

# Japan Labor Issues

# 7

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Alison PENNINGTON

**India** Counterproductive Work Behavior by Drivers of Platform Based Cab Aggregators in India: A Human Rights Perspective  
Surya Prakash PATI and Manoranjan DHAL

**Japan** Working Conditions of Crowdworkers: How Working Conditions of Crowdworkers Vary by Job Content  
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**Korea** Artificial Intelligence-Based Hiring: An Exploratory Study of Hiring Market Reactions  
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Bo-Shone FU

## SPECIAL ISSUE

The 4th JILPT Tokyo Comparative Labor Policy Seminar 2020  
*"The Changing World of Work in Digital Age — New Forms of Work and the Role of Labor Policy"*



Japan Labor Issues

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Special Issue

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\* Entries are arranged based on the seminar program.

\* The responsibility for opinions expressed in signed reports rests solely with their authors, and publication does not constitute an endorsement by the Japan Institute for Labour Policy and Training of the opinions expressed in them.

## *Preface*

The 4th JILPT Tokyo Comparative Labor Policy Seminar 2020

### ***“The Changing World of Work in Digital Age — New Forms of Work and the Role of Labor Policy”***

As labor problems become more universal with the advance of globalization in recent years, there is a growing need for international comparative research in the planning and formulation of labor policy. With this in mind, the Japan Institute for Labour Policy and Training (JILPT) hold “the 4th JILPT Tokyo Comparative Labor Policy Seminar” online on November 9, 2020. The aim of the seminar is to provide an opportunity for researchers from major countries and regions, particularly Asia to come together and engage in a comparative examination of their shared challenges.

The 4th seminar focuses on the topics of digitalization, especially the impact on employment and labor as well as the role of labor law policy. The digital technological innovations are rapidly spreading throughout the world, giving rise to a host of new business models such as internet platforms and the sharing economy. The proactive utilization of Artificial Intelligence (AI) and other new technologies is expected to improve labor productivity and establish a foundation for economic growth. However, the use of these technologies may replace and thereby destroy jobs. In terms of work styles, there are now increasing opportunities to engage in freelancing and employment-like work styles without formal employment contracts through crowdsourcing via internet platforms. People in such work styles fall somewhere between being self-employed and being employees, and as a result, they are not generally granted worker status or protected by labor laws. In the seminar, we compared the current state and challenges in each country and region, and discussed the future direction of labor policy.

This special issue carries 11 reports submitted by promising researchers from Asia-Pacific countries and regions. We are sure that they provide useful and up-to-date information on the latest labor policy issues and a valuable opportunity for comparative studies of circumstances and policy responses in each country and region for discussion in the future. Taking this opportunity, we would like to express our sincere gratitude to Prof. Giuseppe Casale, Dr. Stijn Broecke and Prof. Takashi Araki for their thought-provoking keynote lectures, and also Prof. Hideyuki Morito and Prof. Chikako Kanki for their significant contribution to moderate the seminar.

# Technology, Jobs and the Future of Work in Australia

**Alison PENNINGTON**

Introduction  
 Part 1. Technologies at work in Australia  
 Part 2. A labour regime under strain  
 Conclusion and recommendations

## Introduction

Economies and societies have evolved for generations through innovation and technological change. Though there are some clear ways in which this current wave of automated technologies marks a change from those that preceded it. The explosion of new data gathering devices with big data technologies allow huge volumes of data to be collected, stored and analysed. New innovations in computing and automation use large databases of past decisions to inform real-time judgements, performing non-routine human tasks previously not amenable to machine-aided production.

But despite the capacity of technological investment to revolutionise economies and how we produce and work, real-world data suggests that this has not been the outcome in Australia—at least in an aggregate sense. Similar projections of increased demand for hard technical skills work does not reflect the evolution of employment in Australia where public services-dominated industries like healthcare and education have increased their share. In a country highly vulnerable to extreme weather events (as seen with the recent bushfire crisis), digital technologies are unlikely to be the most important driver of change in the world of work. Work is being increasingly reorganised on a part-time, insecure basis. And since technology is neither autonomous, nor neutral, and instead reflects the concerns and priorities of those actors sponsoring their investment, employer-implemented surveillance technologies and exploitative gig platforms are becoming troubling markers of the modern digital workforce.

This report provides a summary of these major trends in technology and work in Australia. It has been compiled for the 4th JILPY Tokyo Comparative Labour Policy Seminar 2020. The first section of the report documents the major trends impacting on the Australian labour market, including the pace of technology implementation in production, and the increasing prevalence of insecure work. The second section assesses Australia's system of labour regulations and protections in light of ongoing changes to the organisation of work and asks, are they fit for purpose? Finally, the report concludes with recommendations for revitalising the framework of labour regulations and the collective bargaining system in Australia.

## Part 1. Technologies at work in Australia

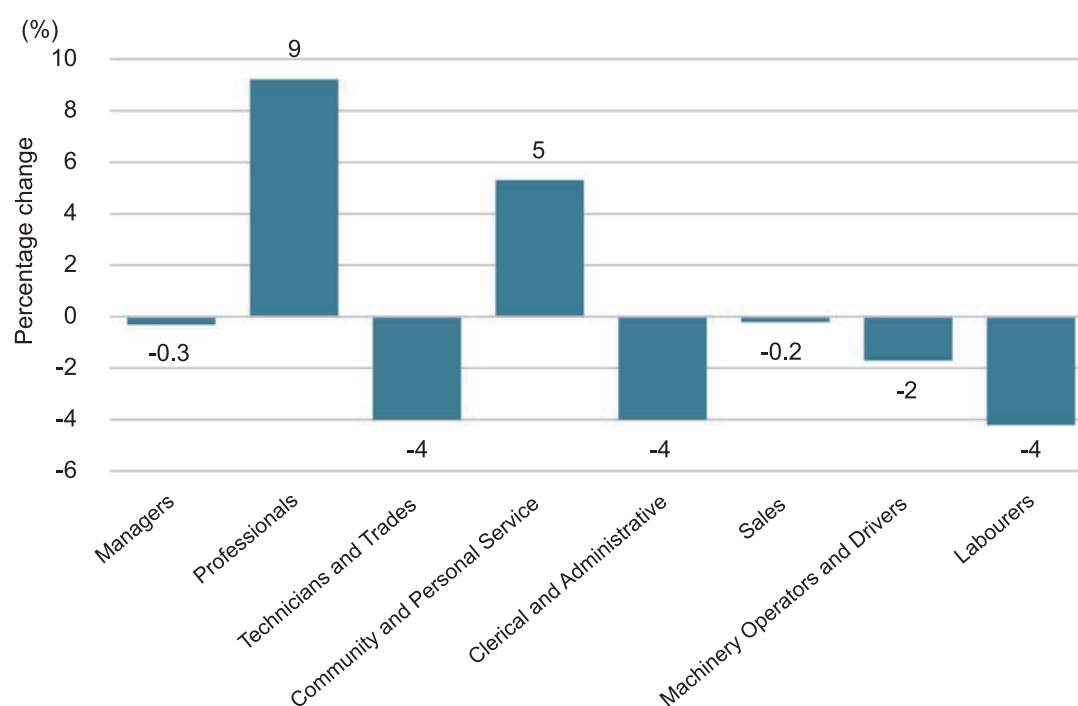
### *The evolution of employment*

Despite sensationalist claims of mass labour displacement from new technologies, technological change has never produced long-lasting mass unemployment. The application of new technologies to enhance productivity has been occurring for hundreds of years, interacting and evolving with jobs and industries over time. Labour-displacing impacts have been generally offset partly by the growth of new jobs associated with the development, production, and operation of those technologies (such as the modern software developer or AI specialist), and partly by the rise of new industries where productive labour is not impacted by the new

technologies (such as teachers and healthcare workers). Technologies create both reimagined and altogether new jobs. Through investment in new technologies, economy-wide efficiencies are generated that can be harnessed to shift our productive labour into more abstract, complex, and high-human input work. Accordingly, the nature of direct labour in many human and personal services today has not been drastically changed by the advent of new technologies.

The evolution of jobs through, and in tandem with technological change is evident in the changing occupation mix in Australia. Professionals and community and personal services occupations have increased their share of total employment by 9- and 5-percentage points, respectively from 1986 through 2019 (see Figure 1). Occupations within these groupings (like teachers, disability care workers, healthcare professionals and engineers) typically perform more abstract, cognitive work with high-level social skills. On the other end, increased use of machinery and computer technologies in logistics, administration and construction sectors are reflected in declining employment shares since the 1980s for technicians and trades (-4%), machinery operators and drivers (-2%), labourers (-4%), and clerical and administrative workers (-4%). Policy decisions to retrench the manufacturing sector and shift the Australian economy away from a goods-producing, to a services economy have exacerbated this trend.

Demographic changes like the ageing population, the continued growth of dual-income households, rising women's workforce participation, and increased demands for both public and private services will strongly influence future employment growth in Australia—likely a greater impact on future jobs than technological change. Table 1 presents data from five-year employment projections (by industry and occupation) prepared by the Federal Department of Employment, Skills, Small and Family Business (ESSFB) for 2019 through May 2023. These projections show that for the foreseeable future, public-service-dominated industries like healthcare and education will form the vast majority of projected jobs growth—with a further 250,000 jobs and



Source: Author's calculations from ABS Catalogue 6291.0.55.003, Table 7; 1986 figure calculated as annual average. 2019 data for February.

Figure 1. Change in employment by occupation (as proportion total employment), 1986–2019

Table 1. Projected highest job growth industries to 2023

Industry	Percentage of total employment (Feb 2019)	Projected new jobs 5 yrs. to 2023	Top hiring occupations*
Health care and social assistance	13%	250,300	Aged and disabled carers; Registered nurses; Child carers
Construction	9%	119,000	Construction managers
Education and training	8%	113,000	Education aides; Primary school teachers
Professional, scientific, and technical services	9%	107,000	Software and applications programmers

Source: Author's calculations from Department of Employment, Skills, Small and Family Business (2018) employment projections from May 2018 to May 2023.

Note: \*Top hiring occupations are those projected to experience strongest growth within highest employment growth industries.

Table 2. Projected occupations with largest employment decline to 2023

Job roles	Projected employment level May 2023	Number of jobs projected to decline in 5 yrs. to 2023	Percentage of employment decline 2018–2023
Personal assistants and secretaries	75,172	-19,381	-20.5%
Office administrators and program administrators	221,241	-12,592	-5.4%
Machine and stationery plant operators	156,353	-5,843	-3.6%
Farmers and farm managers	155,721	-4,529	-2.8%
Clerical and office support workers	82,662	-1,040	-1.2%

Source: Author's calculations from Department of Employment, Skills, Small and Family Business (2018) employment projections from May 2018 to May 2023.

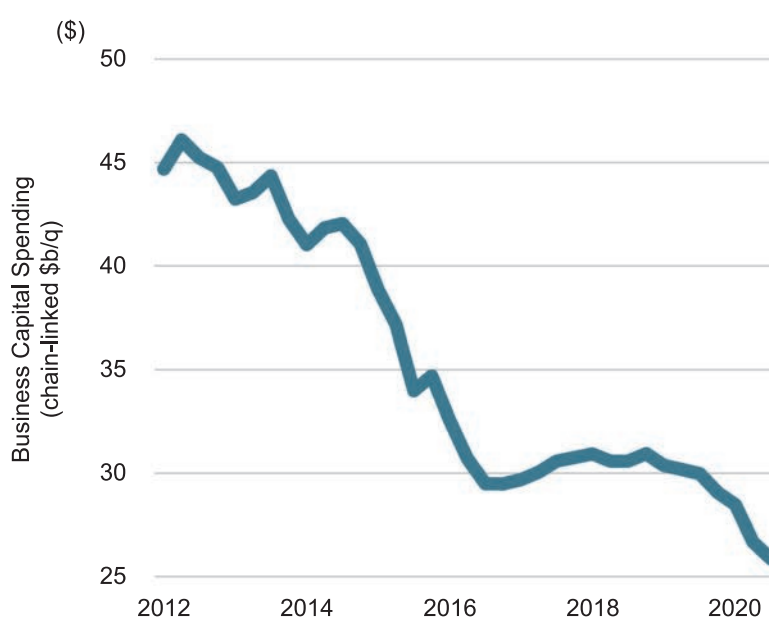
Note: Top hiring occupations are those projected to experience strongest growth within highest employment growth industries.

100,000 jobs added to these industries in the next four years, respectively. Close to 120,000 jobs will be added to construction, and employment in professional, scientific and technical services is projected to add around 100,000 jobs to 2023. Conversely, more routine, process-focused administrative and managerial occupations like personal assistants and secretaries, and office managers are projected to face the biggest declines in total employment in the four years to 2023 (see Table 2). This reflects the increased adoption of automated technologies that make administering business processes cheaper and more efficient.

Digital technologies are often presented as a polarising force in labour markets, shielding workers with high-level technical skills (who receive higher pay) from the negative impacts of automation, while exposing those without high-level technical skills to less secure employment and lower pay. However, the shift in the occupational composition of employment in Australia towards services runs counter to this claim. Many jobs typically considered non-knowledge-intensive or “low-skill” (a mistaken, demeaning term) have been insulated by the impacts of automation. Employment shares have increased in community and personal services occupations, which are not typically considered skill-intensive. Hence widespread assumptions that “high-skill” workers will benefit from automation, while “low-skill” workers will be displaced, are incorrect. Remuneration rates are much more likely to reflect social beliefs about the value of that work, as well as the prevailing industrial relations infrastructure that allows workers to lift the quality and compensation of their work, rather than their skill level.

### *Technology and jobs: The evidence so far*

While new technologies could be implemented in certain enterprises, industries, or occupations impacting on the quantity and composition of employment in these sectors—there is no evidence that this is occurring across the Australian economy in any aggregate sense. In fact, Australia has developed a perverse problem of decelerating investment in technology since 2012 (in both tangible capital, such as machinery and equipment, and intangible capital such as computer software and other intellectual property) (see Figure 2). Since 2012 when several large resource mines and LNG plant projects reached completion, real business capital spending



Source: ABS Catalogue 5625.0. Table 3b.

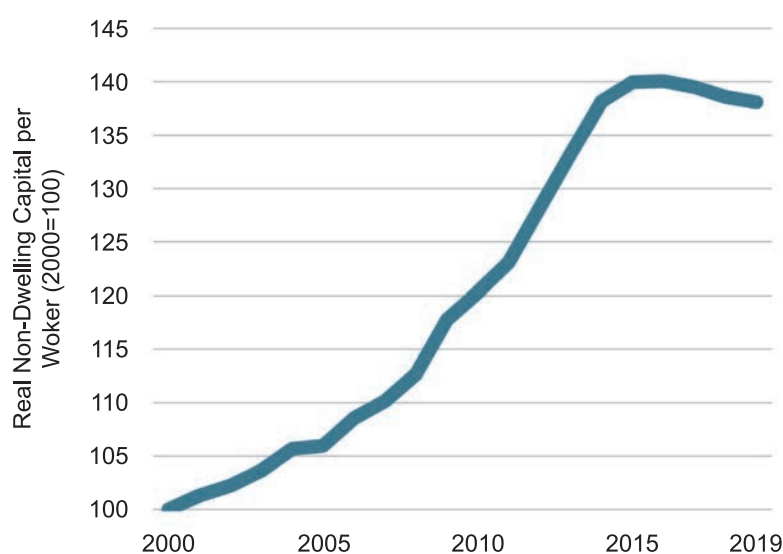
Figure 2. Business capital spending 2012–2020

has plunged dramatically by more than one-third from \$46 billion to around \$26 billion in 2020. This suggests employers are far from galloping toward a capital-intensive, automated future; their willingness and/or capacity to undertake major capital investments appears to have moderated.

If new technologies were facilitating the replacement of workers, we would observe the current stock of capital in effect becoming larger relative to the labour inputs in production. Labour-saving technologies would need to displace or reduce labour inputs and push an increase in the ratio of capital to labour in production. However, expansion in the size of the workforce in Australia has outpaced new capital spending in recent years with the current stock of installed capital (net of regular ongoing depreciation) failing to keep pace with new hiring; the aggregate ratio of capital to labour in production has actually been falling since 2015 (see Figure 3).

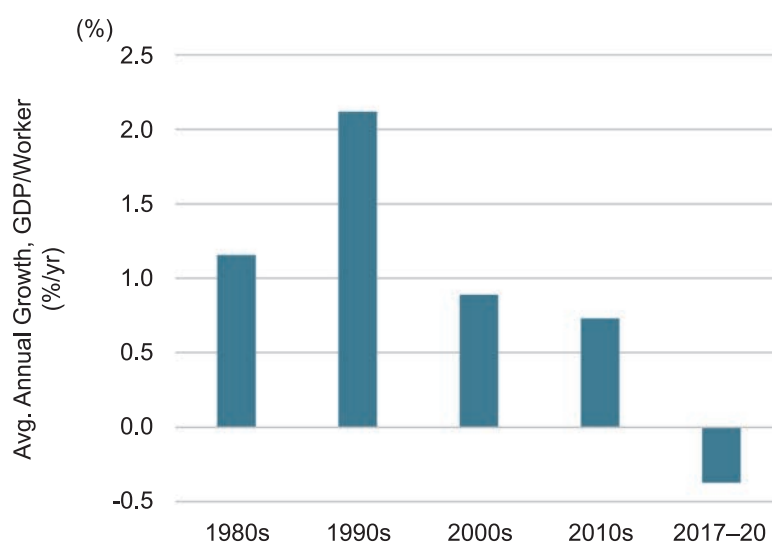
A deteriorating ratio of capital to labour in production is revealing of an economy losing new productive capacity. Consequently, more output with fewer workers is placing breaks on productivity growth. Figure 4 shows that far from an explosion in productivity growth directed by widespread automation, real labour productivity growth in the 2010s has been slower than for any decade-long period since the 1980s. More startling, in recent years productivity growth has shifted into reverse: since 2017 the amount of real output produced by the typical Australian worker has been declining.

