



Industrial Relations Research Association of Israel

In cooperation with the International Labour Organization and the Friedrich-

Ebert-Stiftung

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Platform Economy/ Gig Economy

New Challenges for Labour Relations

Research and editing

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Introduction

The 2021 international conference of the Industrial Relations Research Association of Israel (IIRRA), in cooperation with Friedrich-Ebert-Stiftung (FES)¹ and the International Labour Organization (ILO), presented two significant innovations:

While the 2020 conference was held virtually via ZOOM due to COVID restrictions, this year's event was held in person. This fact, along with the logistical efforts involved, set the theme as a true attempt to return to normal.

The second change was the chosen topic of discussion: **digital platforms and the gig economy**. This is a growing field in Israel and worldwide, and one that has unique characteristics. It is too soon to say which developments will occur in this economy, but all understand that it has shown consistent growth throughout the recent decade, represents a profound innovation, and that management and standards of work relations, work conditions and other employment issues in this field are still in their infancy. Thus, it is understandable why at this point in time there are far more substantive questions regarding GIG employment than convincing answers.

The choice of a newly emerging and dynamic topic is inherently interesting and opens the door to consolidating the initial steps that contribute to future developments. This discourse at this time enables institutions engaged in work relations, including the State, employers and worker organizations, to produce insights and aid this process.

¹ The views expressed in this publication are not necessarily those of the Friedrich-Ebert-Stiftung
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Central dilemmas

The central question that arises is whether the people employed in these platforms are classified as workers protected by relevant employment laws and collective agreements. Is this employment and if so—who is the employer (if such exists). Can current evaluation methods of forms of employment be applied to this particular work or must we change and adapt existing approaches to new work relations? The approach presented by the ILO indicates that workers engaged directly by internet web sites usually are engaged employee-employer relations while those employed by a mediating factor are not included in this category.

It is noteworthy that Israeli legislation has thus far avoided categorizing such workers as “employees.” Moreover, National Labour Court of Israel judgements have determined that the term “employee” may be interpreted differently when pertaining to various areas, such as defining social conditions. The interpretation of the court was that elected officials (not considered employees in the work relations system), should get unemployment payments as workers with the right to fully utilize this protection.

These questions raise additional points regarding achievements in standard work relations. Does the right to unionize apply when it is unclear whether worker-employer relations exist? If the conclusion is that workers of such platforms do not enjoy worker-employer protections and they should be categorized as independently employed/freelancers or others, then unionization designed to set their payment rates undermines current competition and antitrust laws that forbid such actions. Significant changes to definitions and procedures may bring about the conclusion that the basic right to unionize should not be denied to people working in this economy.

More generally, the COVID pandemic has promoted freelancers and small business owners to come together in their protest against COVID restrictions and call for government aid through grants and unemployment payments. Representatives of this sector have gained prominence in the media and politically in the Knesset, and there has been a surprising emergence of this group in the Histadrut with high-ranking members

of both sides now collaborating. Subsequently, one could soon expect to see a general improvement in the social conditions of freelancers and small business owners in the areas of unemployment and pension savings options.

The unionization of Uber drivers and similar attempts in the US, UK, and other countries have turned the spotlight on the status of this kind of employment. Specifically, there is the question of whether the operators in such cases are indeed employers or whether work is organized with an algorithm that facilitates and transfers information in real time to drivers and thus merely regulates taxi calls. If this is just a digitalized system, then worker-employer relations do not apply. Is it conceivable that an algorithm be considered the employer in such a sector or others? Conversely, cases tried in courts in several of countries have decided that taxi operator systems (such as Uber) are not restricted to digital platforms and therefore fully employ their workers even if their only form of communication is digital, technological, and remotely operated.

The dilemma here lies in whether the dichotomous characterization that sets the threshold of worker- employer relations is applicable in this field or is this employment essentially contractual. Several countries have made interesting attempts to create an intermediary state of affairs, such as the distinction between “employee” (enjoying the full status of employee protections) and “worker” (with only partial employment-related social rights and benefits). The following question is then: who should fund worker’s partial benefits—the State (through the national social system) or the employer/operator?

