

Public Services International (PSI)¹

Submission to the International Labour Organisation (ILO) questionnaire on Decent Work in the Platform Economy

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Summary of Key Concerns

Public Services International (PSI) is pleased to respond to the questionnaire on Decent Work in the Platform Economy. We respond to questions but also make the following comment concerning risks with the apparent framing of the proposed instrument:

The decent work framework has been persistently undermined by corporations that provide platform-based services, are driven by algorithms or have data collection and aggregation as the primary business service. The business model of platform-based corporations has depended on the ability to circumvent labour laws and invent a subclass of “independent contractors” or other non compliant labour arrangements. “Platform work” is expanding to the delivery of public services, including in the health and care sector.

*The right to social protection is also being undermined by algorithmic decision making. Workers must have the right to access all data that is held for them, about them or used to make decisions that impact on their working conditions and their access to social protection. **These rights must apply to all workers**, not only workers engaged by labour hire platforms. The instruments should avoid replicating the recently adopted EU directive which creates the right to data information for only one class of worker.*

Corporations are finding other technologically driven methods to avoid obligations and accountability, including by insisting that data based corporations do not need to legally register in all jurisdictions (and promoting digital trade rules that prohibit legal requirements to do so), by promoting algorithmic based decision-making, insisting that algorithms that make decisions about labour or social protection are trade, by intrusively monitoring workers, by amassing data about, and produced by, workers that can be used to replace or undermine workers, and through the creation of corporate structures that undermine accountability, including in secrecy jurisdictions.

*The proposed ILO instrument(s) will be welcome if it can address all, or some, of these threats to the Decent Work Framework. We must be careful, however, **that these instruments do not create a subclass of worker with different entitlements or that the instrument addresses algorithmic decision-making and monitoring only for one group of workers.***

¹ [Public Services International \(PSI\)](https://www.world-psi.org/) is a global trade union federation representing 20 million workers who deliver public services in more than 160 countries. PSI champions human rights, advocates for social justice and promotes universal access to quality public services

. 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

Click or tap here to enter text.

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

Click or tap here to enter text.

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

OTHER

The preamble should recognise that the rise of the platform business model has transformed the exchange of goods and services, particularly labour exchange.² It should acknowledge that many different types of digital labour platforms have emerged: on-location platform work, online micro tasking, online freelancing, and content marketplaces – and more may emerge.³ It should acknowledge that these developments open up several challenges for protecting different dimensions of decent work – “the employment status of the workers, their remuneration and working time, their access to

³ In ‘microtasking’ platforms such as Amazon Mechanical Turk, Clickworker, and Microworkers, large projects are typically broken down into smaller tasks, which are made available to anyone meeting pre-established criteria. In online freelancing platforms such as Upwork, on the other hand, clients typically interview applicants who bid to work on larger projects. See Silberman, M. Six, *The Concept of the ‘Digital Labour Platform’* (September 19, 2023). London College of Political Technology Working Paper 2023/1, Revision 1, Available at SSRN: <https://ssrn.com/abstract=4509153>

social security and occupational safety and health, their representation and access to social dialogue and the termination/deactivation and access to dispute resolution mechanisms.”⁴ The preamble should also recognise that, in addition to the rise of **platform-mediated labour exchange**, another related trend in the platform economy is the **platformisation of work** – the use of platform technologies and their algorithmic management for work coordination in traditional work settings.⁵ It should acknowledge that both platform-mediated labour exchange and algorithmic management of work created decent work deficits that need to be remedied by binding instruments. It should acknowledge that the platformisation of work may impact on all sectors of workers but that the most marginalised workers – migrant workers, women workers, low paid workers, un-unionised workers – are most vulnerable to having the right to decent work undermined by the use of digital technologies.

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

The preamble should recall the Philadelphia Declaration and reiterate that work is not a commodity. It should state that the instrument is designed to ensure that all workers are entitled to decent work and, for clarity, state that the instrument does not create a new category of worker with varied entitlements, but reaffirms that all workers must be protected by all the instruments that apply to them.

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

Other: The preamble should underline that the use of platform technologies by employers may have deleterious impacts on workers, making it desirable to supplement the existing standards to enable all workers to fully enjoy their rights. There should be no reference to competition in the preamble or elsewhere as the concept is not relevant to the realisation of decent work and could erroneously suggest that a new category, with reduced entitlements, is created through the instrument. The preamble should recognise that the platformisation of work (i.e. the use of algorithmic decision making in labour management, monitoring and output) poses a challenge to existing decent work standards that must not be eroded. All workers in an defacto or de jure employment relationship must be entitled to all rights (rather than limiting the instrument to a specific definition of platform worker).

