing work through and remunerated by a digital labour platform.

11. For the purposes of the instrument or instruments, should the term “remuneration” mean the financial compensation payable to a digital platform worker, regardless of their employment status, in exchange for the work they perform on or through a digital labour platform?

Yes No

Comments

[Click or tap here to enter text.](#)

12. For the purposes of the instrument or instruments, should the term “hours of work” mean the time during which digital platform workers are at the disposal of a digital labour platform, including when they are waiting for work assignments?

Yes No

Comments

[Click or tap here to enter text.](#)

13. Should any other terms be defined by the instrument or instruments? If yes, please provide particulars?

Yes No

Comments

[Click or tap here to enter text.](#)

IV. Purpose and scope

14. Should the instrument or instruments apply to:

(a) all digital labour platforms?

Yes No

(b) all digital platform workers?

Yes No

Comments

[Click or tap here to enter text.](#)

15. Should the instrument or instruments provide that, where special problems of a substantial nature arise, each Member may, at the time of ratification and following consultation with representative employers’ and workers’ organizations and, where they exist, organizations representing digital labour platforms and digital platform workers, exclude from the application of all or part of their provisions:

(a) limited categories of digital labour platforms?

Yes No

(b) limited categories of digital platform workers?

Yes No

Comments

Click or tap here to enter text.

16. Should the instrument or instruments provide that each Member should take measures to ensure that, in implementing their provisions, digital platform workers in an employment relationship enjoy protection no less favourable than that enjoyed by workers in an employment relationship generally?

Yes No

Comments

The instrument or instruments should enshrine equal protection to platform workers in an employment relationship relative to non-platform workers also recognised as employees. **In doing so, the instrument or instruments should expressly refer to core entitlements and safeguards such as those relating to the provision of information regarding the calculation of wages as well as the payment of a minimum wage. The relevant provisions should also establish accountability and reporting requirements around the applicability of employment protections to platform-workers recognised as employees.** This is critical, because technological changes (including the introduction of dynamic pay and pricing systems) are increasingly enabling platforms to evade the enforcement of existing labour and employment standards.

The eventual ILO standard must however also recognise that safeguards around the uses of algorithmic management and control in relation to platform workers cannot only apply to workers recognised as employees. As we set out below, the uses of systems such as dynamic pay and pricing algorithms²³ can impact on platform workers regardless of their employment status and can undermine their correct categorisation under employment classification procedures.

At both the level of national and international regulation, we have noted regulatory gaps in relation to the treatment of platform workers formally recognised as employees relative to workers in employment relationships generally. For example, platform workers (regardless of their employment status) are frequently subjected to a lack of transparency as regards the determination of their rate of remuneration, which as noted in the normative gap analysis is not the subject of existing ILO regulation.²⁴ This differential treatment is a direct consequence of the prevalence of algorithmic management and control in the determination of the core working conditions of platform workers, including in relation to their rate of pay. In particular, the introduction of dynamic pay and pricing

²³ We note that there may be other forms of algorithmic management deployed by companies that likewise negatively impact platform workers with employment status relative to other employees. We have focused on dynamic pay and pricing systems as an example of differential treatment.

²⁴ International Labour Organization, A normative gap analysis on decent work in the platform economy, GB.347/POL/1, 2023, https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_869158.pdf.

systems in numerous countries has rendered the determination of pay of both self-employed platform workers and those who may be eligible for employment status alike completely opaque.²⁵

In the UK, drivers working for Uber won recognition as ‘workers’²⁶ rather than self-employed contractors before the country’s highest court, the Supreme Court in 2021.²⁷ Section 1 of the UK’s Employment Rights Act 1996 (as amended in 2020) requires that all workers receive a statement from the employer on the commencement of their employment that among other things sets out “the scale or rate of remuneration or the method of calculating remuneration”. Notwithstanding the Supreme Court’s decision, the introduction of a dynamic pay and pricing system by Uber in 2023 appears to have coincided with a significant drop in driver wages.²⁸ This contrasts with the period prior to the introduction of the system during which there was greater clarity regarding pay in a given period with Uber taking a 25% commission from drivers.²⁹

Bringing a claim for payment of the minimum wage would be difficult for individuals recognised as workers by Uber. This is because of how the opacity of dynamic pay and pricing systems fragments the ability of platform workers to calculate how much they are being paid in a given time (regardless of employment status). Such efforts may also be hampered by a lack of clear rules around whether costs associated with vehicles (in the case of drivers) are subtracted from wages or not. The difficulty is underlined by the fact that two studies into the hourly earnings of Uber drivers in the USA where dynamic pay and pricing systems were deployed (one of which was financed by the company, which also provided select data to the researchers involved) came to highly divergent results.³⁰ What was clear from both studies is that workers who performed “substantially similar work received dramatically different wages, and that... the wages that an individual worker would receive were impossible to precisely ascertain or predict.”³¹ While in these studies, the workers likely did not have employment status – nevertheless the outcome would likely be the same regardless of status given the impact of dynamic pay and pricing systems.

Platforms may be able to use dynamic pay and pricing systems in ways that prevents workers seeking employment status from being able to fulfil the necessary conditions for recognition. This was an argument Privacy International advanced in a letter we submitted to the Council of the EU (EU Council) during negotiations relating to the Platform Workers Directive (PWD).³² Whilst the final adopted version of the PWD does not contain a provision mandating criteria for a presumption of employment (which

²⁵ Veena Dubal, On Algorithmic Wage Discrimination (January 19, 2023). UC San Francisco Research Paper No. Forthcoming, Available at SSRN: <https://ssrn.com/abstract=4331080>.

²⁶ Under the UK’s two-tier employment classification system, recognition as a worker ushers in some employment rights, including the national minimum wage. These rights are less than someone recognises as an ‘employee’, but more than that which self-employed contractors are entitled to.

²⁷ <https://www.bbc.co.uk/news/business-56123668>.

²⁸ <https://www.wired.com/story/drivers-are-rising-up-against-ubers-opaque-pay-system/>.

²⁹ <https://www.wired.com/story/drivers-are-rising-up-against-ubers-opaque-pay-system/>.

³⁰ Veena Dubal, On Algorithmic Wage Discrimination. We note that the wages of the workers in question were regulated by dynamic pay and pricing systems.

³¹ Veena Dubal, On Algorithmic Wage Discrimination

³² Privacy International, Letter to the Council of the EU, 22nd November 2023, <https://privacyinternational.org/advocacy/5159/privacy-international-writes-council-european-union-members-new-platform-workers>.

was instead left to the EU member states), the proposals of both the Commission and the EU Council did. We argued that the criteria for the presumption of employment in the EU Council's version were overly onerous and that certain requirements might actually incentivize behaviours by platforms that are directly contrary to the aims and purpose of the PWD. In particular, a criterion for employment recognition that would require platform workers to demonstrate that there is an upper limit on their rate of remuneration (Article 4(a) of the EU Council's proposal) would likely prompt platforms to use dynamic pay and pricing systems to entrench varying rates of pay.³³ Without transparency regarding their rate of pay, it would become impossible for workers to satisfy such a requirement. Given the absence of criteria for a presumption of employment in the final version of the PWD, there is a risk that such a requirement is introduced in member state implementing legislation.

Thus, the ILO's standard should recognise that equal recourse to protections against algorithmic management, including dynamic pay and pricing systems, for all platform workers regardless of employment status is itself critical to ensuring parity between platform workers recognised as employees and non-platform workers with the same status. Any equal treatment provision should also mandate that algorithmic management is not used to obscure genuine employment relationships.

V. Substantive content of the instrument or instruments

A. Fundamental principles and rights at work

Mandatory

17. Should the instrument or instruments underline that each Member should take measures to ensure that digital platform workers enjoy the fundamental principles and rights at work, namely:
- (a) freedom of association and the effective recognition of the right to collective bargaining;
 - Yes No
 - (b) the elimination of all forms of forced or compulsory labour;
 - Yes No
 - (c) the effective abolition of child labour;
 - Yes No
 - (d) the elimination of discrimination in respect of employment and occupation;
 - Yes No
 - (e) a safe and healthy working environment?
 - Yes No

Comments

Click or tap here to enter text.

³³ <https://privacyinternational.org/advocacy/5159/privacy-international-writes-council-european-union-members-new-platform-workers>.

B. Occupational safety and health

Mandatory

18. Should the instrument or instruments provide that each Member should require digital labour platforms to take appropriate steps commensurate with their degree of control to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by assessing physical and psychosocial risks and taking the adequate preventive and control measures?

Yes No

Comments

[Click or tap here to enter text.](#)

19. Should the instrument or instruments provide that each Member should take appropriate measures to ensure that:

(a) equipment used to perform work on or through digital labour platforms does not entail dangers for the safety and health of digital platform workers;

Yes No

(b) digital platform workers receive appropriate information and training in occupational safety and health;

Yes No

(c) digital platform workers have the right to remove themselves from a work situation which they believe presents an imminent and serious danger to their life or health;

Yes No

(d) digital platform workers report to a representative of the digital labour platform any situation in which they have reasonable justification to believe it presents an imminent and serious danger to their life or health;

Yes No

(e) adequate personal protective clothing and equipment, which are necessary when hazards cannot be otherwise reasonably prevented or controlled, are provided by the digital labour platform without any cost to the worker?

Yes No

Comments

[Click or tap here to enter text.](#)

20. Should the instrument or instruments provide that, in the course of performing their work, digital platform workers should comply with the prescribed occupational safety and health measures and cooperate in the fulfilment by digital labour platforms of the occupational safety and health obligations placed upon them?

Yes No

Comments

[Click or tap here to enter text.](#)

21. Should the instrument or instruments provide that, when the protection of digital platform workers in case of employment injury is not ensured through existing social security schemes, each Member should require digital labour platforms to extend such protection to the digital platform workers they employ or engage?

Yes No

Comments

Click or tap here to enter text.

Guidance

22. Should the instrument or instruments provide that Members should encourage digital labour platforms to provide digital platform workers, as appropriate to the nature of work performed, with access to sanitary facilities and drinking water?