Another aspect of this discussion related to the balance of power between operators (ostensibly the employers) and workers who have no option of changing or amending work orders.

The COVID impact

The need to address GIG and digital economy workers has accelerated due to the sweeping changes COVID has introduced to work relations across the globe. Remote work has profoundly affected the way people function professionally, complete assignments, communicate, and manage work. Working persons in digital platforms work remotely and are therefore especially impacted by these developments. General questions regarding working remotely also necessitate understanding employer rights to prevent or dictate how work from home is conducted and the difficulties of workers while working in such conditions. COVID restrictions have forced us all to deal with these changes and will continue to challenge us in years to come. A recent survey published by the Israel Democracy Institute reveals that the number of people in the employment market working from home has tripled (a rise from 9% to 25%² . This finding is based on activity during October 2021 in which morbidity stabilized and is therefore reliable data. It should be noted that the ILO published its home work convention several years previously. However, this document was drafted in a very different reality and dealt primarily with equality and protections of status, promotion potential, gender inequality, and other topics, issues that should be maintained for people working from home or at a workplace.

² <https://www.idi.org.il/blogs/special-economic-survey/december-2020/33795>

Conference opening session

In the **opening session**, **Adv. Orly Bitty, IIRRA Chairperson**, stressed the importance of the conference due to it being the first in-person event since the COVID outbreak and the choice of topic selected by the conference steering committee and partners, discussing an innovative and still emerging phenomenon that is expanding thanks to technological advances and working persons' numbers. This dynamic area is expected to continue developing and so this is the time to address and define needs and propose solutions.

Knesset member **Yair Golan, Deputy Minister of Economy and Industry**, emphasized that the new administration's diverse views have motivated a change in course, and he foresees it taking social democratic avenues of action. He asked that conference participants, all knowledgeable in this field, feel free to contact his office with proposals for changes and innovations to work relations in general.

Mr. Micky Drill, FES representative and member of the steering committee, underlined the significance of the event format and the Israeli and international collaboration evident in the conference and its topics of debate. He further reviewed the global activities of FES and their social democratic agenda.

Mr. Maurizio Bussi of the ILO discussed the growth of GIG and digital economies and possible developments that may unfold as these forms of employment encroach further into the more traditional work market, digital platforms expand into more employment fields, and also provide employment opportunities for those previously excluded from the labor market. Regulation must be formulated through group negotiations, addressing issues of safety, social security, improved work conditions, and more. Digital working persons often migrate virtually across the globe, requiring international policies and then set regulatory standards. The status of digital and GIG working persons must be classified and defined using criteria relevant to their professional fields.

Dr. Roby Nathanson, chair of the conference steering committee, reviewed the transformation of the labor market, specifically technological changes, and their impact

in creating new economies that employ high-tech tools to provide services and continued technological developments. While not yet fully materialized in Israel, this global trend will undoubtedly continue to expand and employ more labour force. Dr. Nathanson stressed that the social democratic approach is based on both government and social partners. In the tripartite structure, organizations work together to establish an efficient and fair labour market that promotes the economy and life standards. This system strives to balance the various parties and strengthen democracy.

Regarding the determination of GIG and digital working status, Dr. Nathanson suggested relying on flexible definitions, such as those already used in several countries. He noted the MACRO center survey that estimated approximately 40,000 Israelis meet the different definition criteria of GIG workers. They average fourteen weekly work hours, and their monthly income is around 1,400 shekels. A large number of these work on digital platforms several days during the week or partially throughout a workday. The majority are employed in delivery, cleaning, transportation, photography, and in other countries also in the fields of construction, personal services, and commerce. Usually they work at on-line systems.