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?

⁴ ILO (2024). Realizing decent work in the platform economy. <https://www.ilo.org/resource/conference-paper/ilc/113/realizing-decent-work-platform-economy>

⁵ Fernández-Macías, E., Urzi Brancati, C., Wright, S., Pesole, A, The platformisation of work. Evidence from the JRC Algorithmic Management and Platform Work survey (AMPWork), Publications Office of the European Union, Luxembourg, 2023, doi:10.2760/801282, JRC133016.

X Yes ☐ No

Comments

The preamble should acknowledge that the use of algorithms for organising, supervising, monitoring and evaluating work has implications for all workers. It should also acknowledge that algorithmic decision making in relation to accessing social protection has implications that may restrict an element of the decent work agenda.

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

X Yes ☐ No

Please specify

As stated above, the preamble should acknowledge that the “platformisation of work” increasingly impacts on all workers, in the public and private sectors. Further, it should acknowledge the potential threats that unregulated digital labour hire poses to decent work as well as to the enjoyment of quality public services required for workers to enjoy social protection and the progressive realisation of workers economic and social rights. (For example, an online subscription service to engage mental health professionals encourages excessive hours of work with excessive numbers of clients, bypassing regulations around qualifications, standards, record keeping, confidentiality and ratios that may be included in either regulations or collective agreements).

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

The term digital labour platform should be expanded to include algorithmic decision making. It is also important that the definition does not operate to restrict the coverage of the instrument to workers engaged by a digital labour platform. Instead the definition should be used in relation to establishing the employment relationship. Other provisions should relate to all workers.

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

OTHER - Expand the definition of intermediary to cover third party digital monitoring and workflow management systems that are adopted in traditional workplaces, including the public sector (For example MDM 360 degree shield utilised to track India’s community health workers). Without an expanded definition that accounts for third party apps for algorithmic monitoring in workplace management, it is not possible to regulate the entire gamut of platform workplaces / platformised work arrangements. (For example. Labour tribunals cannot call upon third party vendors to provide data on algorithmic decision making processes, in the case of workplace disputes.)

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,⁶ regardless of their employment status or whether they work formally or informally?

☐ Yes ☒ No

Comments

The instrument should not create a separate category of worker. Instead the instrument should ensure that workers engaged through a digital platform are recognised as employees. The instrument could refer to workers engaged through digital platforms. A home care nurse engaged through a digital labour hire company, for example, should be acknowledged as a nurse, with the same entitlements as other registered home care nurses.

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

⁶ 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

Other – the instruments should apply to all employers and all workers. In practice the instruments will apply to all employers (whether defacto or dejure) who collect workers' digital data, or digitalise data about workers, create large language models using workers data, use automated or semi-automated decision making systems for work engagement or management or use digital surveillance to monitor workers.

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

The potential for exclusions would undermine the value of the instruments.

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

Other – The instrument should recognise that all workers must enjoy the fundamental rights and principles of the Decent Work agenda and any rights specific to their sector covered by other instruments, regardless of whether their employment relationship has been recognised by the employer. A key objective of the instrument must be to ensure that the employment relationship is codified and that the efforts to use digital technologies to circumvent employment obligations are eliminated.

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;*

x Yes ☐ No

(e) *a safe and healthy working environment?*

x Yes ☐ No

Comments

Click or tap here to enter text.

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?*

x 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;*

x Yes ☐ No

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

x 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;*

x 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

In relation to d and e – It is imperative that both ILO 155 and relevant sectoral standards as well as the proposed Biological Hazards Convention set the standards for OSH procedures and obligations. This is

particularly important for the health workforce. Workers should be able to report OSH risks to a designated union OSH representative.

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

NO. As in 19, workers obligations should be consistent with existing standards.

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

This should be moved to the mandatory section and expanded to include shade and rest facilities.

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

In addition to C190, R206 should be referenced. The increased use of digital surveillance tools increases risks of violence and harassment.

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

The instrument should reiterate the existing obligations members have to promote decent work, including full employment, the progressive realisation of economic and social rights and non regression of existing rights and standards. It is the responsibility of member states to ensure that the use of digital platforms and algorithmic tools advances social progress for all workers.

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

Care should be taken with any reference to promoting work in the platform economy given the existing decent work deficits. While some disadvantaged groups may find it easier to access work using digital platforms – the same ease of access creates opportunities for exploitation and the erosion of labour standards. It must also be restated that no sectoral regulatory standards should be undermined in the reduction of barriers (i.e. registration requirements for nurses, sectoral hours of work, staffing ratios etc.).