Yes No

Comments

Click or tap here to enter text.

C. Violence and harassment

Mandatory

23. Should the instrument or instruments provide that each Member should take appropriate measures to effectively protect digital platform workers against violence and harassment in the world of work, including gender-based violence and harassment and, where appropriate, violence and harassment involving third parties such as clients and customers, including when perpetrated online, consistent with the right of everyone to a world of work free from violence and harassment, as recognized in the Violence and Harassment Convention, 2019 (No. 190)?

Yes No

Comments

Click or tap here to enter text.

D. Employment promotion

Mandatory

24. Should the instrument or instruments provide that each Member should make it an aim of national policy to promote the creation of decent jobs and encourage career and skills development in the platform economy, consistent with the goal of full, productive and freely chosen employment as set forth in the Employment Policy Convention, 1964 (No. 122)?

Yes No

Comments

Click or tap here to enter text.

Guidance

25. Should the instrument or instruments provide that Members should promote opportunities for further training and education for skills development and portable competencies for digital platform workers, in order for them to enjoy decent work, improve their employment prospects and respond to changing technology and labour market conditions?

Yes No

Comments

Click or tap here to enter text.

26. Should the instrument or instruments provide that Members should promote measures to reduce barriers for disadvantaged groups to work on or through digital labour platforms?

Yes No

Comments

Click or tap here to enter text.

E. The employment relationship

Mandatory

27. Should the instrument or instruments provide that each Member should take measures to ensure the adequate classification of digital platform workers in relation to the existence of an employment relationship, based on the primacy-of-facts principle as set out in the Employment Relationship Recommendation, 2006 (No. 198), taking into account the specificities of work on or through digital labour platforms?³⁴

Yes No

Comments

Click or tap here to enter text.

28. Should the instrument or instruments provide that the measures adopted by Members concerning the determination of the existence of an employment relationship should not interfere with true civil and commercial relationships, while at the same time ensuring that digital platform workers in an employment relationship have the protection they are due?

Yes No

Comments

Click or tap here to enter text.

³⁴ The primacy-of-facts principle is expressed in Paragraph 9 of Recommendation No. 198, which provides that the determination of an employment relationship "should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties."

Guidance

29. Should the instrument or instruments provide that Members should review at appropriate intervals and, if necessary, clarify and adapt the scope of relevant laws and regulations, in order to ensure the adequate classification of digital platform workers in relation to the employment relationship in the changing world of work?

Yes No

Comments

We consider that the presence of a provision that requires Members to review relevant laws and regulations with respect to classification provisions in the context of technological change is critical. As above in our answer to question 16, rapid technological shifts such as the growing deployment of dynamic pricing systems may be used in more ways and in more sectors to disguise genuine employment relationships. Regular review will be needed so that Members can consider whether a technological change requires the introduction of novel classification criteria and/or the reversal of existing ones.

We consider that this is in line with the ILO's "primacy of facts" approach as set out in Employment Relationship Recommendation, 2006 (No. 198). An approach that centres the "facts relating to the performance of work and the remuneration of the worker" must respond to potentially frequent changes in how algorithmic management can set the relevant "facts" underpinning the employment relationship, including by obscuring how much workers are paid over a given period. When the nature of facts can change regularly, so must the legal framework.

In light of the rapid rate of technological change and the inequality in bargaining position between workers and platforms, it is vital that employment classification procedures are not overly onerous for workers to meet, and that the extent of algorithmic management is itself considered as a factor in support of worker claims for employment status. This should for example include the use of ratings for performance management such as to allocate 'jobs' to particular workers or in decisions to terminate them.³⁵ As set out in our letter to the EU Council regarding the PWD cited above, overly onerous classification procedures can in turn result in the uneven application of protections in relation to harms arising from algorithmic management notwithstanding the paper application of safeguards to all platform workers regardless of employment status.³⁶ This is because protections against harmful deployments of algorithmic management and automated decision making (ADM) are likely to rely on workers themselves invoking certain rights. Self-employed platform workers are less likely to have the resources and bargaining power (including through the assistance of trade unions) to invoke these protections relative to those recognised as employees. Any review of classification procedures in the instrument or instruments should include national enforcement of relevant laws and regulations within its remit. This is because too frequently the enforcement of employment classification provisions is left to individual workers, unions and civil organisations raising significant issues with regard to the equality of arms. For example, although Spain's Rider Law amended the country's Penal Code to make hiring workers on the basis of false self-employment a criminal offence - the onus has been on coalitions of

³⁵ See for example the UK Supreme Court's 2021 finding that Uber drivers had employment status in which the Court held that the use of ratings for the purposes of managing internal performance is a "classic form of subordination that is characteristic of employment relationships" - *Uber BV and Ors v Aslam and Ors* [2021] UKSC 5.

³⁶ <https://privacyinternational.org/advocacy/5159/privacy-international-writes-council-european-union-members-new-platform-workers>.

unions and civil society organisations to raise the necessary funds to bring private prosecutions under the legislation.³⁷

Finally, the provision should contain a non-regression clause that ensures that Members do not reduce national protections following a review of relevant laws and regulations.

F. The use of intermediaries

Mandatory

30. Should the instrument or instruments provide that each Member should take measures to ensure that, where the use of intermediaries is permitted, their activities should be adequately regulated, and the respective responsibilities of digital labour platforms and intermediaries, including in respect of occupational safety and health, and the payment of remuneration and social security contributions, should be determined and allocated in accordance with national law and practice?

Yes No

Comments

Click or tap here to enter text.

G. Remuneration and working time

Mandatory

31. Should the instrument or instruments provide that each Member should take measures to ensure that the remuneration payable to digital platform workers is:

(a) adequate and includes, as appropriate, fair piece rates;

Yes No

(b) paid regularly, in legal tender and in full, in accordance with contractual obligations, national laws, regulations and collective agreements, and not unduly withheld?

Yes No

Comments

Click or tap here to enter text.

32. Should the instrument or instruments provide that, in assessing compliance with applicable laws, regulations or collective agreements on the amount of remuneration, the following should not be considered part of the remuneration payable to the digital platform worker:

(a) any expenses or other costs necessary to carry out their work;

Yes No

(b) tips and other gratuities?

Yes No

Comments

³⁷ https://x.com/Elite_TaxiBcn/status/1712146692462580151.

Click or tap here to enter text.

33. Should the instrument or instruments provide that each Member should provide that digital labour platforms should only be permitted to make deductions from digital platform workers' remuneration under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement, and should be prohibited from charging any fees or costs, directly or indirectly, in whole or in part, to digital platform workers?

Yes No

Comments

Click or tap here to enter text.

34. Should the instrument or instruments provide that each Member should require digital labour platforms to regularly provide digital platform workers with accurate and easily understandable information on their remuneration and any deductions made?

Yes No

Comments

The uses of algorithms in relation to the determination of wages, particularly through the deployment of dynamic pay and pricing systems, is currently making it difficult for many platform workers to understand how much they are being paid over a given period of time. Dynamic pay and pricing systems can exploit workers and discriminate against them³⁸ and leave them trying to work out why they are being offered different pay for the same work, or even prevent them going on strike.³⁹ This has

³⁸ Veena Dubal, 'On Algorithmic Wage Discrimination' (123:7 Columbia Law Review 2023) <https://columbialawreview.org/content/on-algorithmic-wage-discrimination/>;

Claudio Agosti, Joanna Bronowicka, Alessandro Polidoro and Gaetano Priori, 'Exercising workers' rights in algorithmic management systems' (ETUI 2023) <https://www.etui.org/publications/exercising-workers-rights-algorithmic-management-systems>

Megan Cerullo, 'How companies get inside gig workers' heads with "algorithmic wage discrimination' (CBS News, 18 April 2023) <https://www.cbsnews.com/news/algorithmic-wage-discrimination-artificial-intelligence/>;

Brian Merchant, 'If you work for Uber or Amazon, you may be a victim of algorithmic wage discrimination' (Los Angeles Times, 11 April 2023) [https://www.latimes.com/business/technology/story/2023-04-11/algorithmic-wage-discrimination](https://www.latimes.com/business/technology/story/2023-04-11/algorithmic-wage-discrimination;);

Gig Economy Project, 'Is 'dynamic pricing' ripping-off gig workers?' (Brave New Europe, 7 February 2023) <https://braveneweuropa.com/gig-economy-project-is-dynamic-pricing-ripping-off-gig-workers>;

Kyle Wiggers, 'Researchers find racial discrimination in 'dynamic pricing' algorithms used by Uber, Lyft, and others' (12 June 2020) <https://venturebeat.com/ai/researchers-find-racial-discrimination-in-dynamic-pricing-algorithms-used-by-uber-lyft-and-others>.

³⁹ Dan Calacci and Alex Pentland, 'Bargaining with the Black-Box: Designing and Deploying Worker-Centric Tools to Audit Algorithmic Management' (6:CSCW2 Proc ACM Human-Computer Interactions 2022) <https://dl.acm.org/doi/10.1145/3570601>;

Aarian Marshall, 'Gig Workers Gather Their Own Data to Check the Algorithm's Math' (24 February 2021) <https://www.wired.com/story/gig-workers-gather-data-check-algorithm-math/>;

Niels van Doorn, 'At what price? Labour politics and calculative power struggles in on-demand food delivery' (14:1 Work Organisation, Labour & Globalisation 2020) <https://www.scienceopen.com/hosted-document?doi=10.13169/workorglaboglob.14.1.0136>;

numerous implications for the legal rights, financial status, and well-being (explored below in our response to question 41) of platform workers. As set out above in our response to question 16, these implications regularly impact platform workers regardless of their employment status and for this reason it is important that this provision applies regardless of whether a worker has been recognised as an employee or not.

