# Workers in the On-location Platform Economy – *Global Unions' Policy Demands*

**t**he labour platform economy can be divided in two segments: 'on location' and 'online' where workers carry out tasks remotely (also known as crowd work). Workers in the 'on-location' platform economy are often known as 'gig workers'. They work to provide services such as passenger transport (ride-hailing), food and goods delivery, road freight transportation, cleaning and other personal or professional services.

Since their inception, on-location platforms have claimed that they provide a technology solution that allows 'independent contractors' to connect to demand via an application in return for a commission, and that they are markets matching demand to labour supply. This enabled them to sell themselves as online services rather than employers, and has led to significant labour cost advantages for them (estimates of their labour cost saving range from €6,000 Euros to $24,000 Dollars per worker per year in Spain and California respectively), as well as immense tax savings. The price and risks attached to these jobs were strictly pushed onto workers, many of whom could be considered as false self-employed. Across the world many of these workers are migrant workers who struggle to find formal employment. Platforms are therefore exploiting some of the most vulnerable workers in society. As matching markets, platforms set the price for the tasks to be fulfilled, and can decide what to pay for the labour, which is a form of monopsony behaviour that distorts the market itself. Platforms can therefore act as 'market setters' in contravention of fair business and employer practice. This is an issue that all platform workers are faced with – whatever their employment status.

This situation is not sustainable. Control is a key test of employment under the law. The fiction of a neutral online 'service' can only be sustained if the reality of the technological forms of labour control used by the platforms is ignored. In the on-location platform economy, app employers control how and when work is carried out since workers are minutely controlled by a mixture of:

- ✔ conditions imposed by the app and its terms of service (types of vehicle/equipment used, the sequencing of tasks, control over access to customers);
- ✔ continuous monitoring via the app that collects at minimum live location data and working time and speed, accepted and declined tasks, user comments and ratings, as well as offline times;
- ✔ positive and negative incentives - including ratings by customers, temporary blocks on use of the app, demand-related pay and pricing, bonuses for rapid task completion.

Due to constraints on data portability, many workers are also dependent on the platform they use most to accumulate favourable ratings or rankings – which most of the time they are not able to delete or amend.

Most platforms oppose the classification of workers as employees, arguing instead for a special category (with notable exceptions being Foodora and JustEats in Europe). They claim that the flexibility that characterises this type of work is what workers want, and that existing regulations do not apply to them. Surveys commissioned by platforms frame their questions so as to create a false choice between flexibility and rights, making it seem as if workers do not want adequate protection and employment status recognition. While it is true that most platform workers highly value the flexibility that this kind of work offers, it is not true that this flexibility must come at the cost of decent working conditions:

(1) historically many flexible forms of work have been accommodated by regulation (part-time work, agency work etc), and so could the needs of on-location platform workers, if they were correctly classified;

(2) there are enough testimonies and spontaneous organising efforts in the platform economy to show the despair of workers over the lack of protections and poor working conditions.

(3) collective agreements being signed in Denmark, Italy, and Norway, show that flexibility can be maintained while providing decent working conditions and access to trade union representation.

The misclassification of gig workers as self-employed, or 'independent contractors' leads to workers suffering many injustices, not least the inability to enjoy their rights to freedom of association.

# Issues faced by on-location platform workers

The issues faced by platform workers are interlinked, and some are specific to the technological forms of control they experience. They lack grievance, complaint, or appeal mechanisms, advice and points of contact on occupational health and safety or other working conditions issues, including pay. They are isolated from the platform-employer and from other workers. Perhaps most importantly, they lack the opportunity to organise and bargain collectively – the gateway to better conditions. Below we use a labour and employment rights framework to list the main issues raised repeatedly by workers themselves. While these may vary depending on the working time, employment status and occupation of the worker, most platform workers will experience some combination of the below:

## Labour, Social Protections and human rights

- Freedom of association not effective or prevented
- Workers' representation and collective bargaining mechanisms not accessible
- Lack of sick pay, holiday pay, access to maternity or paternity benefits

- Racial and gender bias in the algorithms and rating systems
- Lack of consideration of migrant worker issues

## Occupational Safety and Health

- High number of accidents at work and lack of training
- No automatic provision of protective equipment and health services
- Lack of access to sanitation and rest facilities
- No protections against violence/abuse at work
- Musco-skeletal and psychological problems

## Labour control methods

- Pay and working time settings controlled by the platform through algorithms
- Non-negotiable pay, non-transparent pricing
- Automated behavioural incentives to stimulate competition between workers
- Arbitrary deactivations and withholding of jobs
- Penalties for rejecting jobs
- Obligatory guidelines on work wear or equipment
- No effective right to disconnect

## Working conditions and pay

- ✔ Pay below minimum or living wages, and unpredictable fluctuations in pay
- ✔ Unpaid working time (during search and waiting periods)
- ✔ Lack of guaranteed income/hours, penalties for disconnection
- ✔ Lack of access to health insurance and social protection (incl. health and unemployment)
- ✔ Equipment costs, insurance costs and other costs falling on the worker
- ✔ Uncertainty over liability issues and insurance coverage
- ✔ Lack of data portability and no 'right to be forgotten' on rankings and ratings
- ✔ Constant surveillance and monitoring contributing to stress

## Issues for society

- ✔ Regulatory loopholes and tax advantages create an uneven playing field
- ✔ Non-payment of social security contributions, income and local taxes
- ✔ Non-application of licensing or other safety regulation
- ✔ Lobbying by platforms alters existing systems or slows down the application of existing legal and regulatory frameworks
- ✔ Location shifting leads to inability to apply regulation effectively
- ✔ Public safety issues at large (road safety, background checks, etc.)