Development of the GIG economy³

Phase 1 – Globalization and development of alternative work arrangements (contracted workers, offshoring, outsourcing)

Phase 2 – On-line options when searching for traditional employment, such as Craigslist (OJS)(1995)

Phase 3 – Focus on greater diversity of employment forms (independent/freelance). Upwork(1999)

Phase 4 – Using platforms for personal capital/gains (Airbnb, Turo, Pink)

Phase 5 – Ongoing mediation between workers and customers in platform-specific professions (Gett, Uber, Wolt)

The recent decade has shown accelerated development of the GIG platform economy. This progress is attributed to services to customers becoming more efficient, use of innovative technologies, and data collection and distribution of data to workers and customers alike. This has led to an upsurge in remote transactions, an increase in relevant and significant information on this activity, and a streamlining of operations and costs. The GIG economy makes transactions easier and enables activities that would otherwise prove impossible.

KM Efrat Rayten- Marom, Knesset labour committee chair, greeted the conference participants and raised the question: is this a matter of the free market or a rights violation? She committed to dealing with this issue and its implications during committee discussions

³ From the presentation by Dr. Nathanson.

COVID consequences

The nature and uses of gig services are becoming increasingly popular thanks to their availability and convenience as they do not require Working persons to leave home and also partially release consumers from doing so. The COVID pandemic highlighted the ease of GIG services with shutdowns, restrictions, concerns over infection, and isolation requirements increasing demand for such services. The pandemic also caused an economic crisis during partial or full shutdowns of small and medium businesses, particularly after several mass layoffs. Those fired from their position searched for alternative methods of employment, some finding work online, further expanding the number of GIG working labour force. This explains the events following the COVID outbreak. A significant number of workers did not return to their previous professions, making do with partial or random employment on the internet. A substantial number also discovered the advantages of remote work (such as working from home) and chose to change their profession accordingly.

Highlights from discussion with

***Ms. Uma Rani, Senior Researcher and lead author WESO 2021 Report
Research Department, ILO***

Ms. Rani, senior researcher of the comprehensive platform economy study conducted during February 2021 by the ILO:

The digital economy has expanded during the last decade in various countries and professional fields.

Work in this economy is classified into two industries. The first includes web-based work that includes content writers, web designers, app designers, etc. Additional fields: job-search information services for nursing and medicine, electricians, renovators, construction workers, agriculture, industry, e-commerce, educators, etc.

The second industry includes work conducted from a physical work site that provides various services, such as delivery orders, taxi services, translation, editing, etc.

Generally speaking, the first category does tend to have worker-employer relations while the second is typified by unclear relations between parties.

Countries that show significant increase of digital services: in Africa, India, Latin America.

For example, in agriculture the majority of digital services focus on agricultural marketing and information exchange, employee hiring, and funding. These activities are still expanding. Providing data for AI development is one of these too.

Key findings and conclusions regarding workers of various digital fields and their rights:

Information should be collected regarding specific fields and geographical areas to understand these developments and consolidating recommendations to meet these relatively new challenges.

One central question pertains to how one should classify digital employment fields and the status of working persons (fully recognized employees, freelancers, contracted workers, short-term contracted workers, or other)

The economy offers unique forms and models of employment that differ from traditional economies and sectors, requiring regulation that addresses these new work arrangements, social conditions, and wages. These are new fields that necessitate a new perspective on remote work, long-term/transient work, frequently changing work hours, use of algorithms to log entries and exits, significant distance between workers and operators/employers, etc.

For example, use of rating algorithms to assess workers is one-sided, lacks transparency, and should be amended to create fair and balanced work conditions. Currently, no mechanisms for establishing fairness or conflict resolution exist in this economy.

Ms. Rani also agreed to be interviewed on the local Israeli broadcasting channel “Kan” on the TV show “Money Game.” During the conference, Ms. Rani reviewed

the developments of the platform economy and a survey that included 120,000 workers across the globe.