Across a number of countries, platform workers have reported significant decreases in their wages following the introduction of dynamic pay and pricing systems. In France, the introduction of a novel pricing system by Uber in September 2023, which included new opaque criteria regarding pricing per kilometre, appears to have decreased wages by up to 30% over a given trip.⁴⁰ This subsequently prompted a strike by Uber Eats drivers in October 2023.⁴¹ We therefore support a provision that requires digital labour platforms to regularly provide all digital platform workers with accurate and easily understandable information on their remuneration and any deductions made. This information should be made available to workers within a short, specified timeframe and must explain what ratings or profiling (especially when determined algorithmically) have been used to determine rates of remuneration.

Such information must not only relate to base fares paid to platform workers, but should also expressly include “bonuses”, “surges” and other algorithmically generated supplementary payments. that platform companies, such as Uber, use around the world. This is because such income (in the broader sense) is not regular and subject to frequent change. Similarly conditioned by opaque algorithmic systems, the use of such bonuses can further undermine any clarity platform workers have regarding how much they are being paid for work over a given period of time.⁴²

Recent research has suggested that platforms are using these supplementary systems together with dynamic pricing systems as a means to regulate supply and demand at a given time in order to maximise the amount that consumers are paying while minimising outgoings to workers.⁴³ Uber’s system for determining price relies on machine learning technology to estimate how much groups of customers are willing to pay for a ride, which it does in real time. From this, Uber determines a base rate of pay per ride, entirely behind a set of algorithms. Separately, Uber targets drivers with highly personalised and differentiated offers (in the form of ‘bonuses’, ‘surges’, or ‘quests’) to raise their base fare. These systems can be used to regulate the number of drivers at a particular time (as if the algorithms are offering drivers an increased number of such offers, they are likely to continue on the job) in response to differing levels of consumer demands. Since platforms regularly do not pay for ‘waiting time’ such systems may regulate supply and demand in ways that increases their profitability.

The Rideshare Guy, ‘2 Uber Drivers: Same Requests DIFFERENT PAY! You Won't Believe This!’ (YouTube, 1 March 2023) <https://www.youtube.com/watch?v=UADTiL3S67I>;

Rédaction Lille, ‘Livres Uber Eats en grève dans le Nord : ils dénoncent une baisse de leur rémunération’ (Lille actu, 24 October 2023) https://actu.fr/economie/livreurs-uber-eats-en- greve-dans-le-nord-ils-denoncent-une-baisse-de-leur-remuneration_60249320.html.

⁴⁰ https://actu.fr/economie/livreurs-uber-eats-en- greve-dans-le-nord-ils-denoncent-une-baisse-de-leur-remuneration_60249320.html.

⁴¹ https://actu.fr/economie/livreurs-uber-eats-en- greve-dans-le-nord-ils-denoncent-une-baisse-de-leur-remuneration_60249320.html.

⁴² Veena Dubal, On Algorithmic Wage Discrimination

⁴³ Veena Dubal, On Algorithmic Wage Discrimination

In addition to the impacts that such systems have on the financial and legal status of workers, their opacity may also fail to comply with widely recognised data protection principles at national and international levels. In particular, it is unclear how the likely multiple uses of worker personal data to facilitate the functioning of dynamic pay and pricing algorithms are in line with the principles of fairness and transparency, which require data to be processed in line with reasonable expectations of data subjects. This is because the personal data of platform workers are being used in ways that are unforeseeable to workers who consequently do not understand why they are paid a particular amount over a given period.

Moreover, existing mechanisms for platform workers to request remuneration information from employers and obligations on the part of employers to provide workers with explanations as to how their personal data has been used in determining their remuneration are inadequate. With regard to provisions concerning access to personal data, the onus falls on individual workers to request relevant information. Many workers will not have the requisite resources and support (including through union representation) to make such requests. Even where workers do have such support, requests for personal data and how they are processed by dynamic pay algorithms are likely to be contested by platforms and may therefore require lengthy legal proceedings to be successful.⁴⁴

Separately, explainability requirements (such as Articles 13 and 14 under the GDPR) – provide for limited and insufficient obligations on the part of employers. For one, these provisions only come into play where an algorithmic system is fully automated, and they rely on data controllers to determine themselves if disclosure is required. Hence platforms can seek to justify not providing relevant information about the functionality of a dynamic pay and pricing system on the basis that there is an element of human review somewhere in the decision-making chain relating to remuneration. Further, the form and substance of explainability information to be provided is not defined in sufficient detail in the GDPR and associated national and EU level guidance. It is therefore critical that the instrument or instruments not only provides for platform workers to receive “accurate and easily understandable information on their remuneration”, but also that the standard should also break down in sufficient detail the content and form of the information to be provided.⁴⁵ This is important to facilitate compliance with any existing requirements to provide information regarding the remuneration of workers (such as the UK’s Employment Rights Act 1996, which requires employers to set out the rate of remuneration or how this is calculated in respect of those with employment status). Dynamic pay and pricing systems appear to be at odds with this requirement (at least in respect of platform workers recognised as employees) and as such it is vital that this suggested provision explicitly require platforms to provide easily understandable information relating to the functioning of algorithms involved in remuneration. We provide detail on the potential substance and form of relevant information below in our answer to questions 40 and 45.

- 35.** Should the instrument or instruments provide that each Member should take measures to ensure, in accordance with national laws, regulations or collective agreements, adequate protection of digital platform workers in relation to:
- (a) hours of work;

⁴⁴ <https://www.workerinfoexchange.org/post/historic-digital-rights-win-for-wie-and-the-adcu-over-uber-and-ola-at-amsterdam-court-of-appeal>.

⁴⁵ We note that this could be by way of guidance if the instrument is to take the form of a combined Convention and accompanying Guidance.

Yes No

(b) rest breaks;

Yes No

(c) daily and weekly rest;

Yes No

Comments

Click or tap here to enter text.

Guidance

- 36.** Should the instrument or instruments provide that Members should take measures to ensure that the remuneration payable to digital platform workers is at least equivalent to the statutory or negotiated minimum wage, calculated according to the same method, that is applicable to workers in a comparable situation, where it exists?

Yes No

Comments

Click or tap here to enter text.

- 37.** Should the instrument or instruments provide that Members should establish guidance on the payment of tips and other gratuities to ensure that they are received by digital platform workers?

Yes No

Comments

Click or tap here to enter text.

- 38.** Should the instrument or instruments provide that Members should establish a method to determine the remuneration payable to digital platform workers for periods of time during which they are at the disposal of the platform and waiting for work assignments?

Yes No

Comments

Click or tap here to enter text.

- 39.** Should the instrument or instruments provide that Members should take measures to enable digital platform workers to decline a work assignment or to disconnect from a digital labour platform when they are not available for work, without retaliation?

Yes No

Comments

Click or tap here to enter text.

H. Impact of the use of algorithms on working conditions

Mandatory

40. Should the instrument or instruments provide that each Member should require digital labour platforms to inform digital platform workers, before they are employed or engaged, and their representatives or representative workers' organizations and, where they exist, organizations representing digital platform workers, about the use of algorithms to organize, supervise and evaluate work, and the extent to which this use affects the working conditions of digital platform workers?

Yes No

Comments

Providing workers and their representatives with information about all algorithms used in the lifecycle of their employment is key to protecting the rights of digital platform workers. Without the right information being provided at the right time, there will be an unacceptable power imbalance between employers and workers which can lead to exploitation, discrimination and deterioration in workplace conditions.

The information about algorithms provided to workers must be informative, understandable and up-to-date. This means:

- Informative: workers and their representatives must learn more about how they are managed following the provision of information. The information cannot be merely generic boilerplate language about what may or may not be happening (as is often seen in contracts or terms of service on gig economy platforms). Instead, workers and their representatives must be given a thorough understanding of what the algorithms are doing, how they are doing it, and why they are doing it. This includes providing details on the parameters used by the algorithm, their relative importance, where and how the data was collected and the reason for their use. Relevant information should also be provided to workers at key moments in their employment journey. This translates into notifying workers when they are affected by a decision made by an algorithm, detailing which algorithm it was, the reason for the decision and option to ask for a human review. Workers must be able to understand the reasons behind both the decision to use algorithms in the first place and behind each decision that affects them.⁴⁶

⁴⁶ Matt Scherer, 'Regulating Robo-Bosses' (Center for Democracy & Technology, 2024) <https://cdt.org/insights/report-regulating-robo-bosses-surveying-the-civil-rights-policy-landscape-for-automated-employment-decision-systems/>;

Institute for the Future of Work, 'The New Frontier: Artificial intelligence at work' (IFOW 2021) <https://www.ifow.org/publications/new-frontier-artificial-intelligence-work/>;

Joe Atkinson and Philippa Collins, 'Algorithmic Management and a New Generation of Rights at Work' (Institute of Employment Rights 2024) <https://www.ier.org.uk/news/report-proposes-new-rights-to-protect-workers-from-unfair-unaccountable-and-uncaring-algorithms/>;

Ifeoma Ajunwa, 'The "black box" at work' (7:2 Big Data & Society 2020) <https://journals.sagepub.com/doi/full/10.1177/2053951720938093>;

Trades Union Congress, 'People powered technology' (TUC 2022), <https://www.tuc.org.uk/resource/people-powered-technology>.

- Understandable: the information provided must allow workers and their representatives to understand the algorithms being used to manage them without having to rely on support from technical experts. The language, format and depth of explanation must accord with the degree of technical expertise that is required to do the job in question. Visual or other non-textual explanations may be necessary.⁴⁷
- Up-to-date: any software updates that result in material changes to how the algorithm operates should be notified to workers immediately. Where third party developers are used, this should be made clear and cannot constitute a reason for providing less information. Employers should also maintain a record of development history and updates.

We provide more detail about the content of the information that should be provided in response to question 45.

In addition to providing this general background information, workers should always be provided with an explanation for algorithmic decisions made or supported by algorithms, including the key reasons for the decision. This should refer to and correlate with the general information provided about the algorithms.

Employers should also be required to maintain a public register of the algorithms they use and overviews of how they work. This is particularly necessary for digital labour platforms that operate Business-to-Consumer so that people are informed about companies they may do business with and so that job-seekers can be informed in advance of how a company uses algorithms, in particular in the recruitment process.