## Ten key policy demands and calls for immediate action

Taking into account the issues raised above – amplified through numerous legal actions against on-location platforms – we outline ten key policy demands followed by calls for immediate actions by platform businesses to better working conditions.

**Correct the employment status** – there should be an initial presumption of employment, as exists in Spain's 'Riders' Law'. The burden of proof of self-employment should sit with the employer, in this case the platform company, or a worker should seek it explicitly and by choice. This is the gateway to improved working conditions and the enjoyment of labour rights. Misclassification should be addressed to allow for the enforcement of existing legislation and clear rights and obligations – including employer duties. Workers have the right to be managed by a person, or at least to a human point of contact.

**Categorisation along sector lines** – on-location labour platforms each fit into existing sectorial boundaries (transport, services, etc.), existing and negotiated rules and conditions should fully apply to them.

**No regulatory arbitrage** – despite their unclear status and (at times) cross-border operations, companies should adhere to international human and labour rights, local laws, pay the same taxes and make the same contributions to social protection systems as other firms in the same sector. This must be reinforced by due diligence requirements and access to grievance procedures and remedy.

**Labour rights protection** – The ILO Fundamental Principles and Rights at Work, include freedom of association and collective bargaining and occupational health and safety. The ILO Centenary Declaration lays out a floor of rights and protections, including the above, for all workers, irrespective of their employment relationship. In addition it specifies minimum living wages and maximum hours of work. Gender equality is also essential, and these protections should be programmed into the algorithms that manage workers. This means embedding gender and racial discrimination tests and fairness parameters into the criteria and the data upon which the app is based. Platform features should include in-app access to trade unions and workers' representatives, grievance and appeal mechanisms, health and safety reporting mechanisms.

**Social dialogue and collective bargaining** – for now, policy makers have not explicitly engaged in social dialogue between trade unions and on-location platform businesses. This would undoubtedly help addressing some blurry obligation and rights issues. Furthermore, competition law should be relaxed to allow trade unions to bargain for all workers regardless of their status. Information and consultation rights of workers vis-à-vis platform businesses should be ensured by law.

**Predictable and fair pay** – there needs to be enforcement that pay stays above or at minimum or living wage levels in line with the country context. Pay has to be continuous for the whole time a worker spends on an app – while waiting, searching for jobs and executing them. Pay cannot fluctuate or be terminated without advance notice. Platform companies need to comply with such provisions.

**Social protection** – all workers, including on-location platform workers, should have the right and same access to sick pay, holiday pay, maternity and paternity leave and pay, carers' leave, pension contributions, disability payments, death in service payments, pension contributions and levels of income that enable them to live free of poverty – including unemployment benefits. Platforms should contribute to such systems.

**Labour inspectorates** – in order to effectively regulate work in the platform economy governments should create or reinforce labour inspectorates. These should have the ability to classify worker status objectively, without recourse to the judicial system, make probes into working conditions as well as provide recommendations for further regulation (on e.g. the evolution of platform features).

**Certification of the apps and non-discriminatory software** – apps that control labour should be checked for biases, for fair pay settings, the availability of grievance and appeal mechanisms, health and safety reporting mechanisms, and collective bargaining mechanisms, and they should be certified for use by a labour inspectorate or a regulatory agency. Unions must have access to the algorithms that manage the labour process to ensure they respect labour rights and do not distort wages/ payments in an unfair manner. Platforms must ensure that their algorithms and digital processes are tested, so that biases such as those affecting women, migrant and disabled workers and other groups are prevented. Transparency guidelines would allow for more accountability over automated decision-making and management.

**Workers' data rights** – workers produce data that is then used to control their work and optimize the functioning of the platform business, so they have the right to know, as individuals and as a collective, what data is collected, what it is used for, where it is stored or with which third parties it is shared, and how the algorithms and software built on it works. Workers and their representatives should enjoy free access to all the personal data collected on them during working time, including location data and any personal profile data, in recognition that it is their data since they created it. Existing data protection rights should apply fully. Trade unions and workers' representatives should be given the right to information, consultation and bargaining over collective data, their use and value. Since data produces value for the platforms, some of that value should accrue to the workers' collective through their pay.

## Immediate demands to platform businesses aimed at improving working conditions:

**Health and safety** – businesses need to ensure health and safety protection for all workers with adequate and appropriate provision of personal protection equipment and sanitation facilities, training and specific protections against violence and harassment in the workplace. Workers must be able to report OSH issues. Best practice in the prevention of OSH issues in the workplace includes empowering workers to report and act upon problems. The best way of improving health and safety is for employers to recognize trade union and workers' representation.

**Living wages -** regardless of employment status, pay on platforms should be meeting or exceeding minimum or living wage levels of the host country. The right to overtime and unsocial hours payments should be introduced. If workers are genuinely self-employed, they should have access to negotiated cost recovery formulas.

**Human and humane control** – workers in the on-location platform economy have their work conditioned and controlled by algorithmic systems and software. There should be a

guarantee that these systems are under human control and are vetted regularly against possible risks and adverse impacts on workers. Workers must have access to a human point of contact with who they can raise issues, including over automated pay and problems with the app. They should be able to request information on automatic decisions and attributions of tasks, as well as regarding their data rights. Platform providers should allow and encourage regular collective meetings between themselves and workers to discuss working conditions and adjust pay, protections and app design accordingly.

**Fair contracts and transparent management** – Workers must be paid on time, and should receive tips in full at the moment they are received. Deactivations or suspensions of a worker's account should follow a fair, transparent and clearly delineated process, which also provides established grievance and complaints mechanisms. Contracts should specify pay rates and pricing mechanisms, as well as rights to data and information over the use of personal data or attributable information. Any changes to working conditions should be consulted and negotiated. Workers need to be informed about any changes in advance. Workers' ratings should be portable across applications and for personal use. Platforms could also consider providing training to their workers.