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?*⁷

X Yes ☐ No

Comments

It is imperative that the principles outlined in the Employment Relationship Recommendation are enshrined in the instrument ensuring member states enact laws to prevent misclassification of workers.

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.

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?*

x Yes ☐ No

Comments

To ensure this instrument fulfils the purpose it is designed to meet, this must be moved to the mandatory section.

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

With an expanded definition of intermediaries, it should be made clear that the use of intermediaries must not reduce entitlements or protection of workers. Workers engaged through or by an intermediary must be entitled to the conditions and rights of workers engaged in the same or similar work. The comparison must not be to the same conditions as a another 'platform worker', but as a worker engaged in the sector. Regulation

⁷ 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."

of intermediaries is imperative. Consequently, intermediaries that engage workers, or enable workers to be engaged, must be registered as a legal entity in the countries in which they engage workers.

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

This section should refer to a 'living wage' as articulated at the ILO meeting of experts and should refer to C 95.

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

[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

And where algorithms are used to make calculations related to remuneration or deductions, the rules of the algorithm should be explained and the source code made available to workers and their representatives.

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;*

x Yes ☐ No

(b) *rest breaks;*

x Yes ☐ No

(c) *daily and weekly rest;*

x Yes ☐ No

Comments

Overtime, paid leave, sick leave and other entitlements should also be included.

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?*

x Yes ☐ No

Comments

This should move to the mandatory section.

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

See question 12.

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?*

X Yes ☐ No

Comments

The right to disconnect should be made available to all workers.

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?

X Yes ☐ No

Comments

*The instrument should require **prior consultation and negotiation** with workers unions prior to the introduction of algorithmic tools or new technologies that collect, collate or use data, in any workplace. The instrument should include an entitlement for all workers to receive information about the role of algorithmic tools in relation to the organisation, supervision, evaluation of their work (and their social protection). Click or tap here to enter text. As mentioned in 41, this must include the right to explainability and their right to access, or have a worker representative access, the source code. Relevant government authorities, including labour inspectorates, industrial relations bodies and human rights bodies, must also have access to source code to ensure algorithms do not violate fundamental rights or other regulatory standards.*

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;

x 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?

x Yes ☐ No

Comments

– In addition to (a) and (b), platforms must disclose algorithms to workers, workers representatives and relevant authorities and to ensure they are explainable. A critical demand for transparency about algorithmic-management systems for workers and their union representatives should include their right to explainability. In Norway, the office of a dedicated 'data shop steward / data trade union representative' is already recognised in the Main Agreement (2022-25) between the Norwegian Confederation of Trade Unions (LO) and the Confederation of Norwegian Enterprise (NHO).⁸ PSIs affiliates representing labour inspectorates have expressed concern that labour inspectors are prevented from accessing source code that can impact on labour rights including, non discrimination, occupational health and safety, wages and

⁸ <https://www.socialeurope.eu/algorithmic-management-a-codetermination-challenge>

conditions. Labour inspectorates need to be equipped with capacities for algorithmic deciphering and have access to all relevant code.

Click or tap here to enter text.

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

The right to human oversight must include oversight of decisions made about access to social protection, including unemployment benefits, pensions, workers compensation etc.

The instrument should also include provisions that place the burden of proof on the employer to prove that the decision was not discriminatory and lawfully justified where algorithms have been used to make decisions that have resulted in a seemingly adverse outcome for a worker. Similar provisions have been adopted in some jurisdictions where employers do not have transparent pay setting mechanisms – for example the EU Pay Transparency Directive.

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

This should be moved to the mandatory section.

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

Click or tap here to enter text.

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;

x Yes ☐ No

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

x Yes ☐ No

Comments

It should also include explainability and access to the source code of algorithms..

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?*

x Yes ☐ No

Comments

The instrument should also include a recognition of workers' data rights, not only relating to privacy but include collective rights in the aggregate data generated out of their workplace interactions (with one another, with consumers, and with objects in the work process).

The instrument should recognise that workers may authorise unions to have access to data held by the employer and that unions may conduct data audits (unions may have a digital right of entry).

- 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;

x ☐ Yes ☐ No

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

x Yes ☐ No

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

x 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?

x Yes ☐ No

Comments

The above list should be expanded to all protected attributes. The instrument should also prohibit the use of predictive algorithms in any way that would impact on workers entitlements (for example predictive algorithms attempt to identify potential trade union sympathies). The instrument should deal with aggregated data, as well as personal data. The instrument should refer to 'workers data', suggesting that workers data is held for them and not

owned by the employer. The employer should not be able to sell or profit from workers aggregated data or content created by or about the worker without prior authorisation and process covered in a collective agreement.

or tap here to enter text.