- 41.** Should the instrument or instruments provide that each Member should require digital labour platforms to ensure that the use of algorithms:
- (a) does not result in any direct or indirect discrimination, including in respect of access to work on or through digital labour platforms and the setting of remuneration;
 - Yes No
 - (b) does not have harmful effects on the safety and health of digital platform workers, including risks of work-related accidents and psychosocial risks?
 - Yes No

Comments

The use of algorithm by any employers, but particularly by digital platforms, should never serve as an excuse to avoid responsibility and liability. Deployers of algorithms must bear the responsibility of the algorithm they deploy regardless of whether they took part in their development. Such responsibility should be accomplished through thorough auditing, monitoring, meaningful human review and other appropriate mechanisms to ensure the algorithm meets the employment requirement criteria. Such

⁴⁷ Kevin Zawacki, 'Giving Gig Workers the Transparency They Deserve' (Mozilla, 25 April 2023) <https://foundation.mozilla.org/en/blog/giving-gig-workers-the-transparency-they-deserve/>;

Institute for the Future of Work, 'Understanding AI at work', available at <https://www.ifow.org/toolkit/ai-at-work>;
 Information Commissioner's Office, 'Rights related to automated decision making including profiling', available at <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/individual-rights/individual-rights/rights-related-to-automated-decision-making-including-profiling/>

obligations are imposed on AI deployers under the AI Act (for example pursuant to Article 26), which will be important to consider when developing provisions under the instrument or instruments.

A lack of clear and enforceable obligations and responsibilities on the part of the deployers of algorithms, such as digital labour platform, can have a direct negative impact on workers' ability to access work. In its Managed by Bots campaign⁴⁸, Privacy International interviewed gig economy workers who suffered the consequences of fallible algorithms. This included the example of an Uber driver of colour who had been prompted to verify his identity through facial recognition technology (FRT) multiple times a day only to eventually get their account permanently deactivated when the system repeatedly failed to correctly identify him.⁴⁹ The lack of clear obligations on Uber allowed the company to ignore the consequences of this erroneous decision as well as to refuse to revise its position. This was not an isolated instance, and similar cases have been reported by the press^{50,51}. In this particular case, only after a long legal battle was the driver eventually compensated⁵².

The fact that FRT is notoriously known for failing to identify people of colour^{53,54} and that Uber relied on Microsoft Face API strengthen the need for platforms to bear responsibility and accountability for the consequences of implementing technological solutions for worker management. This is particularly important as biometric identification is inherently prone to similar risks and impacts on people subjected to such systems⁵⁵. Deployment of such technologies should only be done with strong safeguards and mechanisms in place to alleviate for their fallibility.

PI's campaign also features testimonies of drivers on the consequences of algorithmic deactivation, from the financial loss they create to the psychological and emotional burden it puts on workers⁵⁶. The

⁴⁸ Managed by Bots, in collaboration with Worker Info Exchange and App Drivers and Couriers Union, 2021 <https://privacyinternational.org/campaigns/managed-by-bots>

⁴⁹ Pa's story: how a facial recognition system potentially failed to recognise a driver of colour and may have cost him his job - <https://privacyinternational.org/video/4710/pas-story-how-facial-recognition-system-potentially-failed-recognise-driver-colour-and> (13 December 2021)

⁵⁰ Uber's facial recognition is locking Indian drivers out of their accounts , MIT Technology review - <https://www.technologyreview.com/2022/12/06/1064287/ubers-facial-recognition-is-locking-indian-drivers-out-of-their-accounts/> (6 December 2022)

⁵¹ Uber Drivers Say a 'Racist' Algorithm Is Putting Them Out of Work , The Time - <https://time.com/6104844/uber-facial-recognition-racist/> (12 October 2021)

⁵² Uber Eats courier wins payout with help of equality watchdog, after facing problematic AI checks, Equality and Human Rights Commission - <https://www.equalityhumanrights.com/media-centre/news/uber-eats-courier-wins-payout-help-equality-watchdog-after-facing-problematic-ai> (26 March 2024)

⁵³ Larry Hardesty, Study finds gender and skin-type bias in commercial artificial-intelligence systems, MIT News, <https://news.mit.edu/2018/study-finds-gender-skin-type-bias-artificial-intelligence-systems-0212> and <https://www.nist.gov/speech-testimony/facial-recognition-technology-frt-0> (11 February 2018)

⁵⁴ Privacy International's submission for the UNSR on racism's thematic report on artificial intelligence (AI) and racial discrimination - <https://privacyinternational.org/sites/default/files/2024-05/PI%20submission%20on%20AI%20and%20racial%20discrimination%20to%20UNSR%20on%20racism%20on%20AI%20March%202024.pdf> (March 2024)

⁵⁵ Privacy International, Biometrics - <http://privacyinternational.org/learn/biometrics#:~:text=When%20adopted%20in%20the%20absence,discriminat on%2C%20profiling%20and%20mass%20surveillance>

⁵⁶ "Driver X's story: spending months searching for the truth about his suspension and being lost in the opacity of the decision-making process" - <https://privacyinternational.org/video/4715/driver-xs-story-spending-months->

lack of understanding of a decision taken by algorithm, as well as how the algorithm functions, create a taxing effect on drivers who can suffer stress and anxiety as they lose confidence in the stability of their job and income.

Algorithms can also directly endanger the safety of workers when faced with edge cases or unusual situations. Ride sharing apps like Uber and Lyft for example have been heavily criticised for massive price surges following dramatic events like the shooting in Brooklyn's subway⁵⁷ or 2017 London Bridge attack⁵⁸. Such price surges not only affect clients who are seeking safety in situation of emergency and can be denied means to reach a safer location for lack of funds, they also incentivise workers to get closer to potentially dangerous events without providing the necessary context or information required for them to make an informed decision.

42. Should the instrument or instruments provide that each Member should ensure that digital platform workers have effective access, without undue delay, to a human review of any decision generated by an algorithm that impacts their working conditions, in particular when it results in the suspension or deactivation of their account, or termination of their work relationship?

Yes No

Comments

A requirement for human review is critical in ensuring that platform workers have accountability and an effective remedy in relation to ADM tools used by platforms. It affords workers a means to challenge potentially adverse automated decisions that would otherwise happen completely opaquely thereby denying workers control, agency, and self-determination. Human review, when conducted properly and meaningfully, can help mitigate against a risk of workers suffering significant adverse effects, including through algorithmic bias and discrimination as well as inaccurate input data.⁵⁹ We note that the question of when human intervention should take place in algorithmic decision-making is a thorny one. We focus our response to this question on the need for human review of decisions generated by algorithms. Nevertheless, for the avoidance of doubt – we also highlight the importance of having a “human in the loop” before an automated output is produced, particularly in respect of decisions that significantly impact workers as well as a right to object to ADM. The need for a “human in the loop” while outside of the scope of this question, is in line with the ILO's non-binding Code of Practice on the Protection of Workers' Personal Data (the Code of Practice) at for example, Article 5.5.

[searching-truth-about-his-suspension-and-being-lost](#) and Alexandru's story: “You never know when they are going to deactivate you or suspend you. And nobody dares to ask why” <https://privacyinternational.org/video/4713/alexandrus-story-you-never-know-when-they-are-going-deactivate-you-or-suspend-you-and>

⁵⁷ “Lyft and Uber criticized for surge pricing after Brooklyn subway shooting”, CSB News - <https://www.cbsnews.com/news/brooklyn-subway-shooting-lyft-uber-surge-pricing/> (12 April 2022)

⁵⁸ “London terror attack: Uber slammed for being slow to turn off ‘surge pricing’ after rampage”, The Independent - <https://www.independent.co.uk/news/uk/home-news/london-terror-attack-uber-criticised-surge-pricing-after-london-bridge-black-cab-a7772246.html> (4 June 2017)

⁵⁹ Information Commissioner's Office, What is automated individual decision-making and profiling? <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/individual-rights/automated-decision-making-and-profiling/what-is-automated-individual-decision-making-and-profiling/#id2>.

Together with the provision of accurate and easily understandable information about the presence, role, and functions of ADM systems – human review also ensures that profiling is not happening behind closed doors in ways that are invisible to workers.⁶⁰ By extension, human review coupled with rigorous transparency and explainability practices ensures that workers understand how the process works and how it impact them.⁶¹

We submit that the instrument or instruments should not frame “decisions that impact on working conditions” in an overly prescriptive, onerous, or formalistic manner. In particular, decisions should not be limited to suspension or termination even if these are of course decisions that have the most significant impacts on workers. As in the above example, decisions relating to the allocation of work and by extension the amount that workers earn both through any base fare and supplementary bonuses and surges have an impact on the working conditions of individuals working in the platform economy. Therefore, the algorithms underpinning dynamic pay and pricing systems should come within the scope of this provision. Avoiding an overly prescriptive approach ensures that new technologies and ADM systems that have emerging impacts on the working conditions of platform workers can be readily regulated through this provision. Nevertheless, for the sake of clarity, at a minimum such decisions should be construed to include those relating to termination/de-activation, suspension, allocation of work, determination of pay, and disciplinary matters.

Decisions should also be capable of including “preparatory acts” (i.e. algorithmic outputs that are generated before a final decision is made) where they exert a strong influence on the final outcome. **This is because there is rarely going to be an example of a single algorithmic decision that can be reviewed by a human before it is made in the platform context. Instead, what is more likely are a series of decisions made at different intervals in a complex chain with different levels and intensities of human review (to the extent that there is any) throughout the process.** This position is supported by the approach the Court of Justice of the European Unions (CJEU) took in a recent judgement relating to Article 22(1) GDPR. In that case, credit scores, which were inputted directly into a final decision as to whether to grant credit, constituted “decisions” for the purposes of the GDPR’s qualified prohibition on solely ADM.⁶² Notwithstanding the fact that the scores were produced at the inception of the decision-making chain, the CJEU placed significant weight on the fact that the scores were inputted directly into the final decision as to whether to grant credit and were invariably followed. This is of particular relevant for a proposed provision on human review given the prevalence of hidden scoring inputs in ADM systems used in the platform economy.

