

The Platform Work Directive: Saying goodbye to bogus self-employment and AI bosses?

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On 24 April 2024, the far-reaching Platform Work Directive was adopted by the European Parliament. The Directive follows a surge in the number of workers in the digital platform sector over the last decade, expected to exceed 42 million next year.

The rise of platform work

The term 'platform work' has emerged as a buzzword encapsulating the intersection of technology and the gig economy. At its core, platform work refers to the range of activities individuals perform through digital platforms like apps, where services or goods are exchanged between freelancers or contractors and their clients or customers. A key characteristic of the work covered by the Platform Work Directive is that the platform pairs customers and individuals, instead of merely advertising services to customers on behalf of individuals.

The defining features of platform work are usually associated with self-employment, with the individual providing services generally having the freedom to decide if they want to accept or reject work. However, often an element of subordination exists, such that features of both self-employment and worker status are present. This leads to uncertainty as to the type of relationship between the platform and the person working through it.

People working through platforms are overwhelmingly classified as self-employed, even if that might not be the true nature of their working relationship. This has raised concerns that many are missing out on basic worker rights, like paid leave and minimum wage, because of being wrongly labelled as self-employed.

The Platform Work Directive

The Platform Work Directive aims to tackle this and is significant on two counts. Firstly, it marks a significant step in the regulation and protection of platform workers across the EU. It also introduces the first ever EU-rules on algorithmic management in the workplace, strengthening the rights of platform workers (both workers and genuinely self-employed) when it comes to automated decisions and the use of personal data.

But it hasn't been a smooth ride for the Directive. Its original (and widely criticised) intention was to introduce an automatic presumption of an employment relationship based on criteria common to all Member States. Lobbyists argued this wasn't what the platform workers wanted as it would compromise their ability to be independent and to work flexibly across various platforms.

However, with an estimated 5.5 million¹ wrongly classified as self-employed and missing out on key rights, getting the Directive across the line was a legislative priority for the EU.

A different framework was put forward and ultimately agreed in February 2024 (see our previous blog [here](#)). It instead requires that each Member State sets their own presumption of employment, triggered when facts indicating control and direction – two classic characteristics of an employment relationship - are present.

Member States will have two years to transpose the Directive into law which will be around May 2026.

Impact across the EU and beyond

Worker status

Platforms will undoubtedly be taking stock of how the Directive might influence the way they engage individuals. Initial estimates predict that 1.7 - 4.1 million people will be reclassified as workers², entitling them to greater rights and protections, from the point the Directive is transposed into national law.

Whilst the Directive will not apply to the UK, it may trigger a broader consideration of how platforms structure their labour force globally as they assess the pros and cons of engaging workers vs self-employed contractors.

Some platforms may decide to alter working practices so that individuals are genuinely self-employed. Broad rights of substitution, absence of control and supervision, and freedom to work for competitors are some of the key indicators of self-employment. In fact, the presence of these factors (amongst others) in the arrangements riders had with Deliveroo contributed to a recent finding in the UK that they were not workers.³

However, relinquishing control of, and direction over, the services provided and the people who provide them comes with its risks. And there will undoubtedly be some individuals who dispute their classification as self-employed. Combined with greater general awareness of worker rights, platforms could well see increased challenges from individuals as to their correct status.

Nonetheless, issues of misclassification aren't unique to the EU. In the UK, the government's 2018 [Good Work Plan](#) paved the way for legislative reform to clarify the issue of status. Six years later, it is arguably no further forward (albeit that Labour, the UK's main opposition party, has pledged to tackle it if it comes into power later this year). The Directive may well provide a blueprint for the UK as to how to approach the longstanding issue.

AI in the workplace

So far, the UK has taken a light-touch approach to the regulation of AI. The Platform Work Directive's rules on algorithmic management are indicative of a more stringent approach to AI regulation being taken in the EU. And the new rules will apply regardless of whether a platform uses workers or self-employed people.

The Directive introduces transparency requirements to ensure that platform workers are informed about the use of automated monitoring and decision-making. Importantly, there must be human oversight on important decisions taken by an algorithm, like suspending someone's account or dismissing them, with individuals having the right to contest these decisions, and protection against dismissal for those required to undertake the human review process.

We could see EU employers outside the platform work sector and UK employers using the Directive's AI provisions as a benchmark for best practice as the use of algorithms in managing and monitoring workers becomes increasingly prevalent beyond the platform working sector. The recent case of *Uber Eats UK v Manjang* is a timely reminder of the litigation risk and reputational damage associated with the use of automated decision-making when adopted without rigorous human oversight.

Strengthened data protection rules

The Directive recognises the application of the General Data Protection Regulation (GDPR) but enhances the protections available to platform workers by, amongst other things, introducing an express prohibition against relying on platform workers' consent when processing their personal data. Whether consent can be validly relied upon in an employment context under the GDPR is already a vexed question. However, the explicit prohibition is novel, in particular, because it applies not only to employees but self-employed platform workers. This upgrade in data protection rights introduced by the Directive is intended to address the heightened risks attached to the processing of personal data via automated monitoring or decision-making systems which are present in platform work.

Find out more about the legal considerations for employers when adopting AI in the workplace in our guide [here](#).

¹ European Parliament, [Press Release: Parliament adopts Platform Work Directive](#) (April 2024)

² European Parliament, [Improving the working conditions of platform workers](#) (March 2024)

³ [R. \(on the application of Independent Workers Union of Great Britain\) v Central Arbitration Committee \[2023\] UKSC 43](#)