While remarkable developments in new technologies like artificial intelligence (AI) have the capacity to transform the world of work, the visible deceleration of capital accumulation and productivity growth provides evidence that this capacity has not translated into tangible outcomes. In fact, Australia's meagre investment record reflects real structural economic weakness, including an underdeveloped value-added industrial base, an oversized role for small business, and over-reliance on extractive resources industries (which tends to require less capital investment after operations are established and exhibit falling productivity rates over time as resources are depleted). Worryingly, Australia was recently ranked 93 out of 133 countries on economic complexity measured by diversity of exports (Harvard University Growth Lab 2019). Low economic complexity carries significant risks for economies seeking to resource green transitions in a changing world, and high risks when world demand for primary resources falls. Another indicator of a weakening economy is the poor innovation record of Australian businesses. Research and development (R&D) went backwards for the



Source: Author's calculations from ABS Catalogue 5204.0, Tables 63. Excludes dwellings.

Figure 3. Ratio of net fixed capital per worker, Australia, 2000–2019



Source: Author's calculations from ABS Catalogues 5206.0, Table 2, and 6202.0, Table 1.

Figure 4. Labour productivity growth by decade

first time in history in 2015–16 equalling only 1.9% of GDP—down on 2.11% in 2013–14 and well below the OECD average of 2.4% (OECD 2019a). Decline in R&D spending is stifling innovation and leading to growth in unproductive firms. Lagging rates of capital investment in production has been associated with the expansion of large numbers of low-wage jobs in relatively low-productivity private sector services industries.

### *Precarious work*

Much of the hype surrounding new technological trends has not considered the real-world employment relations in which technological investment takes place. Work is a fundamentally social undertaking, and the nature of the relationships between people working (or not) is a crucial determinant of the quantity of work available, and the quality of that work. Changes in work organisation and employment relations in Australia are having a greater impact on jobs than developments in automation and artificial intelligence. In particular the institution of standard employment established in the post-war era (full-time, permanent work with normal entitlements like sick and holiday leave, and superannuation) has been eroding with more jobs becoming part-time and more insecure. Indeed, less than half of Australian workers now fill one of these traditional full-time positions with the majority now in part-time, casual, and nominally independent or self-employed jobs (see Table 3).

Almost one in three jobs in Australia are now part-time—one of the highest rates of part-time work in the industrialised world. Part-time jobs accounted for almost half of all employment growth between 2013 and 2018 and the majority of these jobs were casual, with lower pay than existing jobs (Henderson and Stanford 2018). Growth of part-time work is motoring growth in insufficient-hours work; almost one in three part-time workers (over 1 million workers) are seeking more hours. While around 2% of the workforce needed more hours work in the mid-1970s, almost 9% of the workforce were underemployed in 2019.<sup>1</sup> But statistical measures of employment continue to mask growing underemployment since only one hour of paid work meets the standard definition of employment.

Persistent underemployment, structural unemployment, declining labour force participation (particularly

1. ABS Labor Force. Catalogue 6202.0.

Table 3. Share of workers by job category

	Number (million)	Share employment
Full-time permanent employee	6.391	49.8%
Full-time casual employee	0.785	6.1%
Part-time employee	3.507	27.3%
Owner-managers, with employees	0.757	5.9%
Owner-managers, no employees	1.397	10.9%
Total	12.837	100%

Source: ABS Catalogue 6333.0. August 2019.

among young workers and once-full-time-working males), and the high rates of discouraged workers who have given up looking for jobs (over 1 million people<sup>2</sup>) are symptoms of a demand-constrained economy failing to generate sufficient work for all who need it. Research by Stanford, Henderson and Grudnoff (2019) found there was only enough work available in Australia's labour market between 2013–18 to keep half the working-age population employed on a full-time-equivalent basis; only 19.8 hours of work were available per week for each working-age person. An inadequate quantity of work for Australia's growing population underpins worsening underutilisation rates since the global financial crisis in 2008. Underutilisation carries significant social and economic costs for those excluded from paid work, and wider economic costs from reduced incomes, consumption spending, and government revenues.

No statistical indicator can fully capture the extent of insecure work. Nevertheless, past research confirms that across a range of indicators (including part-time job share, incidence of casual work, hours of work, and earnings in insecure jobs), insecure work has become more prevalent (Carney and Stanford 2018). Spare capacity in the labour market functions in a negative feedback loop with job quality, driving down remuneration and the conditions of work. This is because when a growing number of workers are seeking a diminishing number of jobs, employers can more easily act on their preferences for a flexible, irregularly deployed workforce. One pernicious form of flexible work is growth in independent contracting through “sham contracting” arrangements that allow employers to avoid all costs associated with hiring employees. While no official data exists on the scale of this problem, business statistics identifies approximately 1.4 million non-employing businesses at June 2018, with an annual exit rate three times higher than the average for real employing businesses;<sup>3</sup> some of these may be genuinely conducting a business, but the high “turnover” rate appears consistent with high-level precarity among self-employed and “gig” workers.

The reappearance of pre-20th Century on-call contingent “gig” work occupies the worst end of the sham-contracting spectrum. “Gig” work is characterized by digital mediation of piece-work tasks, performed on-demand, and compensated through digital platforms run by large companies (Stanford 2017). There are no official statistics on the prevalence of gig work in Australia but a recent survey undertaken for the Victorian

2. ABS Catalogue 6226.0.

3. ABS Catalogue 8165.0. Table 13.

government's Inquiry into the On-Demand Workforce in 2019 (McDonald et al. 2019) found 7% of working Australians had used a digital platform in the past 12 months to access work; of these workers, around 40% were either heavily or partially reliant on incomes derived from digital platforms to meet their living costs. These estimates surpass earlier estimates from Minifie (2016)—who found around 0.5% adults regularly performed work on or through a digital platform—and Deloitte Access Economics (2017)—who found around 1.5% of the population earned money from some digital platform during 2015–16.<sup>4</sup>

The organisation of work on an irregular and insecure basis is a product of social relationships in work. Growing inequality between employers and employees has increased the power of employers to set the terms and conditions of work, including how technologies are implemented in the workplace (discussed in part 2 of the report). By understanding the social and regulatory dimensions of work organisation, we gain a deeper understanding of the more everyday nefarious uses of technology affecting jobs beyond the more-hyped automation and robotisation narratives.

Electronic monitoring and digital surveillance technologies are a product of growing labour market power imbalances. Digital workplace monitoring allows employers to intensify work pace to extract more labour effort by lifting the intensity of production cycles. But surveillance to increase work discipline is an especially damaging mis-use of technology since it alters the trade-off between providing positive incentives to increase work effort (through measures like higher wages, employee voice mechanisms and higher-trust employment relations), and negative punishments to increase work effort (the threat of discharge). Investment in worker surveillance can hence encourage wage suppression as employers' management models become focused on using “sticks” rather than “carrots” to elicit high performance from employees. A survey by the Centre for Future Work in 2018 found digital forms of work monitoring are being used in a large majority of Australian workplaces; 70% of those currently working had one or more methods of electronic or digital surveillance operating in their workplace—with an average of 3.2 different types of surveillance in use (Henderson, Swan and Stanford 2018). The most common forms of digital surveillance were employer monitoring of web browsing (43% of all current working), and monitoring the contents of emails (38%). Nearly three-quarters of Australian workers believed surveillance technologies reduced worker privacy and around 60% said it reduced trust in the workplace. Predictably then, a majority thought the use of surveillance reduced the quality of and pleasure in their jobs—a counterintuitive development given the significant body of evidence (particularly in human resources research) associating job satisfaction with major firm-level benefits including reduced turnover, reduced absence, and improved performance and productivity (Smeaton et al. 2014).

Widespread use of digital surveillance in Australian workplaces to police labour effort runs counter to the standard hype about technological innovations revolutionising work. Like the rise of precarious, digitally mediated on-demand “gig” work, the use of surveillance technologies by employers has much more to do with unequal social relationships around work, in general, and the growing imbalance in bargaining power between workers and employers in particular.

## **Part 2. A labour regime under strain**

Precarious work has thrived in Australia as workplaces have become smaller and more fragmented. Major factors behind more fragmented or “fissured” workplaces (Weil 2017) include decline in capital-intensive goods-producing industries, increased contracting out practices (including of government-funded social services), the rise of new technologies mediating work, and chronic unemployment and underemployment. But a crucial factor behind growth in precarious work practices has been the failure of the regulatory regime to prevent them.

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4. The study included the sale of assets and other non-labour revenue-generating activities.

The major regulatory levers in Australia are the minimum wage, the National Employment Standards (NES), the Modern Awards system (legal documents outlining minimum pay and conditions across industries and occupations), and the enterprise bargaining system. Together these levers wield a significant influence on the quality of jobs across the country.

But Australia's system of labour market regulation is under significant stress. New digital business models like Uber increase the scope for businesses to hire labour outside their normal responsibilities as an "employer." Minimum wage laws and collective agreement coverage often exclude labour hire workers and contractors who can be employed on inferior pay and conditions to employees performing the same work. The limiting individual rights framework of the major industrial relations legislation—the Fair Work Act (FW Act)—and weakened compliance systems (due largely to unions no longer undertaking their traditional pay and conditions compliance roles) has led to widespread breaches—even for those workers who should be legally covered. This has culminated in the epidemic of wage theft documented across established Australian businesses and franchise-based businesses in recent years (Fitzpatrick 2019). Employer practices of undercutting minimum pay rates for salaried full-time employees have flourished whereby limited restrictions on weekly working hours in the NES and many Awards have allowed employers to avoid compensation for overtime (Professionals Australia 2019).

Labour laws have been passive or inconsistently applied by regulators unwilling or incapable of extending new protections for workers outside of traditional labour standards. Three major cases have tested the application of regulatory standards for non-standard "gig" workers, assessing whether workers were employees. In December 2017, the Fair Work Commission (FWC) dismissed an Uber driver's claim of unfair dismissal because the driver had control of working hours (rather than Uber)—one criterion that the FWC assessed essential for establishing presence of an employment relationship. In November 2018, the FWC ruled that Foodora had in fact unfairly dismissed a delivery rider. Unlike in the Uber cases, the FWC found that the company had a significant degree of control over workers' hours through rostering practices, finding the delivery riders employees and not contractors. Recently in June 2019, company control over work hours again influenced an investigation undertaken by the compliance regulator—the Fair Work Ombudsman—that examined a range of evidence (such as contracts, work time records, interviews with drivers and Uber, banking records, and pricing schedules) and determined no employment relationship existed between Uber and its drivers.

One crucial indicator of pressure on Australia's labour regime is the dramatic decline in the collective bargaining system—particularly in the private sector. The number of workers in the private sector covered by an active enterprise agreement (EA) has plunged by almost 30% since 2013 (or 600,000 less workers) (see Figure 5). Measured as a percentage of the total workforce, active EAs now cover just 11% of private sector workers (down from 22% in 2013).<sup>5</sup> Changes in firm structure and increased competition have weakened the effectiveness of enterprise-level bargaining, but severe restrictions on the capacity of unions to organise, campaign and bargain on behalf of workers have undoubtedly played a major role. Deliberate and sustained anti-union policy measures operational in Australia include extra-political bodies that police union activity, limitations on workplace entry, restrictions on industrial action among the harshest in the OECD; and prohibitions of traditional membership preferences (through full legal protection for free-riding). Consequently, union membership has declined for several decades from over 50% of all employees in the 1970s, falling to just under 15% in 2017 (and below 9% in the private sector).<sup>6</sup>

The FW Act also imposes limitations on the content employees and employers can negotiate on and include in agreements. Should new digital workplace technologies be implemented, crucial operational matters such as

5. Author's calculations from AGD Trends in Enterprise Bargaining Report and ABS Catalogue 6291.0.55.003. Annual averages.

6. ABS. Catalogues 6310.0 and 6333.0.



Source: Quarterly. Attorney-General's Department. Historical data. June Quarter 2019, federally registered EAs only.

Figure 5. Private sector employees covered by current enterprise agreements, 2000–2019

design and implementation pace cannot be coordinated through collective agreement negotiations (nor other productivity-enhancing improvements like work organisation and skills and training). There is growing recognition among labour advocates and unions that Australia's highly decentralised enterprise-level bargaining system is incapable of extending bargaining rights, coverage, and regular wage increases to an increasingly fragmented workforce. Peak union body—the Australian Council of Trade Unions—is presently campaigning for scope reform to allow sectoral- or industry-level bargaining.

Erosion of traditional regulatory supports for work has clearly been a major factor in the deceleration of wage growth in Australia, which has fallen to annual averages of around 2% per year—the slowest sustained pace since WW2.<sup>7</sup> Decline in EA coverage has increased the number of workers whose wages and conditions are determined directly by minimum standards set by the FWC; 21% of all employees had their pay set by Award minimums in 2018—5-percentage-points higher than 16% in 2012.<sup>8</sup> Since Modern Awards were designed to be arbitrated wage and conditions “floors” to enterprise bargaining, FWC review cycles remain lengthy bureaucratic exercises that provide limited opportunity for collective action to encourage increases in low wages. Moreover, the FWC have been hesitant to amend wage schedules, amending only allowances and entitlements in line with workplace change. The growing gap between Award rates and prevailing industry rates in many industries presents an ongoing threat to the security of wages, particularly for workers in professional occupations.

By undermining bargaining power across the labour market (particularly among low-wage workers), growth in nominally independent unregulated labour generally weakens efforts by labour advocates to improve work conditions for those insecure work arrangements already legal within current labour laws—including casual, temporary, and labour hire work. Despite this challenge, some small signs of progress have appeared in recent years. The FWC agreed to introduce a new model term into minimum labour laws in 2018 allowing

7. ABS Catalogue 6345.0. Wage Price Index. The WPI measures wage trends for a fixed ‘bundle’ of jobs over time; it captures a ‘pure’ measure of inflation in the price of a given basket of labour, but misses the effect of compositional change in the labour market over time and in hours worked.

8. ABS Catalogue 6306.0. All employees (not including owner-managers).

casual, fixed-term and labour hire employees with regular hours to request conversion to permanent positions.<sup>9</sup> The Queensland and Victorian state governments have introduced labour hire licencing schemes that impose minimum wage and safety law compliance as conditions on labour hire firms to obtain licences.

One redeeming element of the Australian labour law regime is the robustness and comprehensive protection provided to all workers under Work Health and Safety (WHS) laws. Internationally recognised as the gold-standard in WHS legislation, the model Act (adopted across all states except Western Australia and Victoria) establishes rights to safe work environments for any person undertaking paid productive labour—hence, adopting the much broader classification of “worker,” rather than “employee” (the more limiting scope within industrial laws). Worker representation is also protected through health and safety representative roles and committee structures. Despite the strength of the legislation, real enforcement of standards by state-level health and safety regulators is often inconsistent, passive, and under resourced. Inspection programs and enforcement strategies are not well developed for gig workers, labour hire, home-based work, and franchise arrangements (ANU 2019). In a region recording ever-hotter days and more extreme weather events, the WHS regime will predictably come under pressure as employers liable for workplace safety (and associated costs of workers ceasing work or amending duties) attempt to diminish that liability. Scope mismatch between WHS and industrial laws and the inconsistent employer liability settings could underpin future industrial conflict in an economy increasingly impacted by climate change events.

## Conclusion and recommendations

The whole framework of minimum standards and collective bargaining in Australia requires urgent reform to protect the quality of work in a changing economy where precarious work and new business models (including those fuelled by new digital technologies) continue to grow. Without action to modernise and strengthen the labour regime, more workers will be forced to negotiate with employers in an increasingly unequal, insecure, oversupplied labour market. Some important priorities include:

- Legislative changes to ensure that existing standards (including minimum wages, national employment standards, and collective bargaining systems) are extended to all workers. The disruptive nature of platform-based business models requires a more ambitious approach to labour regulation. Stewart and Stanford (2017) offer a range of reform options including clarifying or expanding definitions of “employment;” introducing a new category of “independent worker;” overhauling traditional definitions of “employee” by creating a more expansive definition of “worker;” and reconsidering the definition of an “employer.”
- A systematic revitalisation of the industrial relations regime to improve opportunities for collective representation. This should include measures to facilitate normal union workplace access; removal of restrictions on industrial action; provisions to allow unions to fund collective bargaining through more sustainable membership incentives including bargaining fees or closed shops; expansion of permissible agreement content to allow workers to negotiate on the implementation of new workplace technologies; and expanding bargaining scope to the sectoral or industry level to improve bargaining power, agreement coverage, promote wages growth and support fairer distributional outcomes.

A stronger collective bargaining system can coordinate the implementation of technologies to ensure they enhance job opportunities and working conditions, and allow workers to protect themselves from their more demeaning and exploitative applications (such as electronic monitoring and surveillance). Some best practices that can be coordinated through collective bargaining include:

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9. See 4 yearly review of Modern Awards decision on casual and part-time employment: [2017] FWCFB 3541.