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

It should be a mandatory entitlement that workers have the right to all their data about, or produced by them, including aggregated data that uses their data.

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

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

This section should ensure that platform workers entitlements to social security are the same as all workers. There should not be a requirement for workers to contribute, unless the existing system requires workers' contributions. The principles of fiscal and economic sustainability should not limit the obligation of employers to contribute to the scheme.

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)?⁹*

☐ 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

Yes and should require that the contract of employment is between a legal entity registered in the jurisdiction in which the work is performed. It should also relate to any regulatory standards for work in that sector.

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

☒ Yes ☐ No

Comments

In the languages of the jurisdiction in which the worker is engaged.

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;*

⁹ 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.

☒ Yes ☐ No

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

x Yes ☐ No

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

x 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;

x Yes ☐ No

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

x 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?

x Yes ☐ No

Comments

Yes, this should be moved to mandatory and should include any other items that are required to be in workers contracts, including reference to the relevant collective agreement and laws.

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?

x 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?

x 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

This should include the obligation to facilitate communication between unions and workers in a secure online space. Workers engaged through digital platforms, or workers who primarily work on digital platforms or work remotely, should have the same freedom of association and collective bargaining entitlements as other workers.

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

This should be moved to mandatory section and include items referred to in 59.

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

Mandatory

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

This should include access to algorithms as mentioned above and should be mandatory.

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

As mentioned earlier, this should include provisions for labour inspectorates to have access to algorithms and explainability of algorithmic decisions. Further, members should ensure labour inspectorates have the capacity to examine algorithms and analyse their impact.

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

This is an important provision and should include the requirement for digital platforms to have a legal presence in any jurisdiction in which they operate.

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

While formalisation should be achieved by the instrument, the references to fair competition are unnecessary and may enable dangerous interpretations that the instrument allows for a new category of worker.

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 platforms 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?*

x Yes ☐ No

Comments

To enable this, relevant government / statutory authorities must have specified entitlements and processes to access data and algorithms collected by employers and should be able to regulate where and how that data is stored.

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?*

x 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?*

X Yes ☐ No

Comments

ENSURE EMPLOYERS ARE LEGALLY ACCOUNTABLE - An increasing number of jurisdictions are adopting laws to enable Decentralized Autonomous Organizations (DAOs) to operate as a legal business. DAOs are blockchain based organisations that operate through 'smart contracts' and have the potential to operate through algorithmic decision making, without human management. A DAO could engage platform workers and avoid human accountability for the obligations anticipated in these instruments. Some jurisdictions (for example the Australian Federal Government) are considering ways to modify existing DAO legislation (i.e. Wyoming legislation) but incorporate accountability requirements.¹⁰ It is important to ensure that all entities that are able to engage workers are legally accountable.

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?*

¹⁰ See - <https://www.afr.com/companies/financial-services/dao-consultation-will-involve-thorny-questions-on-responsibility-20220324-p5a7lp>

X Yes ☐ No

Comments

- A. Workers Data Rights** - *The proposed instrument limits the data rights agenda to freedom from privacy intrusions and excessive workplace surveillance for workers of digital labour platforms. The instrument should recognise that workers in all settings have data rights, and these rights are not just limited to the protection of personal data but include collective rights in the aggregate data generated out of their workplace interactions (with one another, with consumers, and with objects in the work process.*
- B. COLLECTIVE DATA RIGHTS** - *The development of the instrument must not constrain emerging debates about the need to regulate data as a public good. As mentioned in the responses, aggregated data that is collected about, or by, workers may also have impacts on entitlements to decent work, including social protection. Further, concerns around the use of Artificial Intelligence and the use of data about or produced by workers data by large language sets have become subjects of both collective bargaining and public regulation. The instrument should include provisions that enable these concerns to be advanced by recognising data as a collective resource and ensure unfettered access to such data for core public purposes including policy-making, planning, and research on public issues as well as for worker welfare and social protection. A data trust model will ensure that the data commons generated from worker interactions with citizens and the delivery of public services is managed not as a commodity but as a public resource that is stewarded through a fiduciary relationship. Labour unions must play a critical role in such data trusts for any decision about the use of the data for work management decisions in public sector setting or in third party data sharing.*
- C. REDRESSING HARMFUL DIGITAL TRADE RULES** - *Big Tech companies are promoting harmful digital trade rules that will constrain the instruments implementation. Core demands include prohibitions on accessing source code, prohibition on requirements for digital companies to have a local presence and prohibitions on localisation of data. These provisions are designed to enable the sustained exploitation of cheap, unprotected labour and should be countered in this instrument.*