World Employment and Social Outlook The role of digital labour platforms in transforming the world of work, Feb 2021

Platform economy advantages

This economy introduces a new form of employment to the labour market, adding employment possibilities and enabling irregular work hours and temporary work. It is attractive to populations that find it convenient to work from home or remotely, such as women, the disabled, young people, minorities, and others.

This economy provides maximum flexibility at work, working part time at changing hours, easier methods of work, and ability to work from any location.

For businesses, platform technologies open the door to further development, particularly for small businesses.

Negative impact

This form of employment seems to embody free market principles where workers are not subjected to external supervision and platform conglomerates can undermine basic worker rights by avoiding all claims of worker-employer relations. Such violations threaten the very core of labour markets worldwide as they establish a legal loophole that facilitates employment of workers with no option of employer liability. Critique of this evasion of just working rights of workers and protections fought for by professional unions tilts the scales towards employers-entrepreneurs. Advocates of this approach understand the need for work flexibility but believe this can be attained through other means—not by methods dictated by entrepreneurs. This poses an enormous challenge for the labour movement. Even should this gap aid platform workers more than

newcomers to this economy, the gap could diminish benefits and social conditions provided to those not employed in the platform economy.⁴

Many people working in the GIG economy as freelancers/independently contracted workers lack basic social conditions as they are not protected by worker-employer relations. Concerns voiced by worker unions and social organizations focuses on absent social rights and protections that may lead to further erosion of worker rights, potentially spilling over to traditional forms of employment.

Unions and researchers have sounded the alarm on the trend of platform service entrepreneurs to eliminate the human element entirely instead of making current operations more efficient and increasing the number of jobs available. Artificial intelligence and robots nullify the human element in the workplace. There are some indications that digital engagement may increase violence, harassment, and discrimination among users.

Who is the employer ?

It is unclear who exactly is the operator/employer as often many basic elements of this criteria are absent: no address/designated factor for submitting complaints or discussing issues, one-sided work arrangements, delayed payment/wages, extreme individualization of certain activities, asymmetric relations, harassment and lack of basic worker protections. Moreover, many areas lack promotion or training options, have no HR management, are high-risk but carry no liability, include many hours of overtime, and have no mechanisms for managing disagreements.

Legal definitions of GIG economy employers –

It is difficult to classify who are the GIG economy employers and the standards for consolidating these definitions are still unformed. The ILO consider direct employment by operators as constituting worker-employer relations. Operations conducted via a

⁴ Some of these points were taken from the Codetermination and the Gig Economy study conducted by the Macro Center for Political Economics.

website as its means of mediation do not meet this standard in the majority of court decisions around the world.

Additional considerations of the platform economy

In addition to the flexible definitions that will have to be formulated regarding the status of those active in the GIG/platform economy, there are other problems to be dealt with, such as lack of balance and fair work conditions, establishing fair guidelines for task assignment, protection of wages, privacy violations, and lack of employment alternatives that force workers into this market. Efforts should be made to encourage conditions that increase this economy's inherent advantages rather than allow it to develop into a default form of employment.

Good faith issues in work contracts

Good faith and fair dealing are enormously important in work relations. What good faith may exist when the conclusion of a legal contract leads to claims filed to the labour court on alleged worker-employer relations, either initially established or established throughout the contract? Answering this question relies on the power balance between parties—are they equal or extremely asymmetrical? Do the facts suggest a fictitious contractor/freelance agreement, meaning a form of disguised employment? If the court initially establishes that worker-employer relations apply to the case, the claimant's lack of good faith when arguing for their employee status does not invalidate that status (although it may reduce remunerations by the respondent awarded during judgement). Good faith issues are important to producing just outcomes and avoiding an inflexible stance that may lead to unfair results. One should note that the outcomes of contracted services are only reviewed following their conclusion, another fact that may create market uncertainty regarding the status of contracted parties (an issue of profound monetary implications). These circumstances have created a gap between GIG people who deal at this economy that can claim permanent and long-term work relations and those employed by multiple operators, capable of choosing from various alternatives and making informed and independent decisions without being subject to pressure.