- Ample notice to affected workers of planned technology changes with rights to workers and their unions to bargain on issues related to that change.
  - Retraining rights for affected workers to undertake new positions.
  - Transition supports for workers affected by technological change who elect to exit the firm to enter retirement or move to new jobs.
- A reoriented Awards system towards providing higher-wage benchmarks that boost wages and entitlements across all industries and occupations. Declining collective bargaining coverage has left more Australians dependent on these baseline instruments—mistakenly treated as minimum wage “safety nets.” Wage setting in Awards should be released from the quagmire of administration, and opportunities created for collective worker influence and input during review periods.
  - Finally, the worrying widespread prevalence of electronic and digital monitoring and surveillance in Australian workplaces requires specific reforms to protect workers. In addition to strengthening collective bargaining rights to support workers’ efforts to negotiate the terms of digital monitoring and evaluation, more consistent legal privacy protections are needed, and additional requirements placed on employers to provide assurances that existing employment security rights are being observed.

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# Counterproductive Work Behavior by Drivers of Platform Based Cab Aggregators in India: A Human Rights Perspective<sup>1</sup>

Surya Prakash PATI  
Manoranjan DHAL

- I. Introduction
- II. Theory and research question
- III. Methodology
- IV. Findings and discussion
- V. Discussion

## I. Introduction

Labelled initially as ‘crowdsourcing’, platform work may also be understood as ‘on-demand work via apps’ (Gyulavári 2020). The world is in the grip of transformation led by a furious speed of automation and digitization. This has resulted in new forms of employment in various occupations and sectors, the platform economy being one of them (Behrendt et al. 2019). Practitioners and scholars have utilized numerous terms interchangeably to define the platform economy, such as “digital economy,” “sharing economy,” “collaborative economy,” “gig-economy,” “crowd-work,” “piece-work,” and “gig-work” (see Codagnone and Martens 2016 for a concise overview of these conceptual contradictions). However, we can safely arrange all of these under the term “platform” (Gyulavári 2020). Hence, the users associated with providing service through a platform could be termed as “platform workers.”

Drahokoupil and Piasna (2017) suggest that platform work has three major distinguishing factors—(1) platforms provide algorithms that enable matching of labor providers and users, (2) technology reduces transaction costs for employers / clients to the extent that platforms can also facilitate microtransactions, and (3) platforms provide services that diminish or manage the risks involved in market transactions (for example they address market failures such as incomplete information about the labor provider or the threat of cheating). Thus the digital platform has brought in a revolution of consumerism in India, its growth primarily propelled by a proliferation of internet access and mobile phones in recent years (Jaiswal et al. 2014). Life has become simpler through effortless access to services and doorstep delivery of the products at a competitive cost. Cab aggregators are one of the most noticeable forms of this economy. Companies like Meru Cabs (established 2006), Ola Cabs (established 2010), and Uber (began operations in India in 2013) cater to real-time demand by aggregating cabs for the customers (Shah, Verghese, Jana and Mathew 2020). With a steady rise in the urban population of India, there lies immense scope for the platform based cab aggregators to flourish.

The platform economy has opened up an opportunity for millions of labor who either have taken up part-time platform work to boost their income or even “fulltime” employment. However, this form of working has disrupted the way we knew work. It has dislodged the social and labor market protection due to the workers, thanks to the open-ended contracts. Platform companies are reluctant to recognize the workers as employees. This deprives them of all types of social security benefits. The workers also live under continued fear of unfair dismissal, being divested of minimum pay, being disregarded for unemployment benefit and pensions, being

1. This paper is a part of a larger project on Indian platform workers. An earlier version of this paper was scheduled for presentation and discussion at the 10th ILERA Asian Regional Congress (Philippines, Feb, 2020). However, the Congress was never inaugurated owing to the COVID19 pandemic.”

unable to organize or even bargain collectively (Broecke and Cazes 2019; Coiquaud and Martin 2020; Gyulavári 2020). Further, they are usually driven into fierce competition within themselves, compelling them to accept lower wages. This weakens the industry-wide role of collective agreements in adjusting working conditions, which may be perceived as ‘social dumping’ (Gyulavári 2020). A survey covering 1,100 ride-hailing drivers in the United States revealed that almost 75% of drivers earn less than the minimum wage in their State, while 30% of them make losses once the expenses for vehicles are included (Behrendt et al. 2019). Platform work also encourages a rapid pace of work without breaks. The lack of appropriate training further aggravates the risk of accidents. They are usually denied the right to paid sick leave. This increases the chances of illness and the risk of injury (Garben 2020).

Unfortunately, the consumer side of the platform economy has also not remained immune to despair. Feeney (2015) mentions numerous accounts of customers encountering unacceptable behaviors from the platform based cab drivers. For example, drivers have been accused of violating the personal space of passengers (like photographing them or sending them a friend request over social media), and inflict physical harm on them (such as kidnapping and assault, pp. 5–8). Women passengers have also accused the drivers of rape and sexual assault (Jaiswal et al. 2014). Typically, the platforms maintain that they are not to be held accountable for the misdeeds of their drivers. They argue that drivers are just another category of platform users and not employees (*Ibid.*). However, such an argument resonates as more reckless than legal and represents a myopic vision of the business. Dissatisfied customers would eventually switch their allegiance, which in turn would affect the business viability of the platform organization. Therefore, it is in the platform’s self-interest that they turn not a blind eye on the misdemeanor of the drivers. More importantly, it provides a necessary opportunity to reflect on the deeper causes of these transgressions or counterproductive work behavior (CWB).

We believe that the drivers resort to CWB when they perceive that the platform organizations violate their human rights. In the absence of adequate labor rights dedicated to the platform workers, we are compelled to relabel their collective rights as human rights at work. We are encouraged by Mantouvalu (2012), who suggest that the categorization of labor rights as human rights can be particularly beneficial for workers in non-standard work arrangements.

Accordingly, our paper wishes to identify the various types of human rights violations experienced by the drivers associated with the platform based cab aggregators. Towards that, we initially define the study variables and theorize the relationship between human rights and CWB. Next, we elaborate on the methodology, analysis, and findings. And finally, we discuss the study implications while suggesting recommendations for academic scholarship and practice.

## II. Theory and research question

### *Human rights in the business context*

The idea of human rights emerged from the ashes of World War II. In the year 1948, the UN General Assembly adopted the Universal Declaration of Human Rights. It is based on the principle that all human beings are born free and equal in dignity and rights. Every individual irrespective of their place of origin or identity, is entitled to some basic rights and freedoms, which are inviolable (Murphy and Vives 2013). These rights are not a privilege, and they cannot be granted or revoked. The Declaration lists down 30 articles, recognizing among other things, freedom from discrimination, right to life and liberty, freedom from slavery and servitude, freedom of movement, to take residence, and have a nationality (Brenkert 2016). It encompasses all basic civil and political rights as well as social, economic, and cultural rights.

The Declaration has the potential to serve as a lighthouse for appropriate business practices. According to its preamble, “*every individual and every organ of society, keeping this Declaration constantly in mind, shall*

strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction” (as mentioned in Clapham and Jerbi 2001). Business organizations cannot exclude themselves from being a part of society. Their activities influence the lives of the individuals. Accordingly, there exists a global debate that argues for businesses to adhere to human rights. In recognition of this, the UNHRC adopted the United Nations Guiding Principles (UNGP) in Business and Human Rights in 2011. The UNGP rests on three pillars that attempts to align business activities to human rights: (1) State’s duty to protect human rights, (2) corporate’s responsibility to respect human rights, and (3) access to effective remedies for business-related human rights abuse (Ruggie 2008).

There is an intense debate across forums on the definition of “respect” for human rights by a corporate entity. One aspect of this debate focuses on identifying a limited list of rights that the corporations would endorse. Ruggie (2008) argues that such a list would be expansive and not limited, for there exists few such internationally recognized rights today that businesses cannot impact. Hence, he asserts that a satisfactory way a corporation could operationalize “respect” is to ensure that they are “doing no harm” (*Ibid.*). Clarifying it further, he states that while governments delineate the limits of legal compliance, the “respect” by corporations is characterized by social expectations—“as part of what is sometimes called a company’s social license to operate” (*Ibid.*). He asserts that a lack of attention to this responsibility could expose companies to the courts of public opinion (which could include employees, communities, consumers, civil society, as well as investors), and infrequently to charges in the court of law.

Accordingly, Ruggie (2008) advises that to stay in the favorable side of public opinion, the corporations must exercise “due diligence,” i.e. steps they must embrace to become “aware of, address, and prevent adverse human rights impact” (*Ibid.*). Therefore as a beginning, corporations must study and comprehend the principles embedded within the international bill of human rights and the core conventions of the ILO, for they form the references against which they would be judged by other social actors (*Ibid.*).

Many scholars in the past had endeavored to distil these principles into meaningful categories. One such attempt by Donnelly and Howard-Hassmann (1988) had attempted to group the entire list of human rights to a theoretical framework comprising of four distinct clusters. We believe that their categorization provides a clear pathway through which all organizations, and not just corporations, could self-appraise their commitment and adherence to respect human rights. These include *the survival rights* (that encompasses the right to life and basic necessities to sustain life), *the membership rights* (it provides one the right to be treated equally in the society and provides shelter against discrimination), *the protection rights* (this ensures that there is no misuse of power by the State against the individual), and finally the *empowerment rights* (that imparts control to the individuals over their own life, by giving them the right to education, freedom of expression, practice religion, or peaceful assembly) (*Ibid.*). It may be noted here, that according to the Declaration, none of the (category of) rights are presumed to be more important than the rest. Further, these principles are universal, indivisible, and interdependent (*Ibid.*).

### **Counterproductive work behavior**

Employees may wilfully indulge in activities that can have an adverse effect on the organization and its stakeholders. Such employee behavior that goes against the intent or interest of the organization is labeled as counterproductive work behavior (CWB) (Gruys and Sackett 2003). This could come in various forms—tardiness, theft, workplace violence, bullying, absenteeism, withdrawal from work, knowledge hiding or hoarding, cyber loafing, ineffective performance, sabotage, or turnover (*Ibid.*).

Researchers have engaged in several attempts to explain the emergence of counterproductive work

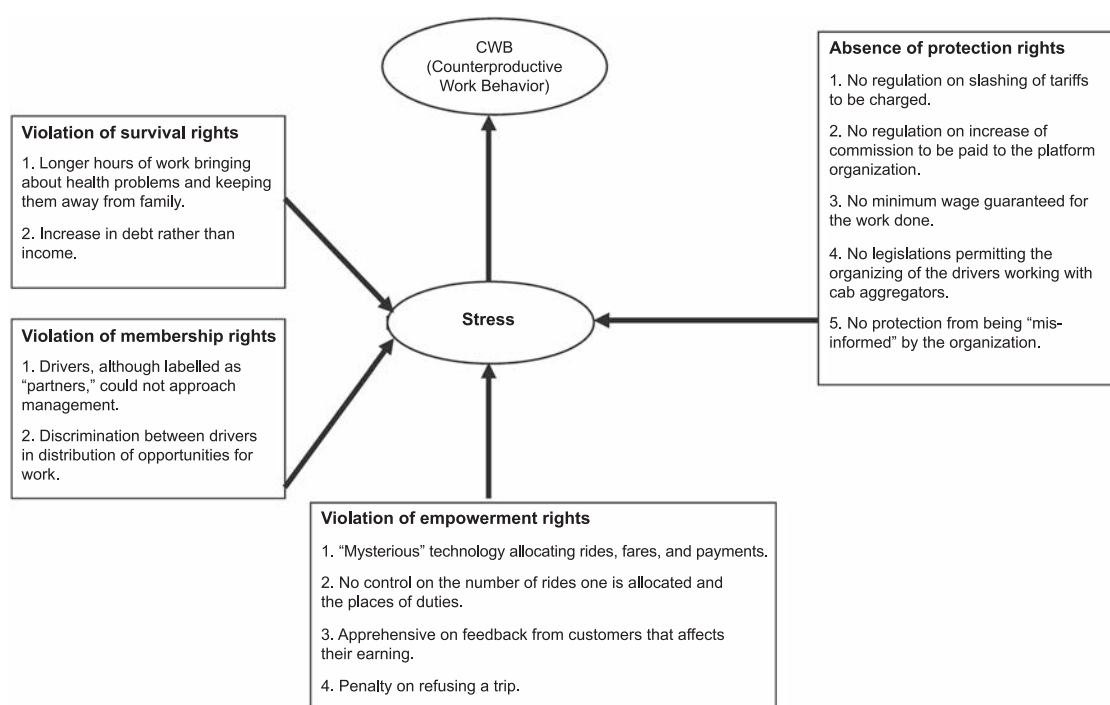
behavior. Some of the notable approaches include Martinko and Gardner's (1982) deliberation on learned helplessness that included organizational, individual differences and attributional variables; Folger and Skalicke's (1998) popcorn model that integrates situational variables, individual differences, and perceptions of injustice; Bennet's (1998) study on perceived powerlessness; Neuman' (1998) discussion on organizational factors leading to workplace violence; as well as O'Leary-Kelly et al.'s (1996) organizational motivated aggression model highlighting organizational variables (please refer Martinko, Gundlach and Douglas (2002) for a detailed review of all the theories). They also developed a causal reasoning model that is based on attribution theory, integrating situational variables and individual differences to explain the origin of counterproductive work behavior. The situational variables responsible for counterproductive work behavior may be stringent policies, competitive environment, leadership style, rules and procedures, economic conditions, reward systems, adverse working conditions, task difficulty, home life, and organizational culture (*Ibid.*). Further, the individual variables that may relate to counterproductive work behavior are negative affectivity, emotional stability, integrity, gender, attribution style, core self-evaluation, locus of control, self-esteem, self-efficacy, and non-neuroticism (*Ibid.*). Similarly, drawing from self-control theory, Marcus and Schuler (2004), in their study involving two organizations in Germany, tested 24 predictors of general counterproductive work behavior. They found that self-control, rationalization, pervasiveness, positive self-concept, and trust related negatively to the construct.

### ***Human rights and counterproductive work behavior: social exchange theory perspective***

Social interactions include a series of sequential economic and or social transactions between individuals (Emerson, 1976). All such transactions involve a process of reciprocity, and this exchange could be more or less rewarding or costing for one party than the other (Cropanzano and Mitchell 2005). The social exchange theory (SET) identifies that there is a definite interdependence in relationships due to this. The theory proposes that rewards gained and costs incurred from the series of exchanges help us to determine the worth of the particular relationship and which in turn allows us to decide whether to continue or terminate the relationship (Cropanzano et al. 2017).

Social exchange relationships naturally flourish if employees perceive that their employers tend to their needs and care about them. This, in return, would lead to positive consequences. (Cropanzano and Mitchell 2005). Fair transactions at the workplace among people foster strong relationships, which engenders positive employee attitude, is mutually rewarding, and enhances overall productivity (*Ibid.*). On the contrary, when employees face work stressors, they resort to counterproductive work behavior, which makes the case of an unpleasant social exchange (Spector and Fox, 2010). Under the framework of social exchange theory, this stress is known to be an outcome of an imbalance perceived between the effort that is made and the reward that is received. (Siegrist, Peter, Junge, Cremer and Seidel 1990) This imbalance created due to an unreasonably demanding job and incommensurate rewards received, becomes an antecedent to counterproductive work behavior. The incommensurate rewards could come in varied forms, low esteem rewards (like less respect and support, low income, and low status), poor promotion prospects, employment insecurity, etc. (*Ibid.*).

Based on SET, we reason that the counterproductive work behaviors displayed by the drivers partnered with taxi aggregators in India are a consequence of human rights violations perceived by them. The Universal Declaration of Human Rights argues that all human beings belong to a single global community and that every individual has moral ties and responsibilities towards all (Brown 2016). The foundation of the Declaration rests on the concept of human dignity, which in turn is the basis of "freedom, justice, and peace." We believe that taxi drivers feel an absence of dignity in their relationship with management. They feel marginalized, ignored, and avoided, with the management unavailable and reluctant to listen to their grievances. Strung to a relationship of unequal reciprocations, they may feel stressed. However, they remain forcibly coupled to the



Source: Compiled by the authors.

Figure 1. Human rights and CWB—Theoretical framework and findings of the research

organization owing to their enormous investments, lack of alternative opportunities, as well as a lack of skill variety. It may be difficult on their part to terminate the relationship. Consequently, they may subscribe to maladaptive coping methods, which in turn may manifest as counterproductive work behavior. Our argument is consistent with past findings. For example, through a study on a military sample, Tucker et al. (2009) found that indiscipline is a distal outcome of stress. Similarly, Clercq, Haq and Azeem (2019) suggested that counterproductive work behaviors could result when employees perceive insufficient time to do their jobs. Figure 1 summarizes our theoretical framework.

Accordingly, if the organizations desire that the drivers desist from engaging in CWB, they need to restore their dignity. This, in turn, requires adherence to human rights by the management. Therefore, we ask the following question to anchor this study:

*Research Question (RQ): What are the human rights violations experienced by the drivers partnering with platform-based taxi aggregators?*

### III. Methodology

#### *Research design and data*

We decided to employ a qualitative research method in this research. Investigations concerning human rights violations by corporations are limited in India. Therefore we seek to identify the variables and concepts that could be the likely causes. Since qualitative research is concerned with developing concepts rather than applying pre-existing concepts (Wilson 2006), we believe this is appropriate for this study.