At this stage, it is important to draw a link between the parameters of what constitutes a decision and the substantive quality and standard of human review necessary to ensure algorithmic accountability. In the CJEU’s recent decision cited above, an automated score constituted a decision coming within the scope of the prohibition on solely ADM because it was invariably followed notwithstanding the

⁶⁰<https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/individual-rights/automated-decision-making-and-profiling/what-is-automated-individual-decision-making-and-profiling/#id2>.

⁶¹ <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/individual-rights/automated-decision-making-and-profiling/what-is-automated-individual-decision-making-and-profiling/#id2>.

⁶² Case C-634/21, *OQ v Land Hesse*, 2022/C 37/19

presence of a human somewhere in the process. In short, under the GDPR, the human review requirement cannot be met where particular automated outputs are passively inputted or rubberstamped by a human. We believe that this approach should underpin a requirement for human review of algorithmic decision-making under the instrument or instruments.

In order to achieve regulatory certainty both in relation to when human review is required and what it should entail – the standard and quality of human review must be set out in detail in the instrument or instruments. We believe that human review should encompass and be underpinned by the following requirements and principles:⁶³

- There is a named accountable human reviewer for the system in question. This should ideally consist of a department with more than one individual. A human reviewer must have the “internal power and resources”⁶⁴ as well as authority to challenge and ultimately ‘reject’ an automated output. The individual or department’s contact information must be made available to those subject to the decision-making in question.
- The reviewing team and any individuals who staff it should have an adequate knowledge and understanding of the relationship between technical design and potential impacts.⁶⁵ This should include demonstrable training in relation to *inter alia* the technical design of relevant algorithmic systems, the risk of automation bias, and potential adverse impacts experienced by workers, including discrimination.
- The reviews should assess for harm experienced by workers other than the individual who is the subject of a relevant decision as well as wider social and societal harms. This could be facilitated by having respective team members responsible for the technical aspects and others for social impacts.⁶⁶
- Platforms ensure that the use of ADM systems allow for the traceability of decisions at the design and implementation stages. This should enable the provision of explanations regarding the concrete decision-making path for a specific decision to impacted workers, including through the internal logging and retention of particular events.⁶⁷ This is particularly significant in the platform context where, as above, decision-making is often fragmented and diffuse in nature.
- Those impacted by a particular review decision must be notified and information regarding appeal procedures, including the contact information for any appeal department, must be communicated.
- The review decision should include meaningful information regarding the underlying reasoning for a particular decision (this will be particularly significant where the decision is an adverse one and where the reviewer has not departed from a particular algorithmic output).

⁶³ This is a non-exhaustive list and there may be other criteria that could justifiably be added.

⁶⁴ MIT Technology Review, How to Hold Algorithms Accountable, 17 November 2016, <https://www.technologyreview.com/2016/11/17/155957/how-to-hold-algorithms-accountable/>.

⁶⁵ Institute for the Future of Work (IFOW), *Good Work Algorithmic Impact Assessment*, 12 December 2023, <https://www.gov.uk/ai-assurance-techniques/ifow-good-work-algorithmic-impact-assessment>.

⁶⁶ How to Hold Algorithms Accountable.

⁶⁷ European Law Institute (ELI), ELI Innovation Paper, Guiding Principles for Automated

Decision-Making in the EU, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Innovation_Paper_on_Guiding_Principles_for_ADM_in_the_EU.pdf.

This information could include the reasons that lead to a particular decision as well as what data was used by an automated system and how it was used.⁶⁸ We further note that a human reviewer should be able to remake the decision themselves, including with new reasons if necessary. This may give more understandable reasons for decisions, in particular in the likely circumstances that algorithms have relied on parameters that do not have any meaningful context.⁶⁹

Guidance

43. Should the instrument or instruments provide that when the impact of the use of algorithms on working conditions of digital platform workers is not covered by a collective agreement, such use should be the subject of prior authorization by the competent authority?

Yes No

Comments

Click or tap here to enter text.

44. Should the instrument or instruments provide that Members should encourage digital labour platforms to ensure regular monitoring and evaluation of the impact of the use of algorithms on digital platform workers' working conditions, and the application of any necessary corrective measures, in collaboration with digital platform workers' representatives or representative workers' organizations and, where they exist, organizations representing digital platform workers?

Yes No

Comments

We consider that the instrument or instruments should go further than encouraging platforms to carry out regular monitoring and evaluation of the impact of the use of algorithms on digital platform workers' working conditions.⁷⁰ Instead, this provision should mandate regular reviews and monitoring of algorithms that impact on the working conditions of platform workers in ways that are open for examination and inspection by workers, their representatives, and interested third parties (such as researchers). It is vital that the assessment and evaluation of impact is subject to robust regulatory oversight. This must at a minimum grant regulators powers to investigate, receive complaints, and impose effective remedies in relation to failures to assess impact and/or defective impact assessments.⁷¹

⁶⁸ We note that further information as regards proposed transparency and explainability safeguards are provided in response to other questions.

⁶⁹ Veale, M., Silberman, M. 'Six', & Binns, R. (2023). Fortifying the algorithmic management provisions in the proposed Platform Work Directive. *European Labour Law Journal*, 14(2), 308-332. <https://doi.org/10.1177/20319525231167983>

⁷⁰ As set out above, in our response to question 42 in the context of human review – this should at least include algorithmic decision-making related to suspension, termination/deactivation, allocation of work and/or in certain cases the promotion or demotion of particular content, determination of pay (including in relation to bonuses and surges), and disciplinary matters.

⁷¹ See for example, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: The right to privacy in the digital age, A/HRC/48/31, 13

Together with proper and meaningful human review as well as transparency and explainability regarding the functioning of ADM systems, impact assessments and reporting and corrective measures are important in securing algorithmic accountability for platform workers.⁷² Mechanisms for the assessment of impact can also be deployed in the design phase thereby mitigating negative impacts prior to the implementation of a given ADM system.⁷³ They offer platforms a means to mitigate risks around the deployment of ADM systems. They are also a means by which some of our recommendations on provisions relating to transparency and explainability (set out above) could be communicated to workers and their representatives.

We believe that mandatory review and monitoring mechanisms (including their communication at a minimum to workers and their representatives) are required to ensure that platforms carry out relevant impact assessments and do so with due transparency. Without clear and enforceable requirements to regularly assess and report on impact as well as undertake corrective measures, there is a real risk that platforms will not disseminate the result of reviews or even to do them at all. In respect of compliance with the requirement to undertake Data Protection Impact Assessments (DPIA) pursuant to the GDPR,⁷⁴ platforms have previously failed exactly to do this. For example, in a decision of the Garante regarding the courier service, Glovo, the company never submitted a DPIA regarding its algorithmic management system to the regulator.⁷⁵ The platform sought to argue that its processing did not result in high risks for workers despite the fact that its algorithmic management system involved extensive profiling as well as automated decision-making with a significant impact on workers.⁷⁶

In order to ensure that any requirement to monitor and evaluate impacts is clear and enforceable, the provision should ensure that the obligation applies as broadly as possible. In other words, the requirement should be engaged where an algorithmic system has an impact on the conditions of workers (as above at a minimum this should include systems relating to termination/suspension/deactivation, work allocation, determination of pay, and disciplinary matters).

As with the application of human review in relation to ADM systems used by platforms, the content of impact assessments and the procedure for their communication to workers and more widely are at least as important as the presence of a clear and enforceable requirement to undertake ongoing monitoring and evaluation. The standard should require competent authorities at the Member level to

September 2021, <https://documents.un.org/doc/undoc/gen/g21/249/21/pdf/g2124921.pdf>. This recommends the “independent and external auditing of automated systems”.

⁷² Ada Lovelace, *Algorithmic Impact Assessment: User Guide*, 8 February 2022, <https://www.adalovelaceinstitute.org/resource/aia-user-guide/>.

⁷³ <https://www.adalovelaceinstitute.org/resource/aia-user-guide/>.

⁷⁴ We note that an obligation to conduct a DPIA will arise where the data processing in question creates a high risk to the rights and freedoms of data subjects (Article 35 of the GDPR).

⁷⁵ European Trade Union Institute, *Exercising Workers' Rights in Algorithmic Management Systems: Lessons Learned from the Glovo-Foodinho Digital Labour Platform Case*, 2023, https://www.etui.org/sites/default/files/2023-10/Exercising%20workers%20rights%20in%20algorithmic%20management%20systems_Lessons%20learned%20from%20the%20Glovo-Foodinho%20digital%20labour%20platform%20case_2023.pdf.

⁷⁶ https://www.etui.org/sites/default/files/2023-10/Exercising%20workers%20rights%20in%20algorithmic%20management%20systems_Lessons%20learned%20from%20the%20Glovo-Foodinho%20digital%20labour%20platform%20case_2023.pdf.

develop policies and guidance addressing how impacts should be assessed, monitored, and reported and how the results should be communicated to workers and more widely. We note that should the instrument or instruments include ILO guidance this could itself propose mechanisms for evaluating and reporting impacts thereby providing norms that could be deployed at the national level.

The question of how impacts should be evaluated does not need to be addressed prescriptively. Indeed, there are a number of models for assessing and reporting impacts developed by government departments, regulators, trade unions, and civil society organisations. At the same time, it is important to recognise the limitations of existing impact assessment mechanisms and frameworks, which may not alone be suited to evaluating impacts of algorithmic management systems in the platform context. For example, in the case of DPIAs (where platforms do carry one out) – a focus on the risk to individual data rights may obscure harms that lie outside of impacts associated with the processing of worker data, including wider social and societal harms. A focus on data processing operations, including categories of data collected, may also mean that the functionalities of an ADM system are not sufficiently set out and interrogated through a DPIA. Finally, as set out above, the fact that there is no obligation to publish DPIAs and/or to disclose them to workers and their representatives – may limit their efficacy as a tool for increased accountability and transparency.