Distinguishing between different profession types and their measure of transience is critical to making classifications in this area.

Labour court judges have voiced differing opinions on efforts to undermine the cogency of work relations. Specifically, they distinguish between extreme lack of good faith in the initial stages of contracted services (leading to denial of worker-employer relations) and those cases examined in retrospect (when outcomes may be reflected in the amount of compensation decided by the court).

*Based on Kota case decision by the National Labour Court where judges disagreed, among other things, on considerations of good faith in work relations.⁵

⁵ Case file 15868-04-18; case file 12372-04-18; case file 7338-10-17; case file 34665-10-17: judgements given on April 7, 2021

Specific populations and impact of their platform activities

Young workers

First, there is the statistical definitions of which age group may be defined as “young.” Is this an objective or subjective differentiation? Is it divided by age alone? A certain majority of young people prefer long-term employment stability. A smaller percentage prefer to diversify and combine stable part-time employment and additional freelance work to supplement income. The home-work balance is becoming increasingly important, as are the social frameworks provided in the workplace. However, studies have shown that promotion/advancement options (including some parts of the colleagues while excluding others) is an even more pressing issue for many.

COVID exacerbated the difficulties of young workers, particularly among young women. The greatest blow was evident in middle class income. Recovery from the pandemic is also slower in these populations. Another problem is that many forms of long-term employment became transient and short-term during COVID. Young people have a clear advantage over older workers in these circumstances. Mothers of young children tend to seek out such jobs as they are flexible. Young people are drawn to platform service jobs because of their income potential. This is especially evident in countries of predominantly low median income, where platform-based work offers relatively high compensation. Another characteristic of this economy is that even highly educated workers (with academic degrees) are not remunerated for their level of training. Young people tend to give importance to a better work-life balance, enjoying flexible work hours and the ability to work from home.

As for the issue of discrimination, many claim no discrimination can exist when employers/operators are not aware of their workers’ identities, as this is often the case in many areas of GIG activities.

Ultra-Orthodox workers (men and women)

The ultra-Orthodox sector has changed its views of the work market, a fact particularly seen among Haredi women. This sector is generally young, poor, has large families, and characterized by inter-generational poverty and isolationism. Their rising numbers in the work market stems from market demands, their own economic needs, and the new ability to have flexible or irregular work hours, partial work, and transient work. There is a significant wage gap among religious workers when compared to non-religious, one even more evident among ultra-Orthodox women versus their non-Orthodox female counterparts. This is despite the fact that the percentage of ultra-Orthodox working women is close to that of women in the overall population. Their increased inclusion is the result of pressing economic needs and campaigns by the government.

Part-time work allows ultra-Orthodox men to continue their religious studies while taking on transient employment at flexible hours more suited to this sector. However, there still remains a lack of basic means in such households (computers, ability to pay for subscriptions, maintenance, etc.) and their digital literacy level is generally low. Also, restricted living conditions make working from home more difficult. Among ultra-Orthodox women, the partial income they generate adds to the subsidies they are entitled to and accrue automatically.

This sector must be addressed as all parties understand the necessity of increasing the number ultra-Orthodox people in the work market as they continue to be Israel's fastest-growing population.

People with disabilities

The COVID pandemic caused a work market crisis that impacted the ability of people with disabilities to return to work after layoffs and attempts to restart normal economic activities. This requires a shift from traditional re-training options (occupational studies) to specialized training focusing on specific skill sets. Many workers struggled to adapt during the crisis. Europe still suffers from high unemployment rates, while the US shows an increase in poverty and low wages. Stipend payments for the disabled were set against their employment status, as throughout the COVID shutdowns no income was generated, and people could only rely on these benefits. Overall, younger workers adapted with greater ease to these changes.