We studied the description of four strikes (March 2017, January 2018, June 2018, and October 2018), where the drivers working with the cab aggregators participated in Chennai. These strikes were detailed in “*Thozhilalar Koodam*,” a media website dedicated to the cause of the working class. Four reports

corresponding to each of the strikes were considered for this research: the strike of March 2017 (was reported March 4, 2017); the strike of January 2018 (was detailed on January 8, 2018); the strike of June 2018 (appeared in print on June 25, 2018); and the strike of October 2018 (was reported on October 31, 2018).<sup>2</sup> There were five reasons for resorting to this website for the data. First, in the absence of a dedicated union of platform-based cab drivers, we had little access to them for interviews. Second, the popular newspapers in India did not cover the strikes extensively. Third, the articles in the website contain extensive quotations from the drivers, which helped us comprehend the issues better. Fourth, there exists a barrier in the form of language. Most of the drivers are not conversant in English and Hindi. This makes conversations between them and the researchers a discontinuous and stressful process. As a result, there is little cooperation from them in participating in the interviews. Finally, the drivers are continuously engaged on duty or waiting for a booking. They feel little economic benefit in sparing time for being interviewed.

### Analysis

Each of the selected documentation of the strike was subjected to individual and collective scrutiny. They were read, reflected upon, and re-read in an effort to assimilate their messages. After that, we analyzed the data as follows.

We arranged the data into segments of material based on an organizing system derived from the human rights conceptualization (Donnelly and Howard-Hassmann 1988). Specifically, each of us independently studied every line of the four strikes carefully while asking ourselves the following question, “*Which incident/event/experience qualifies as a human right violation?*” Accordingly, we categorized the data either under the following themes: *violation of survival rights*, *violation of membership rights*, *absence of protection rights*, and *violation of empowerment rights*. Frequent discussions intervened in this exercise, often making us revisit the text to comprehend the context of the extracted incident/event/experience. This also helped us gain additional clarity before categorizing an incident/event/experience under a human rights construct. We continued this exercise until all the incidents/events/experiences got arranged.

## IV. Findings and discussion

In this section, we present and discuss our findings in light of the research question for this study. We also provide representative evidence in support. However, it may be noted that our results are exploratory and are not representative of all the drivers partnering with the cab aggregators across cities. Figure 1 summarizes our findings.

### *What type of rights are perceived to be violated by the drivers?*

It may be recalled that according to the social exchange theory, stress results when individuals perceive an imbalance between their efforts and rewards (Siegrist, Peter, Junge, Cremer and Seidel 1990). When such

2. The strike on March 2017 was called by Ola and Uber drivers affiliated to Federation of Chennai Call Taxi Unions (CITU, AMOM, TDTUC and TADWA Chennai) for two days (i.e. March 6 and 7). Protesting in front of the Transport Department office, they raised issues such as guaranteed wages, overtime, employment conditions, and lack of redressal mechanisms. The strike on October 2019 was called by drivers belonging to number of driver associations affiliated to CITU, *Urimai Kural* (Rights Voice), *Vazhvirimai Ottunar Thozhil Sangam* (Livelihood Rights Driver's Trade Unions), and *Thozhargal Car Ottunar Amaipuchara Thozhil Sangam* (Comrade Unorganized Car Drivers Trade Union). Sitting in protest at Chepauk, Chennai, they raised slogans against fare control by the taxi aggregators, the contractual terms, and a flawed incentive system. Further, the strike on January 2018 was a one day affair in Chennai that was joined by almost 700 drivers. Raising angry slogans, the drivers blamed the State and Central Governments of being unconcerned of their welfare. The unions demanded regulation of fares, provision of restrooms and toilet facilities, as well as immunity from penalty for drivers who work beyond 8 hours. Finally, around thousand drivers participated in the fourth strike that spanned for two days in June 2018 (i.e. June 21 and 22). They had two demands: fare revision, and reduction of the commission deducted from the fare.

imbalance remains unaddressed in a transaction, it could be perceived as a violation of one's human rights and may result in stress. Individuals, helpless in decoupling themselves from such imbalances, could resort to counterproductive work behavior.

The perceived human rights violations that we identified from our research are as follows:

### **(1) Violations of survival rights**

Our research revealed that one of the primary complaints of the drivers was that their work involved long hours on the road, which affected their health as well as family life. They lamented that such working conditions are unsustainable in the long run. They feared that *".....after one or two years of working like this, everyone will develop major health problems."* For earning *"Rs 1,000–Rs 1,500 per day, they would have to spend almost 14 hours on the road."* They wondered, *"Aren't we human? Wouldn't we also want to spend time with our wives and children?"*

Further, drivers felt driving the cab was not adequately remunerative for leading a life of dignity. They felt that the companies are remaining competitive by exploiting them. Someone remarked, *"Onions are priced at Rs. 50 per kilo today and we are driving our cab for Rs. 6 per km. How does this make sense? Do customers not wonder how we eat and live? We may as well change our work from Call Taxi to Free Taxi."* Consequently, most of the drivers are in debt. They are struggling to repay the EMIs (equated monthly installments) for the loans they had taken to purchase their cars. Added to that, the companies deduct taxes and their fees from their daily earnings. Diesel expenses add to further reduction of earnings.

### **(2) Violations of membership rights**

We found that drivers often felt discriminated by the management in terms of approachability and opportunity for work. For example, there is a feeling that *"preference is given to the drivers who lease the car from [the company's] subsidiary.....by giving the drivers of leased cars longer rides, while car owners are given shorter rides."* Also, drivers felt that one of the companies *"favored business entities owning a fleet of cars who operate their fleet by employing drivers as daily wage workers."*

Further, the drivers, though seen as *"partners and not workers,"* find it difficult to bridge the power distance in their daily experience with the management. The drivers had little access to the management of the companies for *"airing their complaints."* They feel unwelcome whenever they visit to one of the company's offices, which they liken to a *"prison complex"* with an *"intimidating atmosphere."* Negotiating with a half a dozen security personnel, they are only allowed to enter the premises as individuals and not as a group.

### **(3) Absence of protection rights**

The protection rights stem from the State's commitment to protecting the human rights of its citizens (Ruggie 2008). No business entity can violate these. However, in the absence of these rights, there is a likelihood that the employees could suffer from exploitation. Based on our research, we believe that many problems encountered by the drivers could be traced to this absence of protection rights.

One of the repeated concerns that surfaced during every strike is the relentless slashing of fares by the companies to maximize their market shares. Unlike autorickshaws, there is an absence of a legal framework that regulates the fares of the app-based taxis. In the initial years, the companies offered the drivers a minimum of Rs. 16 per kilometer. During the strikes of 2018, the fare offered was just Rs. 6 per kilometer while the Government-mandated minimum rate for the autorickshaws was Rs. 12 per kilometer. On the other hand, the commission charged by the cab aggregators is only climbing north. The Transport Department expressed its helplessness in helping the drivers. It remarked that the taxis affiliated with the cab aggregators are licensed as tourist vehicles, which makes them beyond the purview of laws regulating taxi and auto tariffs.

The drivers were also worried that little action is being taken against the companies for luring them with false promises. Many had migrated from occupations such as farming in order to capitalize on this “*dream machine*.” They were promised an income up to Rs. 80,000 per month. Even a few claimed to have seen advertisements in newspapers “*claiming that we could make Rs 50,000 or more per month*.” These individuals used to be previously employed with smaller tourists and travel companies. Many had sold their lands to invest in cars. By March 2017, they were “*struggling to make even Rs. 15,000 per month*.” For drivers who migrated from autorickshaws, they were “*guaranteed*” Rs. 6,000 per day with just ten trips. However, they are finding it equally difficult to make ends meet.

Since the drivers are not “employees,” they are unable to aggregate formally as a union to voice their demands with the management. Therefore, they affiliate themselves with other unions that enjoy political patronage. However, this makes them relatively powerless in times of strikes. For example, in October 2018 strike, the police arrested the protestors and “*detained them for couple of hours at a marriage hall in Pudupet*.”

#### (4) Violation of empowerment rights

Although the companies position themselves as the ones enabling entrepreneurship, yet the drivers believe this advocacy as “*clearly deceptive*.” Every significant activity in the business like “*payment, ride allocation, etc. are decided unilaterally by the company using technology*.” Further, the fare rates, incentive schemes, and mode of payments may alter any given day. Drivers have little control over “*what ‘scheme’ awaits them each morning*.”

The drivers had little say on the number of rides they are assigned, which in turn affected their earnings. One driver remarked, “*There was a time that I worked 14–15 hours a day and somehow managed to complete 53 trips. I waited hoping that I will be assigned the last trip [to meet the target post which an incentive would be paid] but it never came and the deadline was over*.” This makes them stay on the road for long, with many spending the nights in their cars.

The drivers expressed their misgivings on the feedback ratings provided by the customers. Customers are only allowed to book another ride once they have provided their feedback on the previous ride. It is observed that customers do not give feedback at the end of the service, but at the beginning of the next service, which may not occur soon. Therefore, drivers are apprehensive that customers may rate them thoughtlessly, which may affect the number of rides assigned to them. Further, they are also penalized for refusing a trip.

## V. Discussion

The platform is the most identifiable business model in the Fourth Industrial Revolution (4IR). Comprising of a two-sided digital market, they employ networks, data, and information to create an operative environment for companies (Surie 2019). However, in pursuit of technological innovation, platform organizations have ignored the concerns of their service providers. Masking underneath the veil of legal interpretation, they have resolutely crossed the lines respecting human dignity in many instances. With market share driving the show, mannerisms have taken a backseat. Unfortunately, the repressed frustration of the drivers finds a release on the unsuspecting customer. Misbehavior towards customers, not limited to violence and harassment, has therefore become commonplace in many of the platform organizations. Especially it has reached a heightened level in the case of platform-based cab aggregators in India. Accordingly, in this research, we investigated the various violations of human rights experienced by the cab drivers associated with the platform economy in the country. Using social exchange theory, we reasoned that drivers’ experienced breach of human rights leads to stress, resulting in counterproductive work behavior.

### *Contribution to theory*

Our study contributes to theory in three ways. First, it validated previously reported findings on the human rights violations experienced by the platform based cab aggregators in India and elsewhere. Specifically, our study confirmed that cab drivers suffer from depleted earnings, longer working hours, arbitrary delisting, as well as regulatory and situational ambiguity that prohibits them from organizing (Surie 2019; Sharma 2019; Broecke and Cazes 2019; Coiquaud and Martin 2020; Gyulavári 2020). Second, our study aggregated the previous and new findings into a conceptual framework of human rights. We believe this accentuates the meaningfulness of the results and elevates the seriousness of the misfortunes suffered by the drivers. It also provides a promising overarching framework for future scholars to summarize their findings, thus contributing to a disciplined development of the literature. Finally, we argued a theoretical link between counterproductive work behavior and human rights violations based on social exchange theory. We believe this could prove a ready tool of interpretation for many undesirable behaviors and workplace deviance observed in the workplace.

### *Contribution to practice*

Our research suggests two policy initiatives. First, the government must recognize the emergence of such a workforce and release them from a definitional ambiguity. A definition would assist in solidifying their identity, which in turn would make them capable of demanding and realizing their rights. Scholars have argued in multiple forums that the platform workers must be recognized as “employees,” much to the chagrin of the platform organizations (e.g. Lobel 2016). The government must heed to this argument to legally empower the workers. It would enable these workers to organize and authoritatively negotiate. It would help consolidate the workers’ demands rather than splitting their voices into multiple incoherent murmurs. Such a move would be consistent with the ILO Declaration (1998).<sup>3</sup> Last, the platform organizations must attempt to go beyond the transactional model their business subscribes to. Individuals cannot be expected to drive a car forever. They need to see growth and are in search of personal meaning. Therefore, platform organizations must envisage a career plan for their workers. An opportunity to grow can balance the need to organize and may reduce the engagement of the drivers in counterproductive work behaviors. It can also enhance the workers’ commitment to heighten customer satisfaction.

### *Limitations and future research directions*

Our study suffers from two principal limitations. First, our source of data is secondary, which raises concern on its neutrality. Further, since the media website (*Thozhilalar Koodam*) from where we sourced the data is dedicated to the working class, it may be reasoned that the data could be ideologically colored. Second, our study was contextualized on the drivers working with the platform organizations. Hence, one must exercise caution in extrapolating the findings to other platform workers (like food delivery apps, grocery delivery apps, etc.). Future research may focus on actual interviews of platform workers as well as the management of platform organizations. Researchers may also attempt to cross-validate our findings by investigating a variety of platform organizations.

3. The Parliament of India recently reformed the labor laws in interest of ease of doing business. It classified 29 existing Central labor laws to four labor codes—The Wage Code (2019); the Industrial Relations Code (2020); the Occupational Safety, Health and Working Conditions Code (2020); and the Code on Social Security (2020). Only the Code on Social Security (2020) includes the phrase “platform work.” It is defined as “a work arrangement outside of a traditional employer employee relationship in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services or any such other activities.” The Code on Social Security (2020) assures that the Central Government would formulate and notify social security schemes specific to platform workers. Specifically, the schemes would cover the worker’s life and disability, would provide insurance against accidents, assure health and maternity benefits (including crèche), as well as provide for old age protection. Platform workers are still excluded from other codes, especially from the Code of Wages and The Industrial Relations Code. This jeopardizes their right to organize and to secure a minimum wage.

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# Working Conditions of Crowdworkers: How Working Conditions of Crowdworkers Vary by Job Content

Itaru NISHIMURA

- I. Introduction
- II. The term “crowdworker” in this article
- III. Work style characteristics in quantitative terms
- IV. Qualitative characteristics of work that CWs are engaged in
- V. Where skills are acquired
- VI. Job satisfaction
- VII. Conclusion

## I. Introduction

This article presents an overview of the form of employment known as “crowdwork,” based on existing data. Eurofound (2015) lists 11 work styles, and positions them along the two axes of “employment / self-employment” and “traditional employment relationships / new work styles.” Among the 11 types is “crowd employment” described as a new type of work style that departs from traditional employment characteristics such as working in a predetermined place or for a predetermined time.<sup>1</sup>

Some argue that this new work style cannot be classified as either employment or self-employment. Harris and Krueger (2015) point out that workers in the gig economy have aspects of both independent contractors and employees. They state that while such workers have qualities of independent contractors in that they are free to work when, and as much as, they want to work on their own initiative, but also those of employees in that the mediation of certain internet-based apps is integral to both securing orders and managing their work. In addition, they propose establishment of a new legally recognized category of “independent workers” as an intermediate form of work between employee and independent contractor.

Much remains to be ascertained about the work styles of crowdworkers (referred to below as “CW”), who are said to have the characteristics of both independent contractors (referred to below as “IC”) and employees. RENGO-RIALS (2017b) points out that part-time CWs have lower income and lower job satisfaction than full-time CWs. In addition, RENGO-RIALS (2017a) and Yamamoto (2018) describe the circumstances of CWs in Germany, and point out that many are workers or students engaged in crowdwork as side jobs. The Japan Institute for Labor Policy and Training (JILPT) (2019) points out that many female CWs are engaged in side jobs, and many are classified as “clerical workers.”

However, many realities of the CWs work style remain unclear. For this reason, this article draws on surveys conducted by JILPT in discussing relationships between the job characteristics and the work styles of CWs. The article focuses on typical features of CWs’ job content, and describe how the work styles of CWs vary by job content. What kind of differences (or similarities) in work styles exist between CWs performing tasks considered very scarce, in markets where others are unlikely to be able to imitate them, and those performing common tasks in markets where many people can do the same work? Although this article only points out the features of the CW work style, even partial clarification of the work style of CWs, the reality of which is little understood, seems to be a significant endeavor.

1. In addition, “portfolio work,” “collaborative employment,” and “ICT-based mobile work” are described as work styles with similar characteristics.

The structure of this article is as follows. Section II gives a definition of “CW” as used in the article, and explains classifications of the features of job content. Section III verifies quantitative aspects of work style (amount of compensation and number of days worked). Section IV verifies qualitative aspects of work style (business relationships). Section V discusses where skills required to work as a CW are acquired. Section VI focuses on job satisfaction. Section VII summarizes the features of CWs elucidated by this article.

## II. The term “crowdworker” in this article

### (1) Definition of “crowdworker”

The data used herein is from “Questionnaire on Your Job” conducted by JILPT in 2017.<sup>2</sup> This was a web monitor survey, and the subjects were those who “worked and earned income as self-employed workers, freelance workers, independent contractors, or crowdworkers for one year during 2017.”<sup>3</sup> They were asked about matters including amount of compensation, working hours, number of business relationships, nature of these relationships, how they acquired necessary skills, etc.

Among the questions, respondents were asked to select only those that apply from the following (multiple answers possible): “1. I deal directly with business operators,” “2. I deal directly with general consumers,” “3. I do business through an intermediary company,” “4. I do business through a crowdsourcing company.”

For the purposes of this article, people who selected only “4. I do business through a crowdsourcing company” are considered CWs (n=1068). In other words, in this article people who receive orders for self-employed work only through crowdsourcing companies are CWs.

### (2) Job characteristics

This article focuses on the qualitative characteristics of work that CWs are engaged in, and divides the contents of crowdwork into the following two categories. One consists of tasks that other people can easily imitate, and the other of work that others cannot easily imitate. In this article, CWs engaged in work that other people cannot imitate are described as “CWs engaged in work with a high degree of scarcity (referred to below as ‘high-scarcity CWs’),” and those engaged in work that others can easily imitate are described as “CWs engaged in work with a low degree of scarcity (referred to below as ‘low-scarcity CWs’).”