In the below section we seek to provide some suggestions as regards how this provision (and any associated guidance) could frame the ways in which ADM systems could be monitored and evaluated and the results communicated to workers, their representatives and other interested parties.⁷⁷

Algorithmic Impact Assessments (AIAs) offer one means of monitoring and evaluating impact in ways that could complement the role and purpose of DPIAs that may already be required in a number of Member jurisdictions.⁷⁸ As above, AIAs serve to evaluate potential risks (including impacts beyond data privacy) by “*documenting key decisions, values and choices*”.⁷⁹ AIAs carried out by platforms should provide high-level summary descriptions of the algorithmic system, including its capabilities and the reasons for introducing the relevant system.⁸⁰ They should also detail all outcomes and outputs generated by the ADM system, including the chain of decisions and the presence, scope and extent of human review throughout the decisions. AIAs should also set out any training methodologies and datasets used by the ADM system and the extent and type of automation (i.e. full or partial).⁸¹ The relative weightings of variables, such as the parameters used to assess a worker’s performance and

⁷⁷ With regard to the above paragraph and the below section, we note that DPIAs remain an important tool in assessing the impact of algorithms used by platforms. Our point is that they should not be the only means to assess and monitor impacts and the new ILO standard provides an opportunity to develop complementary mechanisms that may be more tailored to the specificities of ADM in the platform context.

⁷⁸ This is without prejudice to other means of assessing impacts arising from algorithms that may also be appropriate and useful depending on the ADM system in question. For example, in certain circumstances a Human Rights Impact Assessment should be conducted alongside an AIA.

⁷⁹ <https://www.adalovelaceinstitute.org/resource/aia-user-guide/>.

⁸⁰ <https://www.gov.uk/ai-assurance-techniques/ifow-good-work-algorithmic-impact-assessment>.

⁸¹ <https://www.gov.uk/ai-assurance-techniques/ifow-good-work-algorithmic-impact-assessment>.

thereby generate rankings and ratings⁸² deployed in algorithms relating to job allocation, should also be detailed.⁸³

As above, the monitoring and evaluation of harms caused by an algorithmic system needs to involve an assessment of impacts. Therefore, any AIA should contain sections relating to the assessment of impacts, such as for example in relation to privacy and autonomy, health and safety, economic interests, and the environment as well as any corrective or preventative measures that have been taken.⁸⁴ Impact assessments should also outline the techniques and methodologies used to test ADM systems, such as the outcomes of technical algorithmic audits assessing privacy, robustness, and/or explicability and fairness in the development and implementation of the system.⁸⁵

The monitoring and reporting of impacts is not something that should be seen in isolation as distinct and separate from procedures relating to transparency and human review and other forms of accountability for platform workers. A provision for Members to require platforms operating in their jurisdictions to assess and disclose algorithmic impacts offers an opportunity to incorporate worker consultation and participation in the evaluation of harms, including in the design stage. This would complement and strengthen a number of provisions in the Code of Practice including Article 12.2, which requires workers' representatives to be informed before the introduction of any electronic monitoring of worker behaviour in the workplace.⁸⁶ Taking this further, the instrument or instruments could provide for workers and their representatives to be regularly consulted regarding impacts arising from the deployment of ADM systems (including potential ones in the case of ones in the design phase). AIAs provide a useful forum through which such consultation could take place and as such they should record the mode of consultation and any outcomes.

Ideally, as above, AIAs should be published in their entirety, thereby enabling scrutiny not only by workers and their representatives but also civil society organisations and researchers with particular technical, legal, or policy expertise. Similar initiatives have been developed in relation to the uses of ADM systems in the public sector in a number of Member states. For example, in Canada government departments are required to undertake AIAs via a pro forma digital Algorithmic Impact Assessment tool, which are then published via its Open Government Portal.⁸⁷ A public register of relevant impact assessments at the Member level could similarly be developed in relation to algorithmic systems impacting working conditions in the platform economy. When made public impact assessments

82

https://www.etui.org/sites/default/files/2023-10/Exercising%20workers%20rights%20in%20algorithmic%20management%20systems_Lessons%20learned%20from%20the%20Glovo-Foodinho%20digital%20labour%20platform%20case_2023.pdf.

83 <https://www.gov.uk/ai-assurance-techniques/ifow-good-work-algorithmic-impact-assessment>.

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<https://www.canada.ca/en/government/system/digital-government/digital-government-innovations/responsible-use-ai/algorithmic-impact-assessment.html>.

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<https://www.canada.ca/en/government/system/digital-government/digital-government-innovations/responsible-use-ai/algorithmic-impact-assessment.html>.

86 ILO, *Code of Practice on the Protection of Workers' Personal Data*, 1997, https://webapps.ilo.org/public/libdoc/ilo/1997/97B09_118_engl.pdf.

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<https://www.canada.ca/en/government/system/digital-government/digital-government-innovations/responsible-use-ai/algorithmic-impact-assessment.html>

should incorporate process transparency so that changes to evaluations over time are documented and explained.⁸⁸

We believe that trade secrets and other potential legal grounds for non-disclosure should not be a trump card that outweighs other legitimate interests in favour of impact assessments being made public. Where there are legitimate grounds for non-disclosure, platforms should justify particular redactions rather than simply withholding the entire impact assessment. The standard could also provide for Members to establish intermediaries independent of platforms and workers to enable the sharing of impact assessments with workers and their representatives on a confidential basis in the event that grounds for non-disclosure are made out.

45. Should the instrument or instruments emphasize the importance of addressing at least the following elements in any information, collective agreement or prior authorization, as referred to in questions 40 and 44:

(a) the main parameters taken into account in the operation of algorithms that have implications for working conditions, and their relative importance;

Yes No

(b) the extent of human intervention, if any, in the decision-making process;

Yes No

(c) any subsequent change made to (a) or (b)?

Yes No

Comments

Workers and their representatives must be able to understand the reasons and reasoning behind decisions that affect them. Where decisions are made or supported by algorithms, particular effort may be required to provide the necessary amount of information, including about the main parameters and extent of human involvement.

The instrument should therefore go further than suggested here and require the inclusion of the following information provided to workers and their representatives about algorithms used to manage them:

(i) The purpose and design of the algorithm.

Employers must provide a short (two or three sentences) description to explain what purpose(s) the company uses the algorithm for and why it has been preferred to other options.

⁸⁸ See the Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: The right to privacy in the digital age. This provides that: “Meaningful consultations should be carried out with potentially affected rights holders and civil society, while experts with interdisciplinary skills should be involved in impact assessments, including in the development and evaluation of mitigations. States and businesses should continuously monitor the impacts of the AI systems they use to verify whether they have adverse human rights impacts. The results of human rights impact assessments, action taken to address human rights risks and public consultations should themselves be made public.

An overview of the algorithm's design should also be given: including what sort of management decisions are made by the algorithm (and whether they are advisory or decisive); whether the algorithm is deterministic or probabilistic; what training data was used; and under what circumstances the algorithm is not deployed or has a failsafe. Similar to how an employee is presented with HR procedures and other management processes after recruitment, platform providing information about purpose and design of algorithm enables workers to have better understanding of their working conditions and the key mechanism of their employment journey.

(ii) The relative importance of the algorithm's inputs and parameters.

Employers must explain, in an accessible and non-technical way, what input data and/or ratings it uses to reach decision. This means providing an easy way to understand how important different inputs and parameters are to different decisions. This could be done in various ways: from a simple rating of 'high/medium/low importance', to giving more specific and granular detail of the weighting each input or parameter has.

Parameters: as well as explaining the relative importance of different parameters and inputs, their source should also be identified (are they from an app, from customers, from the web or data brokers, are they actual or inferred, how long ago are they from, were they collected while at work, etc). It is possible that AI algorithms will use parameters that are hard to give real-world human descriptions for. In such cases, the company must thoroughly explain how the tool has been built, and how they monitor and audit its outputs to ensure that they do not result in bias or discrimination.

Examples (or statistics) comparing different, but similar, inputs with differing outputs may also be needed to explain what sorts of inputs tend to lead to what sorts of outputs. Where possible, platforms should provide access to APIs or sandboxes that allow workers and researchers to understand how the algorithm behaves in practice.

(iii) How human intervention is catered for.

For important decisions directly affecting workers' ability to perform work, such as account deactivation, a human in the loop should be mandatory⁸⁹. Additionally, platforms must specify who has what oversight over the algorithm's outputs, what level of decision-making authority they have, and how they can be contacted.

The register should also provide some operational information about how much staff capacity (in FTE) is dedicated to human review and how long a review is expected to take. If a review exceeds this expected time period, its effect should be paused, or adequate compensation should be provided until the review is complete.

(iv) Development history and updates.

The company should also state where responsibilities for the development and update of the algorithm lie, especially where an external supplier has been involved. This does not require identifying individuals, but rather relevant teams/departments/organisations and the nature of their different responsibilities. A log of updates should also be listed, including, as appropriate, continued API/sandbox access to earlier algorithm versions.

Transparency and explainability of algorithms and systems with high impact on people is paramount developing a future where technology supports human rights and individuals rather than work against

⁸⁹ PI advocated for human reviews in important decision to be included in the Platform Work Directive - <https://privacyinternational.org/advocacy/4961/privacy-internationals-proposed-amendments-eu-directive-working-conditions-and> (7 October 2022)

them. Taking inspiration from high level principles⁹⁰ and legal instruments⁹¹ addressing AI systems, the instrument should aim to impose the highest level of transparency to platforms developing and deploying algorithmic management systems that can impact drastically impact workers.

I. Protection of digital platform workers' personal data

Mandatory

46. Should the instrument or instruments provide that each Member should establish effective and appropriate safeguards concerning the collection, storage, use, processing and communication of digital platform workers' personal data?

Yes No

Comments

See question 47.

47. Should the instrument or instruments provide that each Member should require digital labour platforms to ensure that digital platform workers' personal data are collected, processed and used only to the extent strictly necessary for the proper performance of the work relationship or as required by national law, and to prohibit, in particular, the collection, processing and use of personal data:

(a) relating to private conversations, including exchanges with workers' representatives;

Yes No

(b) concerning membership of workers' organizations or participation in their activities;

Yes No

(c) obtained when the digital platform worker is not connected to a digital labour platform for the purpose of performing work;

Yes No

(d) concerning physical and mental health and other sensitive data as determined in accordance with international labour standards and other relevant national and international instruments?

