



Employment & Benefits Newsflash

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Coming soon: EU Directive on improving working conditions in platform work—but will it drive change?

The platform economy (a subset of the gig economy) and their workers have garnered a wave of attention in Belgium and at EU level. Criticisms of the platform economy abound, from false self-employment and substandard working conditions to excessive hours.

On March 11, 2024, the EU 27 employment & social affairs ministers confirmed the agreement they had provisionally reached in February 2024 concerning a directive that aims to improve the working conditions of platform workers. This directive will give significant legal backing to platform workers so that they can be properly recognized and protected as workers.

In this newsflash, we summarize the directive for you in light of the rules that already exist in Belgium.

Background

Platform work is a form of employment in which individuals or organizations use an online platform to access other individuals or organizations to provide specific services in return for payment. Some examples are hired drivers, meal delivery, babysitting, home care, translation, etc.

The platform economy has gained phenomenal success in recent years, especially since 2020 when the Covid-19 pandemic affected the world. By 2025, the EU expects that there will be around 43 million platform workers.

Around 90% of the platform-operating companies categorize their workers as self-employed. However, the status of platform workers is a complex issue that gives rise to considerable uncertainty. One of the main reasons is the use of false self-employed workers.

Indeed, this modern—digital technology driven—work arrangement has blurred the lines between self-employment and salaried workers, since the workers' interlocutor is the platform—an abstract entity—that dictates collaboration while giving the workers the freedom to connect or not, or in other words, to work or not, and to choose when and sometimes how they work.

A wide range of case-law in Belgium and throughout the EU already reflect this uncertainty and unease.

The EU Directive on improving working conditions in platform work

This directive aims to respond to the challenging labor & employment situation by introducing two major improvements:

- Platform workers are presumed by law to have employment status, and
- There must be transparency in the use of algorithms by digital platforms.

Regarding employment status, Member States will have to provide for a legal presumption of employment if certain facts indicating control and direction are found. The directive allows Member States to specify the terms and conditions of such presumption and expects national laws to delineate the types of facts that indicate control and direction.

If the platform workers, their representatives, or national authorities invoke this legal presumption, the digital platform will have to bear the burden of proving that there is no employment relationship between the platform and the worker, hence the platform has no employer's authority.

The Belgian legislature has already created this legal presumption on its own initiative. Under Belgian law, if parties to an employment relationship are free to choose whether to be self-employed or salaried, especially in certain employment-sensitive sectors (such as construction, transport, and agriculture), the law presumes that the parties are bound by an employment relationship.

Since January 1, 2023, work rendered via a digital platform (i.e., platform work) is one of the sectors for which the law presumes an employment relationship to exist between the worker and the platform.

In practice, this legal presumption of employment has not led to any radical changes yet.

The directive also tackles the issue of algorithmic management, which is widespread in the platform and gig economies because of the limited level of human interaction involved. Digital platforms utilize automated monitoring and decision-making systems to recruit, assign tasks, set prices, manage schedules, etc. Under the directive, digital platforms must duly inform workers about the use of such systems, ensure human oversight and evaluation in the decision-making processes, and also inform workers about the right to have those decisions explained and reviewed.

Will the directive drive change?

Since Belgium already has a legal presumption of employment for platform workers, the directive on its own would not actually create any major change in the sector, nor would it cause courts to be bombarded with requests for reclassification of the employment relationship between the worker and the platform. Part of the reason for this probably lies in the lack of awareness about the issues and complexities of this type of work and work relationship.

In this respect, the directive will probably not drive much change.

However, it is worth noting that the directive will also impose new obligations on platforms to provide certain information to employees. Raising workers' awareness of their rights could, in time, profoundly change the relationship between workers and digital platforms.

Timing and to do's

The directive is expected to be formally adopted in the next few months, after which the Member States will have 2 years to transpose it into their national laws.

Platform-operating businesses should stay abreast of developments in platform work regulations, as these changes could impose additional obligations to comply with and possibly affect the employment classification of both existing and prospective contracts with individuals they categorize as self-employed.

Our Employment & Benefits Practice is closely monitoring the developments on this topic and will make sure you are up to date. If you have questions or wish to discuss this topic in further detail, please contact our team.



Stefanie Tack
Partner

stefanie.tack@strelia.com
+32 486 79 92 42



Marnix De Greve
Senior Associate

marnix.degreve@strelia.com
+32 473 57 48 33