The questionnaire contained a question asking respondents to choose on a gradation from “A. I did a lot of work that only I could do” to “B. I did a lot of work that other people could do,” with the options being “Closer to A,” “Closer to A than to B,” “Closer to B,” and “Closer to B than to A.” Based on this question, respondents closer to A (who chose “closer to A” or “closer to A than to B”) are considered CWs engaged in work with a high degree of scarcity (high-scarcity CWs.) Those who chose “Closer to B” or “Closer to B than to A” are considered CWs engaged in work with a low degree of scarcity (low-scarcity CWs).

Table 1 shows profiles of the respondents. First, regarding the characteristics of CWs among ICs who responded, many were female and many were young. Many were not primary wage earners in their households. Many were engaged in side jobs as well, and their primary jobs often consisted of office-related work. Examination of CWs by type reveals that “high-scarcity CWs” are more likely to be male than “low-scarcity CWs,” and many of the former are responsible for their livelihoods. There are also many for whom crowdwork is their primary job. In these cases primary job contents tended to be non-office work tasks such as “design / video production-related,” “IT-related,” “specialized work-related,” “life-related services / barbershops / hair-dressing and beauty salons,” or “tasks at manufacturing plants, construction work sites, etc.”

2. The survey period was December 15–26, 2017.

3. However, this excludes (1) those engaged in agriculture and forestry, (2) those who employ other workers, and (3) individual shopkeepers.

Table 1. Respondent profiles

(%)

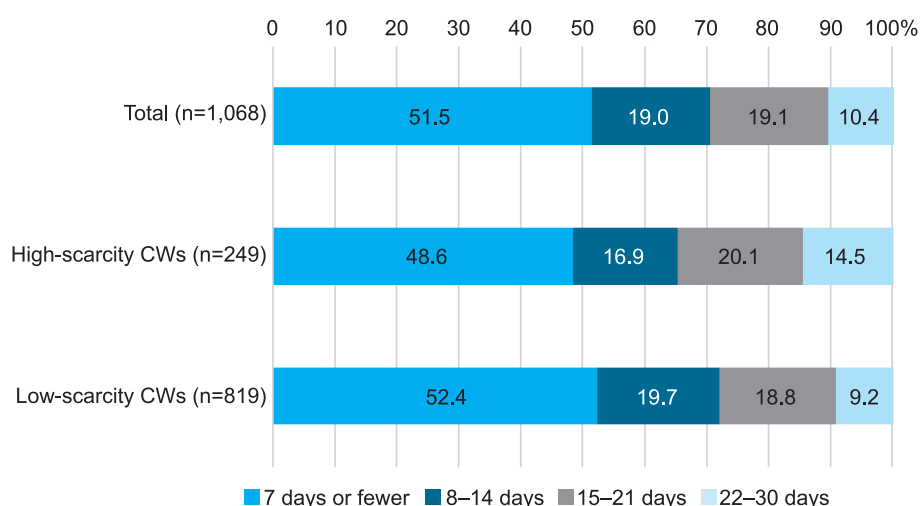
		Overall	All crowdworkers	High-scarcity CWs	Low-scarcity CWs
n		8,256	1,068	249	819
Gender	Male	62.9	43.7	58.6	39.2
	Female	37.1	56.3	41.4	60.8
Age	15–24 years old	1.1	2.7	3.2	2.6
	25–34 years old	15.2	31.8	23.3	34.4
	35–44 years old	26.0	34.1	38.6	32.7
	45–54 years old	28.0	21.0	20.1	21.2
	55–64 years old	18.0	7.7	10.4	6.8
	65 years old and over	11.6	2.7	4.4	2.2
Education	Junior high / high school diploma	21.0	20.2	19.8	20.2
	Vocational school / specialized training college diploma	10.6	11.2	10.5	11.4
	Junior college or technical college degree	13.6	13.8	13.0	14.1
	University degree	47.7	49.4	49.4	49.4
	Post-graduate degree	6.9	5.3	7.3	4.7
	Other	0.1	0.1	0.0	0.1
Marital status	Never married, divorced, or spouse has died	39.1	36.2	36.9	36.0
	Married	60.9	63.8	63.1	64.0
Primary wage earner	Self	54.8	40.1	50.2	37.0
	Self and other household member	23.7	22.6	26.1	21.5
	Other household member	20.7	37.0	23.3	41.1
	Other	0.9	0.4	0.4	0.4
Crowdwork as main job vs. side job	Main job	49.5	26.6	30.9	25.3
	Side job	50.5	73.4	69.1	74.7
Primary work contents	Office-related work	18.9	54.9	32.5	61.7
	Design / video production-related	8.9	6.0	11.2	4.4
	IT-related	8.5	6.8	9.6	6.0
	Specialized work-related	39.6	20.3	29.3	17.6
	Life-related services / barbershops / hair-dressing beauty salons	9.0	3.1	4.0	2.8
	Tasks at manufacturing plants, construction work sites, etc.	15.2	8.9	13.3	7.6

Source: Prepared by the author.

### III. Work style characteristics in quantitative terms

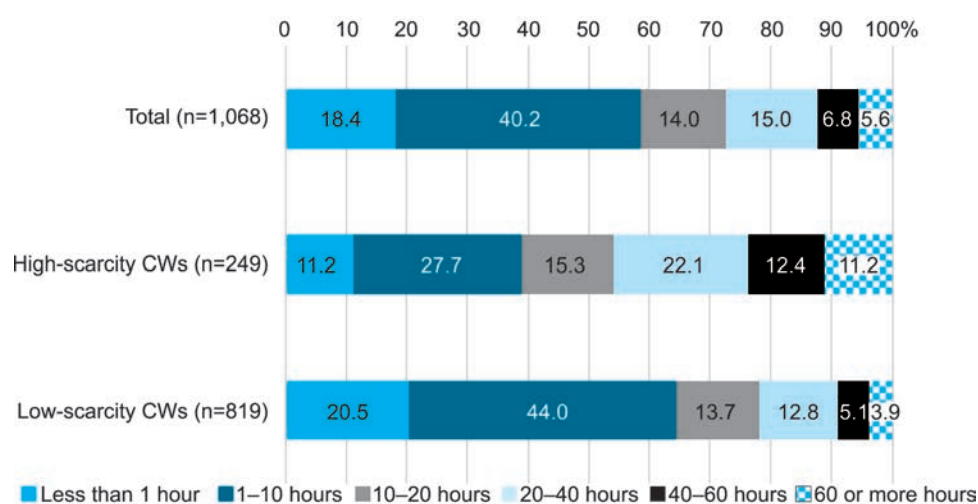
This section outlines the number of days worked by CWs, their hours worked, and their compensation received. First, Figure 1 shows the number of days worked. Here it can be seen that “high-scarcity CWs” work more days per month than “low-scarcity CWs.” Next, Figure 2 shows hours worked. Here it can be seen that “high-scarcity CWs” work more hours per week than “low-scarcity CWs.” From the above, it is evident that “high-scarcity CWs” work more.

Second, Table 2 shows compensation received during the year. Here it can be seen that “high-scarcity CWs” received higher compensation than “low-scarcity CWs.” 15.2% earned 4 million yen or more, and 8.0% earned 8 million yen or more. While it is not shown in the table, the percentage of all ICs including those other than CW who earned 8 million yen or more was 6.8%. This suggests that some of “high-scarcity CWs” earn relatively high compensation among ICs in general.



Source: Prepared by the author.

Figure 1. Crowdworkers' average number of days worked in one month



Source: Prepared by the author.

Figure 2. Crowdworkers' average number of hours worked in one week

Table 2. Crowdworkers' annual compensation amount

	n	Less than 500,000 yen	500,000-1 million yen	1-2 million yen	2-4 million yen	4-6 million yen	6-8 million yen	8 million yen or more	Total (%)
Total	1,068	82.1	6.5	3.6	2.9	1.8	0.7	2.4	100
High-scarcity CWs	249	58.2	11.2	6.4	8.8	5.2	2.0	8.0	100
Low-scarcity CWs	819	89.4	5.0	2.7	1.1	0.7	0.4	0.7	100

Source: Prepared by the author.

#### IV. Qualitative characteristics of work that CWs are engaged in

This section describes CWs' business relationships with requesters. The questionnaire contains a question asking about business relationships between CWs and requesters (i.e., those to whom CWs actually provide services). Here, this refers to "requester (client)" (shown in the right circle in Figure 3) for whom CWs provide services directly.

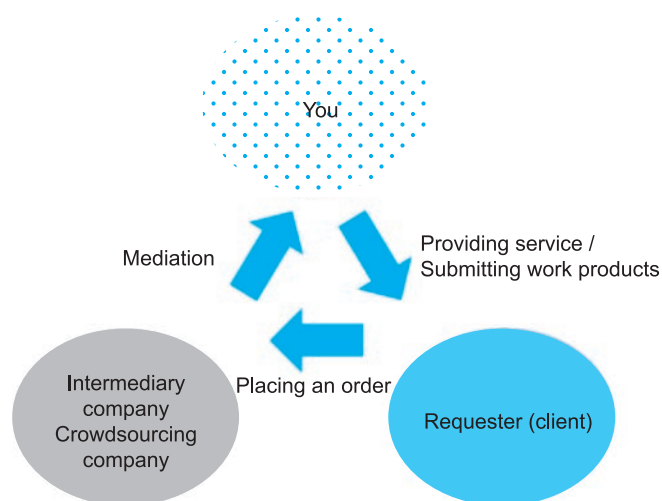
Figure 4 shows how details of contracts are determined. Here it can be seen that "high-scarcity CWs" communicate more with other parties with whom they have business relationships when deciding the contents of a contract than "low-scarcity CWs." Also, the percentage of decisions made in accordance with the rules of third parties (crowdsourcing companies or intermediaries) is low. It is evident that "high-scarcity CWs" tend to negotiate directly with requesters (clients) with whom they have business dealings when deciding contract details.

Then, after the contents of contracts are decided, what kind of business relationships are CWs involved in? Figure 5 to 7 show the frequency of instructions received from requesters (clients) with whom CWs have business dealings. Figure 5 shows the presence or absence of instructions regarding contents of jobs, Figure 6 shows the same regarding number of days and hours worked, and Figure 7 the same regarding where work is done.

First, among job contents, work days and hours, and work locations, instructions are least likely to be received regarding work locations, and most likely to be received regarding job contents. Next, more than half of both "high-scarcity CWs" and "low-scarcity CWs" work without receiving instructions. Regarding job contents, it seems that instructions are received at the same frequency regardless of the characteristics of the work. On the other hand, regarding days, hours, and locations of work performed, "high-scarcity CWs" are instructed by those with whom they have business dealings more often than "low-scarcity CWs." Compared to "low-scarcity CWs," "high-scarcity CWs" show a tendency to receive instructions regarding work days, hours worked, and work locations.

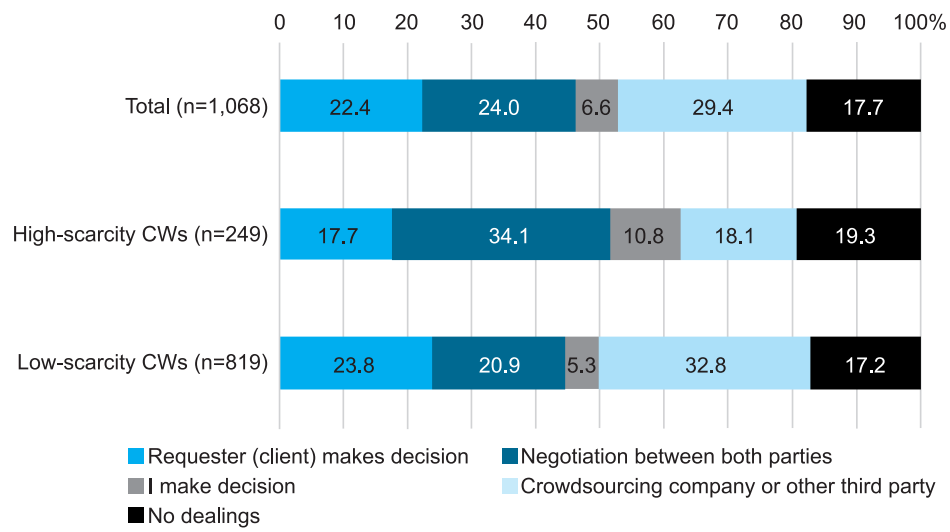
##### Example

"Please respond with regard to requesters (clients) indicated in the right circle below."



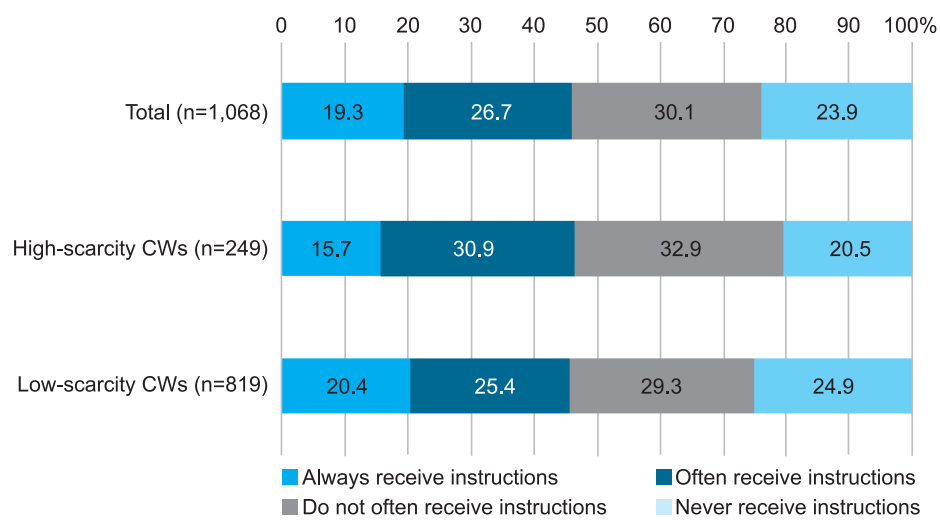
Source: Prepared by the author.

Figure 3. Business relationships with requesters (clients)



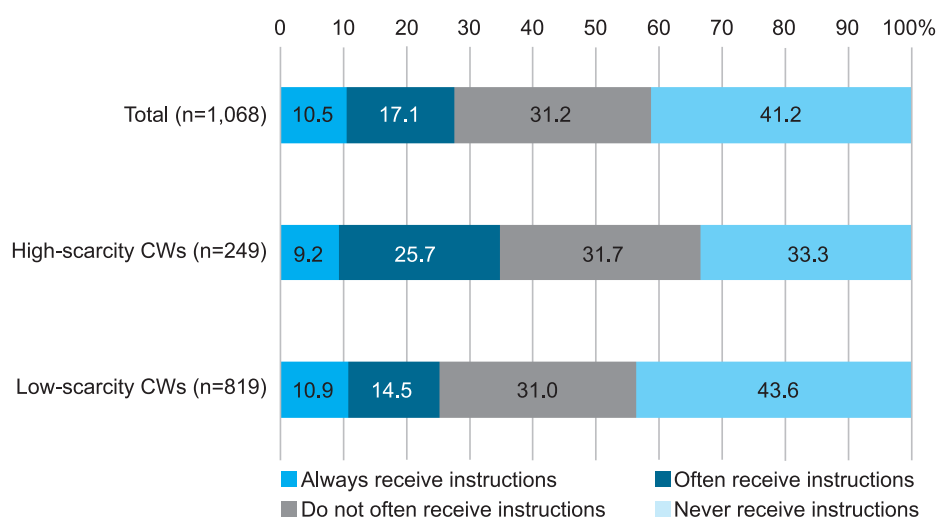
Source: Prepared by the author.

Figure 4. Business relationships and means of deciding contract details



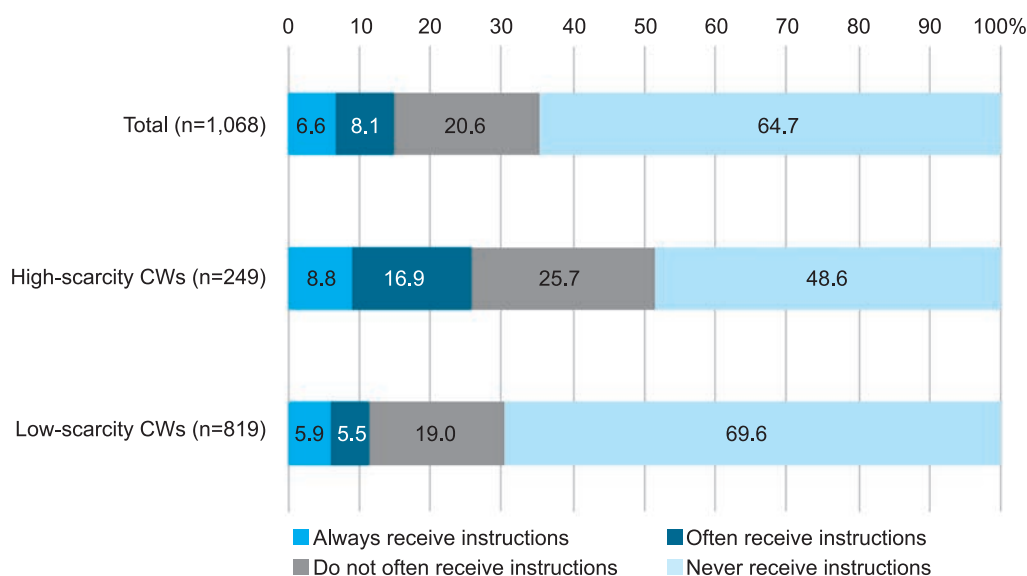
Source: Prepared by the author.

Figure 5. Presence or absence of instructions in business dealings (job contents)



Source: Prepared by the author.