Yes No

Comments

We propose answering questions 46 and 47 together. This is because the question of the desirability of tailored safeguards relating to the processing and storage of the personal data of platform workers is intrinsically linked to the question of their substance. We submit that the case for the desirability of bespoke safeguards implemented at Member level through the instrument or instruments is clearly made out by our answers to the above questions. As we have demonstrated, protections regarding the

⁹⁰ The OECD principles on AI for example have a principle on Transparency and Explainability, OECD <https://oecd.ai/en/dashboards/ai-principles/P7>

⁹¹ See article 13 of the AI Act, Transparency and Provision of Information to Deployers - <https://artificialintelligenceact.eu/article/13/#:~:text=This%20article%20states%20that%20high,limitations%2C%20and%20any%20potential%20risks.>

handling of personal data of platform workers are required to ensure that workers understand the reasoning for decisions impacting them, so that they can effectively challenge adverse decision-making, and are not subject to particularly intrusive surveillance technologies.

A number of Members have data protection regulations in place that may offer certain safeguards regarding the handling of data relevant to platform workers. However, as pointed out in the Office's 2024 *Realizing Decent Work in the Platform Economy* report: levels of protection relating to the processing of worker data vary considerably across national and international data protection regulations.⁹² As noted above, an ILO instrument or instruments offers the opportunity for a clear and enforceable baseline level of protection incorporating tailored safeguards regarding the processing and handling of platform worker data. As we have highlighted throughout our responses to the questionnaire, existing data protection standards, such as the GDPR, suffer from a lack of enforcement in the platform context. This is exacerbated by provisions that rely on platforms operating algorithmic systems to self-regulate their practices and for the onus to fall on workers to request information about how their data is being handled without considering the inequality of arms that characterises the work relationship.

A binding ILO convention with provisions relating to the protection of platform worker data also offers an opportunity to build on and update the non-binding standards set out in the Code of Practice in a changing technological context. For example, the Code of Practice is silent on the obligations of third-parties who are regularly handling the employment data of platform workers. We submit that Member regulations creating safeguards concerning the collection, storage, use, processing and communication of digital platform workers' personal data should impose obligations on relevant third parties in addition to platforms themselves.

This is because there are now increasing ways in which third parties are processing the data of platform workers very often with significant impacts on their working conditions, financial status, and well-being. For example, in Argentina – the start-up Nippy provides delivery drivers with access to rest stops in return for allowing it to sell data collected by its app to partners in insurance, financial services, and telecommunications.⁹³ In the case of on-demand labour platforms, there is now an emerging ecosystem of data brokers that offer services to platform workers including the automated collation and extraction of information about their earnings.⁹⁴ This employment data is then being monetised by these third-party companies including to provide them services such as car insurance.⁹⁵ There is a risk that unregulated data access and sharing may create downstream harms for platform workers including ADM relating to access to services, such as insurance, and credit, and workers being targeted with predatory loans.⁹⁶

Third-party companies are also becoming increasingly involved in the design and implementation of ADM systems. Outside the platform context, we have previously documented how workplace recruitment is being transformed through companies providing employers with 'AI software' to assess

⁹² ILO, *Realizing Decent Work in the Platform Economy*, ILC.113/V(1), 2024, <https://www.ilo.org/resource/conference-paper/ilc/113/realizing-decent-work-platform-economy>.

⁹³ <https://privacyinternational.org/examples/5303/delivery-drivers-trade-data-rest-stop-services>.

⁹⁴ <https://ssrn.com/abstract=4331080>.

⁹⁵ <https://ssrn.com/abstract=4331080>.

⁹⁶ <https://ssrn.com/abstract=4331080>.

candidates through automated CV screening and interviews, which may collect facial or voice pattern data.⁹⁷

We consider that our above recommendations regarding human review, transparency and explainability, and the evaluation of impacts should, where relevant, apply to third parties. This should also be the case with respect to our recommendations in relation to the substantive safeguards proposed in question 47, which we address below. Such a position would be in line with the obligations placed on third-party AI service providers under the EU's AI Act. For example, as per Article 25 read together with Article 16 - the requirements relating to the operation of "high risk AI systems", including with respect to technical documentation, record keeping and logging, accuracy, and human oversight, apply to providers of such systems.⁹⁸

With respect to the substantive safeguards suggested at question 47, we agree that the instrument or instruments should provide that Members establish protections, which ensure that digital platform workers' personal data are collected, processed and used only to the extent strictly necessary for the proper performance of the work relationship or as required by national law. This means that platforms should only collect data while platform workers are using the platform to undertake work. The alternative risks blurring the boundaries between being at work and not and expands the amount of data platforms can collect on workers, through apps or otherwise.⁹⁹ Without firm boundaries, this might result in data being collected on workers while they are at home, on holiday, or asleep. Waiting time between jobs is a necessary part of the performance of work in the platform economy and by extension workers would be connected to the platform during these times. Given that platforms will collect worker data during such times and in view of the necessity of waiting time, we consider that Members should ensure that workers are remunerated for this time.

We also support a number of prohibitions on certain processing activities in light of their intrusiveness and harmful impacts on workers and society more widely. With respect to the processing of private conversations, including exchanges with workers' representatives, we consider that the instrument or instruments should provide that Members prohibit this use of worker data. We note that such data is likely to be particularly sensitive and may relate to the political opinions and legitimate trade union activities of workers. The mere possibility that such data could be gathered is likely to have a chilling impact on the communications between workers and with their representatives, which engages fundamental rights and freedoms relating to collective bargaining. This comes within the scope of

⁹⁷ PI, AI-powered employment practices: PI's response to the ICO's draft recruitment and selection guidance, March 2023, <https://privacyinternational.org/advocacy/5287/ai-powered-employment-practices-pis-response-icos-draft-recruitment-and-selection>.

⁹⁸ We note that a number of ADM systems in the platform context would likely be classified as "high risk AI systems" once the AI Act comes into force. This would likely for example include ADM systems relating to worker termination, task allocation, and evaluation of performance or behaviour.

⁹⁹ We note that the alternative would also undermine the purpose and functioning of ILO standards regulating working time. For example, the Hours of Work (Industry) Convention, 1919 (No. 1) should cover platform workers, in particular drivers. Given the nexus between the collection of worker data and the performance of work in the platform economy, limiting data collection to hours of work should follow logically from the regulation of working time.

other binding ILO standards, including the Collective Bargaining Convention¹⁰⁰ and international human rights law, including Article 11 of the European Convention on Human Rights.¹⁰¹

With respect to the processing of sensitive personal data¹⁰², including information relating to the physical and mental health of workers, we consider that the instrument or instruments should significantly limit such data processing through binding safeguards. To the extent that the instrument or instruments seeks to define sensitive data in the context of safeguards concerning the personal information of platform workers, we submit that the definition should be broad and not overly prescriptive. This ensures that Members can respond flexibly to new technological developments that may entail the processing of novel forms of data, including inferred information. For example, the increasing use of wearables by employers is already leading to the collection of worker data relating to *"different interpersonal variables, such as speech patterns and body movements, which results in a total picture of human interaction at work."*¹⁰³ Such information may on its own not fall within existing definitions of sensitive data (for example Article 9 of the GDPR) but could provide employers with a deeply intrusive view of the behaviour of their workers.

We have already addressed the collection of biometric data, through FRT for example, in a number of our responses. However, we also consider that a provision requiring Members to implement particular data protection rules should refer to the processing of worker biometric data in the context of protections relating to sensitive data. As above, the use of remote biometric systems in the context of decisions relating to worker deactivation are already raising issues of fairness, accuracy, and discrimination.

Provisions at the Member level relating to the protection of worker data should prohibit the processing of biometric data where the information collected is being used to make automated decisions impacting on worker conditions. One such example, detailed above, is where mismatches between real time biometric data provided by workers and stored reference data is used to suspend or deactivate them from platforms.

Any processing of worker biometric data should also as above be subject to compulsory impact assessments before and during deployment. Biometric data must also not be processed by platforms if doing so would lead to the collection, storage, or communication of inaccurate worker information. The processing of such data should also be subject to strict necessity, proportionality, and security thereby enshrining principles, which are already contained in the Code of Practice¹⁰⁴ and widely recognised in

¹⁰⁰ ILO, Collective Bargaining Convention (No. 154), 1981, https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312299.

¹⁰¹ See for example, *Demir and Baykara v Turkey*, [2008] ECHR 1345.

¹⁰² We note that this paragraph and the below correspond to question 47(d). However, for the purposes of our submissions as a whole, we consider that other forms of data cited in question 47 should also be considered sensitive. For example, the information mentioned at questions 47(a) and (b) may also constitute sensitive data thereby requiring heightened levels of protection.

¹⁰³ ILO, Working Paper on the *Protection of workers' personal data: General principles*, <https://webapps.ilo.org/static/english/intserv/working-papers/wp062/index.html>.

¹⁰⁴ See for example, Article 6.14 of the Code of Practice, which provides that: *"...Employers are not at liberty to choose the method and means of monitoring that they consider to be the most suitable for their aims. Rather, employers should take into consideration the consequences for the privacy of workers and give preference to the least intrusive means of surveillance."*

international standards¹⁰⁵, at the Member level. As such, if less intrusive means could achieve the same aim – biometric data collection should not be deployed by platforms. Workers and their representatives must be informed about the collection of biometric data and provided with meaningful information about what its processing will entail, including any measures to keep their information secure, (where relevant this should be on the lines of the transparency and explainability recommendations advanced above). Further, the introduction of systems involving biometric data processing should be subject to consultation between platforms and workers and their representatives.

We consider that the safeguards set out in the above paragraph should similarly apply to other sensitive forms of personal data. For example, the processing of data relating to physical and mental health should likewise not be used by platforms to make automated decisions concerning workers or to subject them to profiling.