Tripartism – Frameworks that fit and balance the needs of all involved in platform employment

This case cannot be resolved through the usual manner of establishing the right institutional frameworks designed to promote solutions and improve relations. This innovative economy emerged from growing demands for individually provided services via digital platforms. As such, this system is inherently non-institutional and does not rely on means of production or standard work environment relations. It requires grappling with several difficult questions. A bill is being drafted in Israel to address several fundamental issues relating to remote work. Regulation supporters will be pleased to see some legal guidelines in place while opposers continue to battle any regulation, hoping to leave the matter of home/remote work conditions in the hands of business management and only allow for very few individual worker claims.

Nevertheless, organizations representing both sides (workers and employers) agree that government action (legislation or some regulation) is better accomplished in the early stages of this market's development and should be conducted with full and open collaboration of government and social organization representatives. During the panel discussion on tripartism, some expressed the desire that such communications be conducted with the Economy and Industry Ministry and not the Finance Ministry as the former is more flexible regarding rights, promotions, and address of work market problems, while the Finance Ministry tends to be more conservative about spending and seems more rigid in approach during negotiations. Panel speakers addressed the disagreement and split among employer organizations in Israel, expressing the hope that they work together to create a more cohesive and clear policy.

Several countries have already seen unionization attempts of platform service workers, and some collective negotiations have started. There have also been tripartite national discussions of the matter, but these have yet to prove productive. This all unfolds under existing competition law statutes.

Ideas on how to nationally regulate this economy range from establishing a committee that considers the international aspects versus state-level legislation, convention, and the ILO report and its recommendations. One example of this is the convention is on seafarers , intended as an international regulatory guideline that applies in addition to national laws of any individual country.

Conclusions and possible actions

As stated, platform-based activities are continually expanding while official and institutional address still lag far behind. Impacting this evolution while still in its early stages requires the government, worker unions, and employer organizations to rethink and formulate policies.

As this economy is still evolving, researchers and scholars should be involved in raising ideas and drafting proposals. This should be followed by the establishment of a tripartite committee to examine the data and understand what means can best promote this activity (agreements, recommended guidelines, or legislation).

Among others, topics will include:

- Attempts to define the employment relations that exist in myriad platform-based professions.
- Importantly, the need to establish a baseline of work conditions (basic benefits, safety, compensation, and social security).
- Unionization, a matter of particular importance assuming intermediary definitions of platform workers is established. Competition laws must also be amended to ensure fair competition and enable collective negotiations over work conditions and benefits, especially for those defined as independently employed or freelancers.
- One option discussed during the conference relates to a section of the National Health Insurance Law that includes a definition for types of workers that are not independent but are considered protected by worker-employer relations and entitled to employee social benefits. This amendment allows stage workers and actors to be eligible for full employee status concerning social security rights.
- Virtual immigrants, discrimination, and transparency of work conditions are also topics for address. We recommend adding flexible criteria that define the manner of engagement between those commissioning work and service providers (such

as financial dependency and testing measurements already adopted by several countries).

- Concurrent to discussions of the Israeli economy, legislation and judgements in other countries should be tracked, as well as relevant ILO actions. It is clear that various GIG economy issues and the borderless nature of digital platforms has implications on state-level standards.
- Collaboration of platform workers in establishing digital employment frameworks is possible and important (such as creating cooperatives).
- The German model of codetermination may be adopted to promote balance and a path to clear and effective discussion of this system. This is a good way to avoid rights violations and create a transparent environment through open dialogue which are currently sorely lacking in the field.
- Transparency and fairness in the workplace must be improved by adopting ILO's Decent Work principles.
- Platform service companies and others must be taxed according to set specifications and these funds should be used to establish a social fund to develop alternative employment and new activities. This funding may help narrow social gaps through basic payments to all citizens/residents. This is currently being examined in various countries.
- Rules against discrimination must be determined for digital and platform workers, as well as safety guidelines. Also, work hour limits must be applied to these workers.
- A conflict settlement mechanism must be created to resolve conflicts.
- Terms for termination or conclusion of services must be determined for digital platform workers.