Figure 6. Presence or absence of instructions in business dealings (work days and hours)

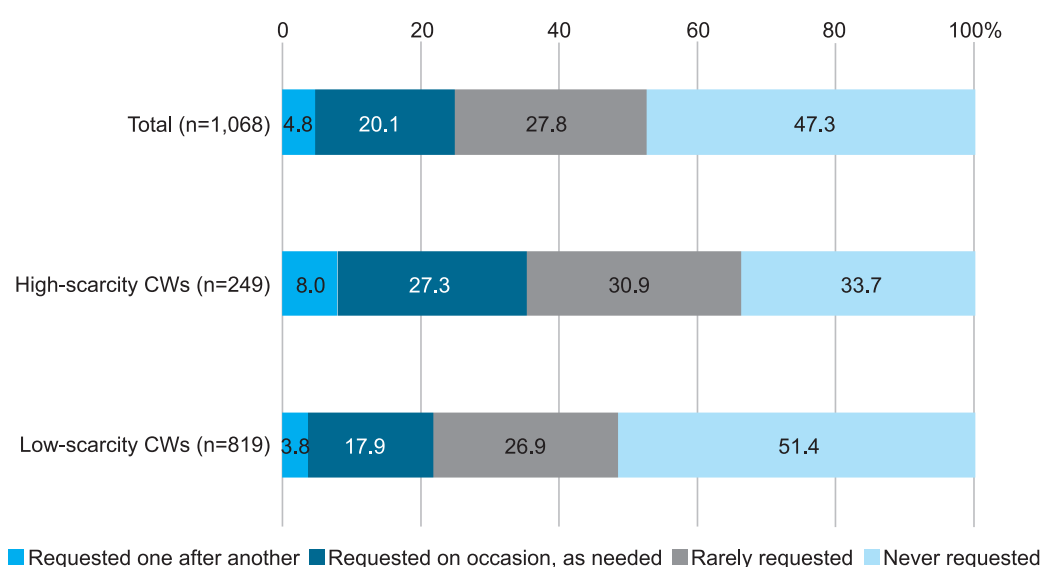


Source: Prepared by the author.

Figure 7. Presence or absence of instructions in business dealings (work location)

Next, how often were CWs asked for progress reports during work? Figure 8 shows that “high-scarcity CWs” are more frequently asked for progress reports in the course of business dealings than “low-scarcity CWs.”

From the above, it is evident that “high-scarcity CWs” are more likely than “low-scarcity CWs” to receive instructions or be requested to report on progress in performing tasks.



Source: Prepared by the author.

Figure 8. Frequency of requests for progress reports in the course of business dealings

## V. Where skills are acquired

In Sections III and IV, we examined the characteristics of CWs' work styles. Then, how did they gain the skills needed to work as a CW? According to Table 3, 50% of CWs answered that they acquired skills "nowhere in particular." Specific items that ranked highly were "experience, training or study sessions at a company" and "through related books and other materials." By type, "high-scarcity CWs" were more likely to have acquired the necessary skills somewhere than "low-scarcity CWs," and a lower percentage of "high-scarcity CWs" responded "nowhere in particular" than their low-scarcity counterparts. "High-scarcity CWs" tended to have acquired the necessary skills through "experience, training or study sessions at a company," "through related books and other materials," "correspondence courses or online courses," "study sessions with peers, seminars, and other information exchange."

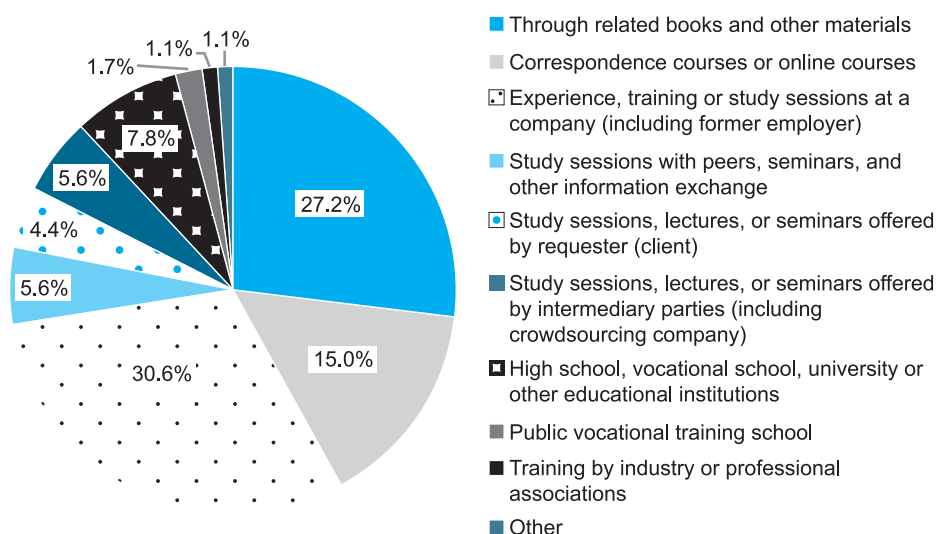
For "high-scarcity CWs" that acquired the necessary skills in some way, in terms of the most useful sources

Table 3. Where necessary skills are acquired (MA)

		(%)		
	n	Total [1,068]	High-scarcity CWs [249]	Low-scarcity CWs [819]
Through related books and other materials		19.8	27.7	17.3
Correspondence courses or online courses		10.1	18.5	7.6
Experience, training or study sessions at a company (including former employer)		20.5	28.5	18.1
Study sessions with peers, seminars, and other information exchange		4.5	10.8	2.6
Study sessions, lectures, or seminars offered by requester (client)		2.2	4.8	1.5
Study sessions, lectures, or seminars offered by intermediary parties (including crowdsourcing company)		4.6	6.0	4.2
High school, vocational school, university or other educational institutions		6.3	9.2	5.4
Public vocational training school		1.7	1.6	1.7
Training by industry or professional associations		1.2	2.8	0.7
Other		0.7	0.8	0.6
Nowhere in particular		50.0	27.7	56.8

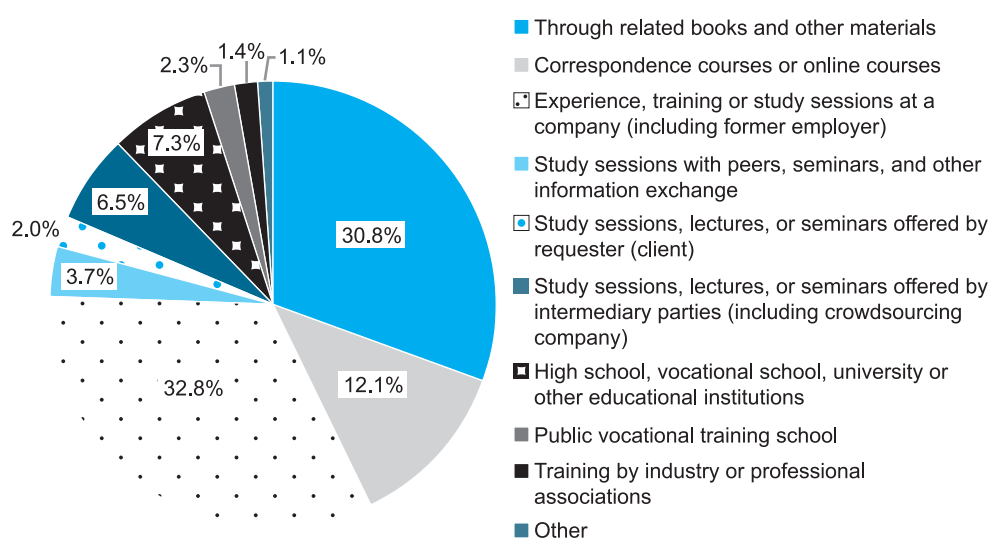
Source: Prepared by the author.

of skills, “experience, training or study sessions at a company” (30.6%) was highest, followed by “through related books and other materials” (27.2%) (Figure 9). Similarly, for “low-scarcity CWs” who acquired the necessary skills in some way, when asked where the most useful skills are acquired, the highest percentage responded “experience, training or study sessions at a company” (32.8%), followed by “through related books and other materials” (30.8%) (Figure 10). Based on these results, it is evident that companies are the most common places for CWs to acquire necessary skills in some way.



Source: Prepared by the author.

Figure 9. Most useful source of skill acquisition (high-scarcity CWs (n=180))



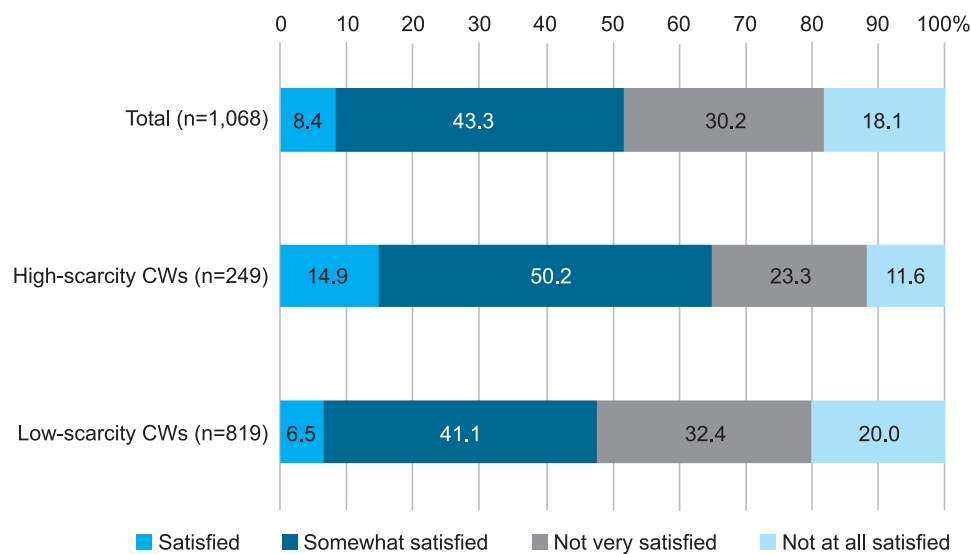
Source: Prepared by the author.

Figure 10. Most useful source of skill acquisition (low-scarcity CWs (n=354))

## VI. Job satisfaction

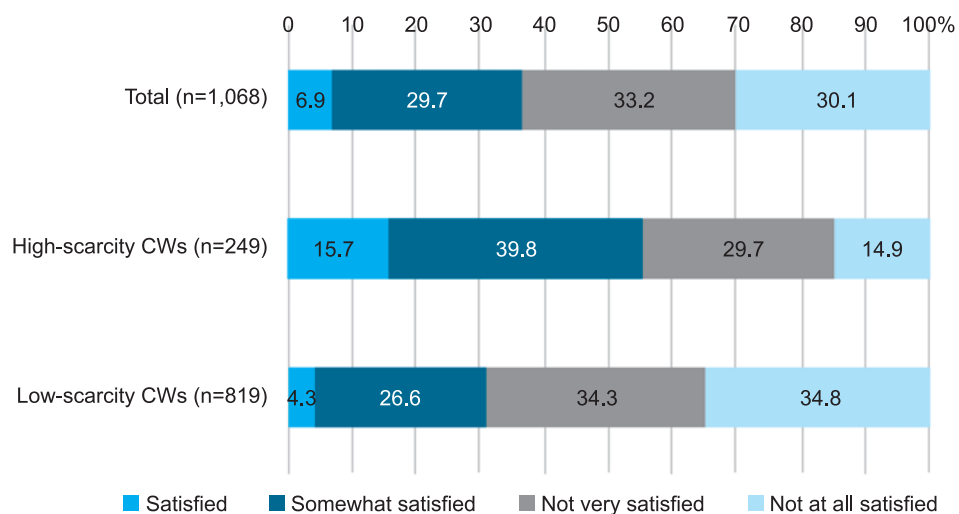
Thus far we have looked at CWs' work styles and where they acquired necessary skills. Next, how do CWs feel about their work styles? This article verifies level of satisfaction with "work overall," "income," "feeling work is worthwhile," and "ease of working."

First, examining responses regarding crowdwork overall (Figure 11), about half were satisfied with "work overall" (total of "satisfied" and "somewhat satisfied"). In terms of individual items, satisfaction with "income" (Figure 12) and "feeling work is worthwhile" (Figure 13) were lower than satisfaction with "ease of



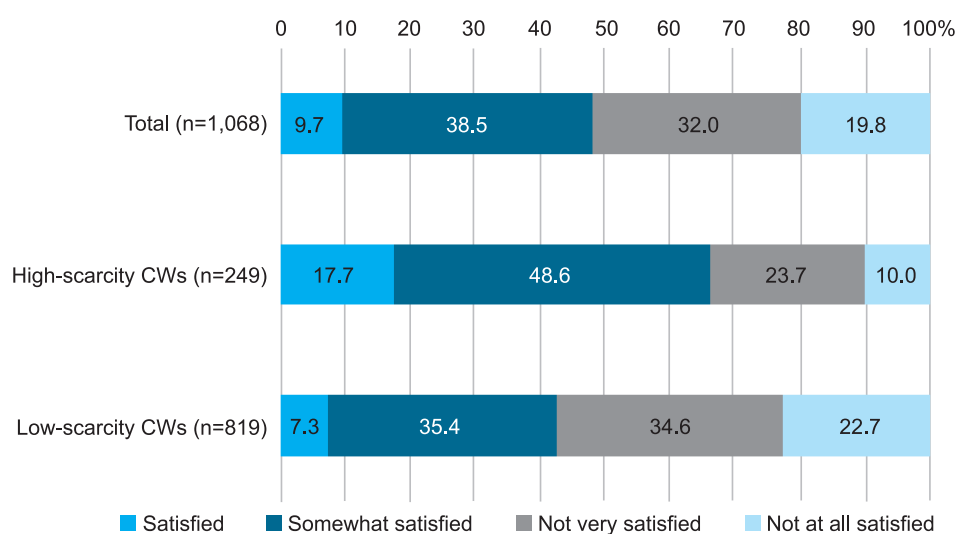
Source: Prepared by the author.

Figure 11. Degree of satisfaction with work overall



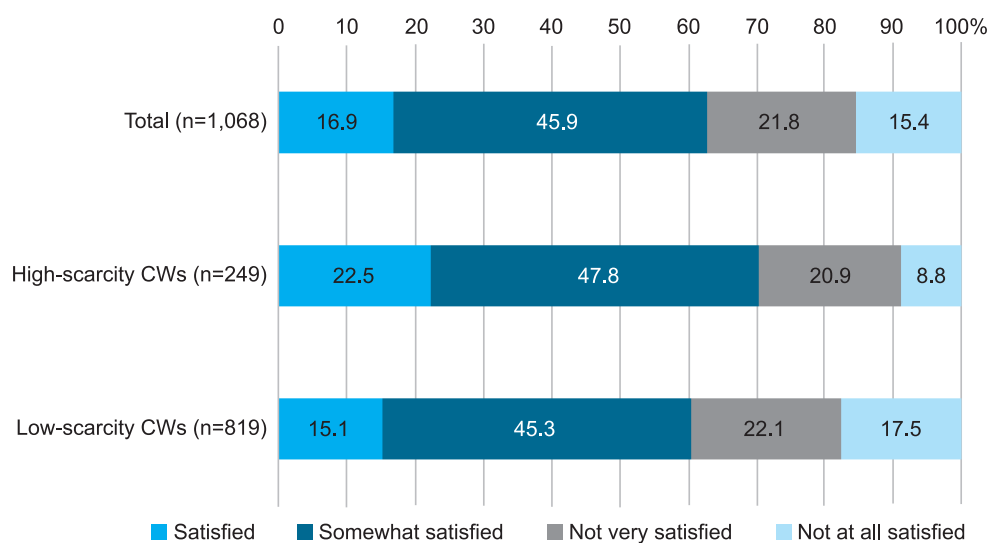
Source: Prepared by the author.

Figure 12. Degree of satisfaction with income



Source: Prepared by the author.

Figure 13. Degree of satisfaction in terms of feeling work is worthwhile



Source: Prepared by the author.

Figure 14. Degree of satisfaction with ease of working

working” (Figure 14). The work styles of CWs may tend to heighten “ease of working” more than “income” and “feeling work is worthwhile.”

When level of satisfaction by job characteristics is examined, we find that the figures are higher for “high-scarcity CWs” than for “low-scarcity CWs” across all types of satisfaction, and more than half of respondents in the former category answered that they were satisfied with “work overall,” “income,” “feeling work is worthwhile,” and “ease of working.” The largest differences between types (high-scarcity and low-scarcity) are in “income” and “feeling work is worthwhile.” Although not shown in the Figure 12, satisfaction with “income” is only 48.5% for all ICs including CW. Among all ICs, “high-scarcity CWs” seem to have the

highest satisfaction with income. In light of the above, it is evident that “high-scarcity CWs” tend to feel at least a certain degree of satisfaction with “income,” “feeling work is worthwhile,” and “ease of working.”

## VII. Conclusion

### (1) Characteristics of CWs

As this article has described, the following points can be cited as characteristics of CWs.

First, the overall trend among CWs is that many are female and not the primary wage earners in their households. Also, many are doing crowdwork as side jobs. From this, it is evident that women select the CW as a means of supplementing household finances. Most of this work is “office-related.”