Guidance

48. Should the instrument or instruments provide that, in establishing the safeguards referred to in question 46, Members should take into account relevant instruments of the International Labour Organization, such as the code of practice on the protection of workers' personal data, and other relevant national and international instruments on the protection of personal data and the right to privacy?

Yes No

Comments

Click or tap here to enter text.

49. Should the instrument or instruments provide that Members should establish policies relating to the portability of data that relate to the work of a digital platform worker, including ratings?

Yes No

Comments

Click or tap here to enter text.

J. Social security

Mandatory

50. Should the instrument or instruments provide that each Member should take measures to ensure that digital platform workers enjoy social security protection on terms not less favourable than those applicable to workers generally?

Yes No

Comments

¹⁰⁵ Council of Europe, *Recommendation of the Committee of Ministers to member States on the processing of personal data in the context of employment*, CM/Rec(2015)5, 1 April 2015, [https://search.coe.int/cm/#{%22CoEIdentifier%22:\[%2209000016805c3f7a%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22}\]](https://search.coe.int/cm/#{%22CoEIdentifier%22:[%2209000016805c3f7a%22],%22sort%22:[%22CoEValidationDate%20Descending%22}]).

Click or tap here to enter text.

Guidance

51. Should the instrument or instruments provide that Members should take measures to ensure that digital labour platforms and digital platform workers both participate in the financing of social security systems based on the principle of financial, fiscal and economic sustainability, with due regard to social justice and equity?

Yes No

Comments

Click or tap here to enter text.

52. Should the instrument or instruments provide that, where coverage of the national social security protection system is limited, Members should endeavour to progressively extend its scope so that it covers all digital platform workers in respect of the nine categories of benefits included in the Social Security (Minimum Standards) Convention, 1952 (No. 102)?¹⁰⁶

Yes No

Comments

Click or tap here to enter text.

53. Should the instrument or instruments provide that Members should endeavour to take steps for the maintenance or portability of social security rights in the course of acquisition and acquired rights of digital platform workers when they are successively subject to different social security schemes in different Member States or within the same Member State?

Yes No

Comments

Click or tap here to enter text.

K. Terms and conditions applying to digital platform workers

Mandatory

54. Should the instrument or instruments provide that the terms and conditions of digital platform workers should be governed by the law of the country where the work is performed?

Yes No

Comments

Click or tap here to enter text.

55. Should the instrument or instruments provide that each Member should take measures to ensure that digital platform workers are informed of their terms and conditions of work in an appropriate,

¹⁰⁶ See Parts II–X of Convention No. 102: medical care, sickness benefits, unemployment benefits, old-age benefits, employment injury benefits, family benefits, maternity benefits, invalidity benefits and survivors' benefits.

verifiable and easily understandable manner, where possible through written contracts, in accordance with national laws, regulations or collective agreements?

Yes No

Comments

Click or tap here to enter text.

Guidance

56. Should the instrument or instruments provide that Members should require that contracts between digital platform workers and digital labour platforms contain at a minimum:

(a) the identity and contact details of the contracting parties;

Yes No

(b) the tasks that the digital platform worker is expected to perform;

Yes No

(c) information about the impact of the use of algorithms on working conditions, as referred to in question 40;

Yes No

(d) information about the grounds on which a digital platform worker's account may be suspended or deactivated, or the work relationship terminated;

Yes No

(e) information about the method to determine the remuneration payable to the digital platform worker, and possible deductions if any;

Yes No

(f) periods, if any, during which the digital platform worker is expected to be at the disposal of the digital labour platform for work assignments?

Yes No

Comments

Click or tap here to enter text.

L. Protection of migrants and refugees

Mandatory

57. Should the instrument or instruments provide that each Member should take all necessary and appropriate measures to prevent abuses of, and provide adequate protection to, migrants and refugees in the course of their recruitment or their work as digital platform workers?

Yes No

Comments

Click or tap here to enter text.

Guidance

58. Should the instrument or instruments provide that Members should ensure that free public information services are provided to ensure that migrants and refugees are aware of relevant laws and regulations relating to working on or through digital labour platforms, including dispute settlement mechanisms and legal remedies as referred to in questions 65–67?

Yes No

Comments

Click or tap here to enter text.

M. Freedom of association, social dialogue and the role of employers' and workers' organizations

Mandatory

59. Should the instrument or instruments provide that each Member should take all necessary measures to ensure that digital labour platforms and digital platform workers effectively enjoy freedom of association and the right to collective bargaining, including the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization?

Yes No

Comments

Click or tap here to enter text.

Guidance

60. Should the instrument or instruments provide that Members should create an enabling environment for digital labour platforms and digital platform workers to exercise their right to organize and bargain collectively and to participate in social dialogue, including at the cross-border level?

Yes No

Comments

Click or tap here to enter text.

61. Should the instrument or instruments provide that Members should take or support measures to strengthen the capacity of representative employers' and workers' organizations and, where they exist, organizations representing digital labour platforms and digital platform workers, to effectively further and defend the interests of their members in relation to work on or through digital labour platforms?

Yes No

Comments

Click or tap here to enter text.

62. Should the instrument or instruments encourage employers' and workers' organizations to extend membership and services to digital platforms and digital platform workers, respectively?

Yes No

Comments

Click or tap here to enter text.

63. Should the instrument or instruments provide that Members should take measures to ensure that digital labour platforms make available to representative workers' organizations and, where they exist, organizations representing digital platform workers, all information necessary for meaningful negotiations?

Yes No

Comments

Click or tap here to enter text.

N. Suspension, deactivation and termination

Mandatory

64. Should the instrument or instruments provide that each Member should take measures to prohibit the suspension or deactivation of a digital platform worker's account, or the termination of their work relationship with a digital labour platform, when it is based on discriminatory, arbitrary or otherwise unjustified grounds?

Yes No

Comments

Click or tap here to enter text.

O. Dispute resolution

Mandatory

65. Should the instrument or instruments provide that each Member should take measures to ensure that digital platform workers have easy access to appropriate and effective legal remedies, and safe, fair and effective dispute resolution mechanisms?

Yes No

Comments

Click or tap here to enter text.

Guidance

66. Should the instrument or instruments provide that Members should take measures to ensure that digital platform workers have access to dispute resolution mechanisms in the territory in which the digital platform worker resides or carries out work on or through a digital labour platform, regardless of where the platform is established?

Yes No

Comments

Click or tap here to enter text.

67. Should the instrument or instruments provide that Members, when taking measures regarding legal remedies and dispute resolution mechanisms, should consider the particular situation of migrants and refugees, including recognition of the right to stay lawfully in the territory to pursue their claim after their work relationship has ended?

Yes No

Comments

Click or tap here to enter text.

P. Compliance and enforcement

Mandatory

68. Should the instrument or instruments provide that each Member should put in place mechanisms to ensure compliance with and enforcement of relevant national laws, regulations and collective agreements, having regard to the special characteristics of work on or through digital labour platforms?

Yes No

Comments

Click or tap here to enter text.

69. Should the instrument or instruments provide that, in order to ensure compliance, each Member should determine the conditions governing the operation of digital labour platforms through a system of licensing or certification or other form of regulation, including reporting obligations?

Yes No

Comments

Click or tap here to enter text.

Guidance

70. Should the instrument or instruments provide that, when putting in place compliance mechanisms as referred to in question 68, Members should ensure respect for the right to privacy of digital platform workers?

Yes No

Comments

Click or tap here to enter text.

71. Should the instrument or instruments provide that Members should ensure that measures are in place to facilitate the formalization of platform workers, tackle undeclared activities and promote fair competition, including by imposing reporting obligations on digital labour platforms?

Yes No

Comments

Click or tap here to enter text.

Q. Implementation

Mandatory

72. Should the instrument or instruments provide that each Member should implement their provisions in relation to digital labour platforms operating, and digital platform workers working, in their territory?

Yes No

Comments

Click or tap here to enter text.

73. Should the instrument or instruments provide that, in implementing their provisions, each Member should consult with, and promote active participation of, representative employers' and workers' organizations and, where they exist, organizations representing digital labour platforms and digital platform workers?

Yes No

Comments

Click or tap here to enter text.

74. Should the instrument or instruments provide that their provisions should be applied by means of laws or regulations, collective agreements, court decisions, a combination of these means, or in any other manner appropriate to national conditions and practice, including by extending or adapting existing measures, or by developing new measures to cover digital platform workers?

Yes No

Comments

Click or tap here to enter text.

Guidance

75. Should the instrument or instruments provide that Members should cooperate at bilateral, regional and international levels to ensure the effective implementation of their provisions, especially in matters concerning fundamental principles and rights at work, social security, dispute resolution and the regulation of the operation of digital labour platforms?

Yes No

Comments

Click or tap here to enter text.

76. Should the instrument or instruments provide that Members should raise awareness and provide information and guidance to digital labour platforms, digital platform workers and representative employers' and workers' organizations and, where they exist, organizations representing digital labour platforms and digital platform workers, to support the effective implementation of their provisions?

Yes No

Comments

Click or tap here to enter text.

77. Should the instrument or instruments provide that Members should establish appropriate mechanisms, including the collection of data and statistics, to monitor developments concerning work on or through digital labour platforms?

Yes No

Comments

Click or tap here to enter text.

R. Amendments

78. Should the instrument or instruments include a simplified and accelerated procedure for amending specific provisions in order to ensure their continued relevance in the light of technological, regulatory or operational developments impacting on work on or through digital labour platforms?

Yes No

Comments

Click or tap here to enter text.

VI. Other considerations

79. Are there unique features of national law or practice that are liable to create difficulties in the practical application of the instrument or instruments?

Yes No

Comments

Click or tap here to enter text.

80. (For federal States only) In the event of the instrument or instruments being adopted, would the subject matter be appropriate for federal action or, wholly or in part, for action by the constituent units of the federation?

Yes No

Comments

Click or tap here to enter text.

81. Are there any other pertinent issues not covered by the present questionnaire that ought to be considered when drafting the instrument or instruments?

Yes No

Comments

Click or tap here to enter text.