Second, “high-scarcity CWs” (who perform tasks that are difficult for others to imitate) are mostly men and many of them are the primary wage earners. They are engaged in work other than “office-related,” such as “design / video production-related,” “specialized work-related,” or “tasks at manufacturing plants, construction work sites, etc.” Their amount of compensation is higher than that of “low-scarcity CWs.” Degree of satisfaction with work is also high. In terms of how skills are acquired, they tended to acquire the necessary skills for working as a CW in a certain place and in a certain way, with useful skills most often acquired at companies and in related books.

Third, many “low-scarcity CWs” are women and not the primary wage earners. Most of their work is “office-related,” and the majority earned less than 500,000 yen annually. Approximately 90% earned less than 1 million yen. Compared to “high-scarcity CWs,” degree of satisfaction with income and feeling that work is worthwhile are lower. They tend to be somewhat dissatisfied with work overall. It appears that acquiring the skills needed to perform work in a particular place is relatively rare.

The above findings suggest that CWs are a heterogeneous group, and that at least two types exist (Table 4). One can be categorized as “household income-supplementing CWs.” Many of them are women, and they are engaged in tasks that can be done with general capabilities. The amount of compensation tends to be low, and they tend to be somewhat dissatisfied with their work styles. The other can be categorized as “independent CWs.” This group consists mostly of men, and is engaged in work that requires specialized skills. Some of them earn relatively high compensation among ICs in general. They tend to be satisfied with the CW work style, and to be satisfied with their incomes to a certain extent.

From “household income-supplementing CWs” degree of satisfaction, it is evident that a certain number of CWs may have unwillingly selected this work style. However, this article does not address the status of family members such as spouses or future career prospects. Without taking these factors into account, it will not be clear whether these are “unwilling CWs” or not, and this is an issue for future study. In any case, it can be stated that some CWs are engaged in professional work and are relatively satisfied with their income and work styles, and others who are engaged in simple work and are somewhat dissatisfied with their income.

Table 4. Two types of crowdworkers

	Independent CWs	Household income-supplementing CWs
Gender	Predominantly male	Predominantly female
Characteristics of work undertaken	Work that requires a certain degree of training and/or preparation	Work that does not require a training and/or preparation
Where necessary skills were acquired	Experience at company	Nowhere in particular
Degree of satisfaction	Satisfied	Somewhat dissatisfied

Source: Prepared by the author.

## (2) Companies as sources of skills

This article examined the circumstances of “high-scarcity CWs,” and many respondents stated that skills that helped them to do their jobs were gained through experience at companies. In the case of “low-scarcity CWs” as well, among the limited contingent who had acquired the necessary skills in some way, the most common source of skills was experience at a company. These findings suggest the importance of companies as a source of skills required for working as a CW.

Even when self-employed and not working as an employee, skills and experience acquired at companies would be useful. However, this article does not cover exactly what skills were acquired at companies, and this is also an issue for the future.

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# Artificial Intelligence-Based Hiring: An Exploratory Study of Hiring Market Reactions

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- I. Introduction
- II. Theoretical background
- III. Field investigations of labor market reactions
- IV. Discussion
- V. Suggestions for employers and policy makers
- VI. Conclusion

With the development of technology, artificial intelligence (AI) is being used in multiple capacities in our society. In human resource management (HRM), AI-based hiring has recently been adopted and is rapidly diffusing among many firms around the world. Given that firms are facing many difficulties in hiring, the adoption of AI-based hiring could be an appealing alternative to the traditional hiring practices. However, our society does not have a good understanding of AI hiring, and the reactions of the labor market are largely unknown. In this study, we aimed to develop a better understanding of AI hiring through field investigations of job applicants, HRM professionals, and assessment center experts by collecting and analyzing both qualitative and quantitative data in South Korea. Our findings reveal many concerns regarding the use of AI hiring systems despite several advantages. A series of interviews with HRM experts indicated that the predictive validity of AI hiring needs improvement before it can be used more extensively. Additionally, our statistical analysis showed that job applicants who had experience with AI hiring had more concerns than applicants without such experience. However, the result of job applications did not affect the applicants' attitudes toward AI hiring. Suggestions for employers and policy makers are given.

## I. Introduction

“Hire hard, manage easy.” This simple cliché directly notes the importance of effective hiring for organizations to achieve their strategic goals in doing business. This approach is emphasized by many successful leaders in the management of their organizations. For example, Jeff Bezos, the CEO of Amazon, confessed that when he hires managers, he spends the majority of interview time asking potential managers about their own hiring skills. Richard Fairbank, the CEO of Capital One, also stressed the importance of effective hiring, saying that at most companies, people spend 2% of their time recruiting and 75% managing their recruiting mistakes. In line with this notion, many empirical research studies have demonstrated the significance of employee selection for many organizational outcomes (e.g., Barrick and Zimmerman 2005; Cascio 2006; Coppin 2017; Ekwoaba et al. 2015; Podsakoff et al. 2011).

However, firms are facing many difficulties in hiring (Cappelli 2019). In particular, Korean firms are experiencing challenges such as extremely high workloads and soaring hiring costs, while job seekers are becoming distressed by a series of recent occurrences of hiring fraud in major Korean firms (Hankyoreh Daily 2018). Fortunately, artificial intelligence (AI)-based hiring systems using recent technological developments have the potential to be a useful tool for more effective and fairer hiring systems. The use of AI hiring is diffusing rapidly among Korean firms. In 2019, more than 400 firms had adopted AI hiring systems (Chosun

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Daily 2018), and the number will continue to grow in 2020. In response, many Korean universities are offering classes and training programs to better equip their students for these new changes in the job market. AI hiring is clearly likely to become a new standard of employment tests in Korea in the near future.

Although these changes are promising, AI hiring is also expected to have drawbacks. Specifically, firms do not thoroughly understand what AI hiring systems do and whether they provide more accurate assessments of the future job performance of applicants. However, firms are making very large investments in these new hiring systems by purchasing AI hiring software packages or by developing such software within their organizations. Job applicants also fear these completely new hiring systems because they are unsure about their own performance in such selection tests. Unfortunately, firms and job seekers do not seem to receive good guidance for these changes, and no systematic approaches have been observed for the use of AI hiring systems in Korean society. In addition, academic studies exploring AI hiring are extremely rare.

Given that firms are unsure whether AI-based hiring is useful, an exploratory study of AI hiring practices can be a useful starting point to build our understanding of these new hiring systems. Thus, gathering feedback on the use of AI hiring from people who have experienced such systems might provide useful suggestions for future directions. In this study, we thus aimed to investigate AI-based hiring practices in the context of South Korea's labor market. With this aim, we collected information from stakeholders who would be affected by the use of AI hiring in the Korean labor market. Specifically, the responses of job applicants, human resources (HR) practitioners, and assessment center (AC) experts were examined. In doing so, we collected both quantitative and qualitative data by conducting an online survey and a series of expert interviews simultaneously in the study.

This study was intended to contribute to the literature related to hiring and selection as well as the emerging domain of AI-related research. To the best of our knowledge, research studies combining both selection and AI research do not yet exist. Thus, this study may be a good starting point for further research on this topic. Additionally, we aimed to provide valuable insights to managers and employers who are facing this new change in the labor market. Finally, our study findings can be of great use for policy makers who strive to shape more effective labor policies around the world. By incorporating feedback and opinions from people affected by developments in AI hiring, our study can contribute to the goal of creating a labor market where technology benefits both firms and job seekers.

## II. Theoretical background

### 1. Characteristics of AI-based hiring systems

People started using the term “AI” only a few years ago. With the emergence of AlphaGo, which played the game “Go” with the famous Go player Lee Sedol in 2016, AI emerged rapidly in our lives and in society in general. There are many different definitions of AI, and society is still developing an understanding of it. Thus, it is not easy to define what AI truly is. However, one way to understand AI is reflected in the typology of Russell and Norvig (2010), who categorized AI into four different types based on the functional scope (rational computing vs. similarity to human intelligence) and functional type (thinking and inferring vs. connected to hardware). Although AI can be understood in different ways based on its purpose and functions, the fundamental core aspect of these types suggests that AI is a programmed algorithm with a learning capability that aims to imitate or outpace human intelligence.

Currently, AI is being used in many different sectors (e.g., manufacturing, customer management, medicine, legal services) in our society. Clearly, AI can also be used for the effective management of HR. One way to apply AI to human resource management (HRM) is to use AI in the process of employee hiring. Some organizations have already started to use AI for hiring, and several commercial versions of AI-based hiring programs have been released. According to the classification of Russell and Norvig (2010), AI hiring systems

fall in the intersection between rational computing and thinking (and inferring). AI hiring uses fixed algorithms and does not involve acting like a robot or the internet of things (IoT) in screening out candidates in an applicant pool.

In Korea, there are several commercially traded AI hiring programs and other programs that have been developed by large Korean firms with their own uses. In general, programs developed within organizations are not fully developed, and their functions are quite limited compared to those of commercially traded programs. In contrast to these rather limited AI hiring systems, commercially available programs are more functional and more advanced in multiple aspects. Specifically, the developer of one commercially traded AI hiring program that dominates the Korean AI hiring solution market insisted that the program can be used in multiple different industries and that the predictive validity of this AI system is high due to the use of big data (more than 100 million accumulated cases so far); however, these claims have not been proven.

Based on our field investigations of the AI hiring programs being used in Korea, we identified several features of AI hiring systems, as indicated below. In general, AI hiring systems consist of several functions, such as physical response detection, brain activity analysis, personality/aptitude tests, and performance prediction.

#### *(1) Physical response detection*

This feature indicates the functions related to the collection and analysis of an applicant's physical responses during job interviews by using information captured by a camera linked to an AI system. Specifically, this function detects an applicant's facial expression, heartbeat, and voice to determine the levels of attractiveness, emotional presentation ability, communication skills, etc. In this function, analyses such as text analysis, visual data analysis, and sound detection are used. The collected information is used to determine the overall attractiveness of applicants.

#### *(2) Brain activity analysis*

This feature concerns the collection and analysis of brain activities based on brain neuroscience. To perform this function, AI hiring systems assign to an applicant a series of tasks that the applicant needs to complete. In general, the applicant plays a simulated game, and the AI hiring system measures his or her performance to evaluate several different abilities governed by different areas of the human brain. Specifically, these abilities include memory, inference, planning, decision making, multitasking, etc. Performance on this feature generally indicates the level of general cognitive ability and is used as the basis for determining person-job fit.

#### *(3) Personality/Aptitude tests*

This function tests an applicant's personality or aptitude and thus is not a new feature of AI hiring systems. In many firms, a personality test or an aptitude test is usually a part of the selection procedure; however, online-based personality tests can effectively be incorporated into AI hiring systems to make important decisions in employee selection procedures. Specifically, decisions such as person-organization fit (Kristof-Brown 2000), potential to grow, and future job attitudes could be predicted based on the findings of such tests.

#### *(4) Performance prediction*

In contrast to the three features mentioned above, this feature refers to functions related to synthesizing and applying information collected from the three tests to predict future job performance. In doing so, AI hiring systems are used to analyze patterns in applicants' test results and compare them with the results for high/low performers in each job category. To perform this function, AI uses machine learning based on the predetermined

performance prediction model. The findings of this feature are used to make final hiring decisions.

These features of AI hiring might provide very different contexts to employers and job applicants in the employee selection procedure. Some people expect the use of AI hiring to solve existing problems in Korean hiring practices. In the following chapter, we briefly describe Korean hiring practices and several problems associated with them.

## **2. AI hiring to mitigate hiring problems in Korea**

For the last several decades, Korean firms have been using an organization-wide hiring system with annual hiring sessions (Bae and Rowley 2001). In this hiring system, applicants are hired without any agreement related to job assignment or responsibilities, and jobs are subsequently assigned. Firms hire employees once a year, and thus, applicants who fail to receive a job offer have to wait another year. For this reason, the cost of not being successful in securing a job is very high for job seekers in this system. In addition, competition to secure better jobs is becoming increasingly intense. According to Korean labor statistics, the unemployment rate for young adults in South Korea was between 10% and 15% in the last five years (Ministry of Employment and Labor of South Korea 2019). Moreover, there is a general trend in which many young adults turn down job offers from small to medium-sized firms to seek a better job at a large firm. Thus, it is important for job seekers to experience fair selection procedures while job seeking.

However, larger problems lie in the actual hiring process in Korean firms, and job seekers experience unpleasant and unfair incidents. Specifically, job seekers frequently become the target of uncivil behaviors by interviewers (JobNJoy 2019). For example, some interviewers ask uncomfortable questions that are considered very private and not related to future job performance. Additionally, many firms engage in unfair hiring procedures. A few years ago, many Korean banks were accused of unfair hiring cases in favor of the family members of highly influential people in Korea (Hankyoreh Daily 2018). The investigation showed that this type of unfair hiring fraud has existed for a long time. Finally, the validity of hiring tests is also in question. Although firms use multiple employment tests, these tests measure general mental ability or common knowledge, which are closely linked to job performance. Thus, test results are not well accepted by many applicants. All these factors combine to increase job seekers' psychological distress and their negative perceptions of hiring practices.

However, negative perceptions are not limited to job applicants; firms are experiencing many problems as well. Because many Korean firms hire a large group of new employees once a year (Bae and Rowley 2001), HR departments struggle to cope with extremely large workloads during the hiring seasons. This makes HR jobs very labor-intensive and prevents HR professionals from engaging in the more strategic functions of business management, causing serious physical and psychological problems for HR practitioners. Moreover, the increasing number of applications looking for better job opportunities causes firms to invest more resources in the acquisition of HR. The low validity of frequently used selection tests such as unstructured interviews, bio data, reference checks, etc. (Schmidt and Hunter 1998) is also a problem for employers.

We believe that these problems are severe because they cause serious psychological distress to both job seekers and HR professionals, lower the utility of HR, and provide applicants with a motive to leave local labor markets in pursuit of better job opportunities. However, the use of AI hiring systems might be useful to address these problems. Specifically, we expect that AI systems would not behave uncivilly toward applicants and that the use of such systems could reduce the workload of HR departments. However, it is uncertain whether applicants would feel uncomfortable about being judged by a computer system. Moreover, employers and applicants are unsure of the accuracy of AI-driven assessment. In the following section, we present exploratory investigations of these issues.

### III. Field investigations of labor market reactions

#### 1. Method

For this study, we conducted field investigations by carrying out online surveys and a series of expert interviews. To develop insights about AI hiring, we performed a series of interviews with three HR experts (two HR managers and one practitioner) from three large Korean companies and two experts in competency assessment, i.e., Assessment Center (AC) experts. The HR managers and the practitioner had at least 10 years of experience in the HR field at multiple companies. They possessed operational knowledge of AI hiring because their firms had been using AI hiring systems. One AC expert had more than 25 years of field experience, and both experts had a basic understanding of AI hiring. The research team visited the organizations that these interviewees were affiliated with. Before the interviews, the general features of AI hiring systems and the purpose of the current study were explained to the interviewees. The average interview duration for the research team was approximately 30 to 45 minutes. The interview findings were summarized in subsequent discussions.

For the online survey, the subjects were current or potential job applicants who would soon be entering the job market. Specifically, they were either current senior college students, recent graduates looking for a job, or active job seekers with or without a current job. Although more firms are adopting AI hiring, it was not easy to find job applicants with experience applying under an AI hiring system. To find those applicants, we used several online community groups that support job hunting through information sharing and group-based learning. Additionally, students enrolled in classes offered at a large private university located in Seoul were recruited for the survey. In total, 162 people responded to our survey, and 10 responses were determined to be unusable for the current study.

The final sample included 152 usable responses, and 29.6% of the respondents had experience with AI hiring. Although the number of respondents with AI hiring experience was small, the data were valuable given the great difficulty of finding such applicants. Among the respondents, 39.5% were male, and the average age was 26.39 years. Regarding educational background, 90.8% were attending or had graduated from 4-year universities, 2% had the equivalent of a high school diploma or less, 0.7% were attending or had graduated from a 2-year college, and 6.6% had education levels equivalent to or higher than the graduate level. A total of 61% of the respondents had work experience, mostly through internships. With the completion of the survey, we conducted a series of descriptive analyses and compared the mean levels of several meaningful variables.

#### 2. Results

##### (1) Responses of HR professionals

We conducted interviews with three people currently working in HR positions (HR manager or practitioner) at large Korean firms. The interview included questions regarding the motivations for adopting AI hiring systems, benefits and limitations of these systems, and operational usage of these systems in the hiring process.

There are several potential motivations for adopting AI hiring systems. In Korea, the unemployment rate for young adults is higher than 10% (Ministry of Employment and Labor of South Korea 2019). Thus, applicants apply to multiple companies when job hunting. In fact, one job seeker submits approximately 18 to 36 applications per year (Chosun Daily 2016). Even employed individuals return to the job market to seek better jobs. In other words, job competition is very intense among young adults in Korea. As a result, HR professionals at large firms must find better ways to deal with the tremendous number of applications they receive. For example, an HR professional working for Company C stated the following:

*There are more than tens of thousands of incoming applications at the end of each year. Dealing with*

*these applicants is like “hell” for HR professionals. Usually, they cannot even think about leaving work before 10 p.m. Some of us cannot even go back home for a few days in a row.*

One way to address this problem is to use technology to effectively make the first cut without losing good applicants and while maintaining fairness as much as possible. In this case, AI hiring systems seem to be good tools that meet the expectations of many HR practitioners.

Naturally, the current hiring practices in Korea can result in high expenses related to employee acquisition, and the use of computing power instead of a reliance on human labor is one way to effectively control increasing costs. Another motivation for AI hiring is related to organizational efforts to shape a positive image of a firm in the labor market. Our survey conducted with job applicants was somewhat supportive of this claim. The survey items “I think AI hiring is innovative” and “I think AI hiring is future oriented” had mean scores of 3.39 and 3.60, respectively, out of a maximum of 5.00. In addition, the adoption of AI hiring can gradually solve problems of high workload and cost. In fact, the use of AI hiring has started to reduce workload to some extent.

Despite these benefits, HR professionals are also concerned about the validity of AI hiring, and this concern represents the single most important issue affecting the transition of traditional hiring practices to AI hiring. In short, HR professionals believe that AI hiring systems do not offer strong prediction power for future job performance. Specifically, an HR professional working for Company S voiced this concern as follows:

*In fact, we do not think AI hiring systems offer high predictive validity. To test whether we can rely on AI hiring, we conducted concurrent and predictive validity studies with our current employees and job applicants (newly hired). In both tests, AI hiring could not pick high performers. Our high performers turned out to be low performers under an AI hiring system, whereas our new employees (hired for their high scores under an AI hiring system) turned out to be extremely low performers afterwards.*

This statement highlights the limitations of AI hiring in predicting job performance. This HR professional also mentioned that the company chose to return to their previous hiring practices. An interviewee from another large Korean firm stated that they did use AI, but in conjunction with their traditional hiring systems. In such contexts, AI hiring systems are used only to screen cover letters at the early stage of the selection process. However, the previous experience with the shortfalls of AI hiring systems does not mean that no AI hiring systems can be used to identify high performers or that there is no hope for improvement. AI hiring clearly seems to have both benefits and limitations in its current stage of development. For this reason, firms need to be careful in adopting and implementing AI hiring.

## *(2) Responses of competency assessment experts*

We also interviewed AC experts. In an AC (Heneman et al. 2003), applicants are examined for their suitability for an employment opportunity in terms of their skills, knowledge, ability, and personality through multiple tests such as in-basket, case analysis, and group discussion. Given that various tests under AI hiring heavily overlap with the tests that ACs use to examine applicant qualifications, it is considered useful to include the opinions of AC experts.

According to these experts, both AC and AI interviews can be used to measure aspects of applicant behavior, and these data are used to judge the applicant’s suitability for a certain position. However, the AC experts’ greatest concern regarding the use of AI hiring was related to the validity and precision of the assessment results derived from AI-based tests. They stated that AI hiring systems rely merely on simple information to make judgments and that this limitation inhibits the accurate assessment of applicants’ true

competency. Specifically, one expert made the following comment:

*Competency assessment requires a lot of in-depth questions following initial questions. Moreover, the suitability of these questions and the validity of the answers to these questions vary depending on the situation. Thus, leaning on simple information cannot generate accurate assessment. Specifically, the mechanism through which AI hiring collects information does not capture dynamic information and cannot produce strong predictions of abilities such as problem-solving and effective communications for real-world business.*

Another major problem of AI hiring, as we found in the interviews, is the problem of customization. If a firm uses its AI hiring system developed in-house, this problem should not arise. However, most firms do not have the time and resources to develop their own systems, and consequently, they purchase a commercially available product. For this reason, the unique organizational context, including the company culture, values, goals, and organizational structure, cannot be considered in AI hiring. However, in traditional ACs, reflecting the organizational context is relatively easy. This point was also articulated in the interviews with HR managers.

### (3) Responses of job seekers

The administration of a survey of job applicants was a critical part of this study because job applicants are the most important players in the hiring process. We thus examined applicants' perceptions of and satisfaction with traditional hiring practices as well as their reactions to AI hiring systems. If applicants' perceptions of traditional hiring systems are sufficiently positive, then the adoption of AI hiring may merely be for the sake of employers, with fewer benefits of the new hiring practices for job applicants. Thus, we present job applicants' perceptions of traditional hiring practices first. Then, we describe four different aspects of applicants' reactions to AI hiring. For all items, the scale ranged from 1 (not at all) to 5 (very likely).

Table 1 shows applicants' reactions to traditional hiring practices across firms in Korea. In total, nine items were included in the survey to examine three different dimensions. The first two dimensions examined whether applicants developed positive attitudes toward traditional hiring practices in Korean firms, and the last dimension examined the negative aspects of traditional hiring practices. The first dimension concerning the "effectiveness of the traditional hiring practices" showed a mean value of 3.17 (2.86–3.50), which was slightly above 3 (the median value of the scale). The second dimension regarding the "fairness of traditional job interviews" showed a mean value of 2.96 (2.79–3.13), which was below the median and the value of the first dimension. However, the dimension regarding the "ineffectiveness of the traditional hiring practices" showed a mean value of 3.63 (3.56–3.70), which was above the scale median.

At the item level, the items "effectiveness of personality/aptitude tests" and "fairness of Q&A opportunities" showed the lowest values (2.79 and 2.86 for each) among the nine items. In summary, these results indicated that the applicants had somewhat negative rather than positive reactions to the traditional hiring practices of firms in Korea. Specifically, the applicants appeared to perceive problems with the "fairness of the interview method." However, they responded that interviews are the most effective among the three hiring methods, namely, application assessments, personality/aptitude tests, and interviews.

We also examined applicants' attitudes toward AI hiring systems. For this purpose, four dimensions and one single item dimension were included in the survey. The questions sought to determine perceptions of 1) the ability of AI hiring systems to replace traditional hiring systems, 2) the trustworthiness of AI hiring systems, 3) resistance to the use of AI hiring, 4) attitudes toward the use of AI hiring by organizations, and 5) applicants' intention to apply to organizations using AI hiring. Except for the trustworthiness of the AI hiring dimension, all the questions examined whether applicants were open to this new hiring system and willing to accept its

Table 1. Applicants' reactions to traditional hiring practices

Dimension	Mean	SD	Question Item	Mean	SD
Effectiveness of the hiring system	3.17	0.70	Effectiveness of application assessments	3.15	0.92
			Effectiveness of personality/aptitude tests	2.86	1.02
			Effectiveness of interviews	3.50	0.83
Fairness of interviews	2.96	0.77	Fairness of interviews	3.13	0.92
			Fairness of Q&A opportunities	2.97	0.97
			Fairness of interview evaluation criteria	2.79	1.00
Ineffectiveness of interviews	3.63	0.72	Interviewer seemed tired	3.63	0.89
			Interviewer rated applicant's appearance	3.70	1.00
			Interviewer did not concentrate on interview	3.56	0.92

Source: Compiled by authors.

Note: N=152, SD=standard deviation

use. In total, 13 questions were asked for this purpose.

The survey results showed that the “trustworthiness of AI hiring” dimension showed the lowest score (mean 2.49, 2.29–2.60) among the four dimensions. Moreover, the item “help to understand the job and work context” scored the lowest (2.29, SD=1.12) among the 13 items. For the dimension regarding the ability of AI hiring to replace traditional hiring systems (mean 2.94, 2.69–3.14), personality/aptitude tests showed the highest score (3.14, SD=1.12) compared to those of application assessment and interviews. The dimension measuring “opposition to the use of AI hiring” had a relatively high score (mean 3.04, 2.97–3.11). The mean value of this dimension was higher than 3 (the median of the scale). The final dimension showed a mean value of 2.88 (2.80–2.96), which was lower than the median. However, the intention to apply to organizations using AI hiring was high, with a score of 3.73. The findings generally showed that the applicants had negative perceptions of AI hiring but were still highly likely to apply to firms that use AI hiring.

In the analyses above, we examined job applicants' perceptions of the newly adopted AI hiring systems. Although these analyses provide useful information, applicants' reactions to AI hiring might have been influenced by several other factors, such as their experiences with AI hiring and acceptance/rejection of their job applications. We presumed that applicants' perceptions could change after experiencing the AI hiring process because they would feel more comfortable with it once they better understand it. To test this presumption, we compared the means of the two groups (the group with AI hiring experience and the group without this experience) by using a test of statistical significance.

We compared the two groups in the three dimensions (replacement of traditional hiring systems, opposition to the use of AI hiring, and intention to apply) examined in Table 2. We were unable to compare the groups in the other two dimensions (trustworthiness of AI hiring and positive attitude toward organizations with AI hiring) because we did not collect information from applicants who did not have AI hiring experience. To conduct the analysis, we formed a composite variable of the replacement of the traditional hiring system by averaging the values of the three items (application assessment, personality/aptitude tests, and interviews). For the dimension of opposition to the use of AI hiring, we formed a reflective measure. The reliability value (Cronbach's alpha) was 0.61. Although this value was not sufficiently high, it was acceptable given that only three items were used to measure this variable, and the sample size was small. The intention to apply was measured with one item.

Table 3 shows the mean comparison results for the three variables. Before the comparison, the homogeneity of variances was checked. For all three variables, this assumption was fulfilled. In the mean comparisons, the

Table 2. Applicants' attitudes toward AI hiring

Dimension	Mean	SD	Question Item	Mean	SD
Replacement of traditional hiring systems	2.94	0.93	Can replace traditional application assessments	2.97	1.10
			Can replace personality/aptitude tests	3.14	1.15
			Can replace interviews	2.69	1.11
Trustworthiness of AI hiring	2.49	1.03	Clearly related to job requirements	2.58	1.08
			Measure factors that lead to high performance	2.49	1.199
			High score on AI hiring test means high performance	2.60	1.27
			Help understand job and work context	2.29	1.12
Opposition to the use of AI hiring	3.04	0.80	Cannot effectively measure my competency	3.11	1.04
			Cannot accept that AI evaluates me	2.97	1.15
			Think AI will discriminate	3.05	1.01
Positive attitude toward organizations with AI hiring	2.88	1.01	Feel positive about this organization after experiencing AI hiring with this organization	2.80	0.99
			Feel I want to work here after experiencing AI hiring with this organization	2.96	1.15
Intention to apply			Will not apply to organizations that use AI hiring (reverse coded)	3.73	1.13

Source: Compiled by authors.

Note: N=152, SD=standard deviation

two groups showed statistically significant mean differences for the replacement of traditional hiring practices ( $t = -2.76, p < .01$ ) and intention to apply ( $t = 1.95, p < .05$ ). Specifically, applicants with AI hiring experience were less likely to believe that AI hiring could replace traditional hiring practices (experience group mean=2.62, no-experience group mean=3.07). However, applicants with AI hiring experience showed a stronger intention to apply to organizations that use AI hiring (experience group mean=4.14, no-experience group mean=3.61). Together, these findings suggested that in general, 1) applicants do not believe that AI hiring can replace traditional hiring systems, but 2) they are more likely to apply to organizations that use AI hiring once they have had experience with it themselves. However, the two groups did differ significantly in their opposition to the use of AI hiring.

We also compared applicants' attitudes in terms of their job application results. We expected that an applicant would develop positive attitudes toward organizations that extend a job offer in response to their application. Applicants who do not succeed in securing a job could attribute their failure to the AI hiring systems that their target firms used for selection. For this reason, we compared the means of the three variables examined in Table 3 between two groups (accepted group and declined group). The analysis (Table 4) showed that there was no statistically significant difference between the two groups for the three variables. However, the accepted applicants seemed more likely to agree that AI hiring could replace traditional hiring practices (accepted group mean=3.12, declined group mean=2.86). The result was not significant at the level of 0.10 ( $p = 0.14$ ). Given that a two-tailed test was used for significance, this finding cannot be disregarded. In terms of intention to apply, the accepted group showed a stronger intention to apply to organizations using AI hiring systems (accepted group mean=3.86, declined group mean=3.68). Regarding opposition to the use of AI hiring, the mean values were very close between the two groups.

Table 3. Comparing applicants' attitudes based on AI hiring experience

	AI hiring experience			No AI hiring experience			95% CI of the mean difference	t	df	sig.
	N	Mean	SD	N	Mean	SD				
Replacement of traditional hiring practices	45	2.62	0.98	107	3.07	0.88	-0.77, -0.13	-2.76***	150	0.00
Opposition to the use of AI hiring	45	3.07	0.91	107	3.03	0.75	-0.25, 0.31	0.23	150	0.82
Intention to apply	22	4.14	1.13	77	3.61	1.11	-0.01, 1.06	1.95**	97	0.05

Source: Compiled by authors.

Notes: 1. Two-tailed test, \*\*\*  $p < .01$ , \*\*  $p < .05$ , \*  $p < .10$ , N=number of samples, SD=standard deviation.

2. The sample size for intention to apply is smaller since this item was added later in the survey administration process.

Table 4. Comparing applicants' attitudes based on the result of job applications

	Accepted			Declined			95% CI of the mean difference	t	df	sig.
	N	Mean	SD	N	Mean	SD				
Replacement of traditional hiring practices	38	3.12	0.86	106	2.86	0.97	-0.08, 0.61	1.49	142	0.14
Opposition to the use of AI hiring	38	3.05	0.86	106	3.04	0.77	-0.29, 0.31	0.08	142	0.94
Intention to apply	22	3.86	1.04	76	3.68	1.17	-0.37, 0.73	0.65	96	0.52

Source: Compiled by authors.

Notes: 1. Two-tailed test, \*\*\*  $p < .01$ , \*\*  $p < .05$ , \*  $p < .10$ , N=number of samples, SD=standard deviation.

2. The sample size for intention to apply is smaller since this item was added later in the survey administration process.

## IV. Discussion

Hiring systems are important not only for employers but also for job seekers in the labor market. Competition for better jobs is increasing, and the unemployment rate has been very high in many countries (e.g., South Africa, Greece). In South Korea, the unemployment rate for young adults has been higher than 10% for the last few years (Ministry of Employment and Labor of South Korea 2019). For this reason, many job applicants believe that hiring procedures should be fair, but the reality seems somewhat different. According to a recent poll, job seekers had very negative perceptions of the hiring practices of Korean firms (JobNJoy 2019). Specifically, job seekers responded that they did not have opportunities for fair competition and that their abilities were undervalued. The current hiring system is a very large problem in many ways. For instance, it causes serious psychological distress to job seekers and results in society not taking advantage of some valuable HR.

In this study, we conducted an exploratory study of labor market reactions to the use of AI hiring systems. Specifically, we examined the reactions of job applicants, HR professionals, and AC experts by conducting a survey and a series of interviews. The results indicated that applicants in general are concerned about the use of AI hiring systems. Although job seekers are not satisfied with and have somewhat negative perceptions of the traditional hiring practices of firms in Korea, they also do not welcome the adoption of AI hiring. This finding was interesting but also problematic. Interestingly, despite their feelings about such systems, applicants still intend to apply to firms that use AI hiring. However, this result does not indicate that firms need not care about applicants' preferences. When the working population starts to shrink rapidly, job seekers will avoid firms that are less concerned about (potential) employees.

One HR professional answered that the motivations to adopt AI hiring include the employer's intention to develop an innovative image of the firm in the Korean labor market. In fact, the use of AI hiring is effective for achieving this goal. According to one survey item (not included in the analyses), job applicants indeed regard firms that use AI hiring as innovative and future oriented. Notably, applicants view those firms as innovative even though they do not like AI hiring. Thus, this finding needs to be interpreted carefully because applicants do not want to be a scapegoat of AI hiring, even though the firms that use AI hiring appear to be innovative. In fact, one of our survey questions asked whether applicants prefer AI hiring or traditional hiring practices. The results showed that applicants prefer traditional hiring systems (AI hiring: 24.3%, traditional hiring 50%, no preference: 25.57%).

One major problem of AI hiring is its low predictive validity. We found that job seekers, HR professionals, and AC experts are all seriously concerned about the predictive validity of AI hiring. According to the information published by one AI hiring system vendor that currently dominates the pertinent market in Korea, the predictive validity of the AI hiring system is approximately 0.40. A research study on the effectiveness of various selection methods on employee job performance showed predictive validity values (correlations) ranging from 0.13 to 0.68 (Beardwell et al. 2004). According to the researchers' findings, the predictive validity of AI hiring was equivalent to that of the personality test ( $r = 0.38$ ). In another study, the predictive validity of biodata (resume) assessment showed rather similar levels of predictive validity (Pilbeam and Corbridge 2006). Hence, AI hiring is not better than biodata assessment or, at best, is not better than a personality test.

Fairness is another major issue in AI hiring. In fact, some responses to our open survey questions indicated that job applicants are concerned about losing job opportunities because of their appearance (i.e., not looking good). They stated that AI hiring decisions should not be based on applicants' appearance. However, some other issues need investigation in future studies. Given that AI also collects information about facial expressions, voice, eye contact, etc., we cannot be sure that AI hiring does not use this information in a discriminatory way. According to a developer of an AI hiring system, this information is used to determine the overall attractiveness of applicants. However, we are uncertain where to draw the line between good appearance and attractiveness. In fact, this problem is related to other types of discrimination based on gender, race, academic background, etc. For example, Amazon decided to cease AI hiring because its AI hiring system continuously engaged in gender discrimination (Reuters 2018), and racial discrimination is a well-known problem of COMPAS (AI) (New Scientist 2018). Moreover, the psychological test results of applicants can be misleading, as some AI systems, such as Norman, are biased (BBC 2018). These cases indicate that AI hiring can also be biased in that regard.

## V. Suggestions for employers and policy makers

### 1. For employers

Our field investigation showed that AI hiring may have some limitations. However, AI hiring has some advantages and will soon be part of the employee selection procedure in many organizations. Thus, it is wise to find ways to more effectively use AI rather than avoid using AI. In this spirit, we offer several suggestions for employers to effectively use AI hiring systems. First, it is urgent to improve the predictive validity of AI hiring. There are multiple sources of the low predictive validity of AI hiring systems. However, we believe that judgment regarding the future job performance or job-person fit (Kristof-Brown 2000) of an applicant is complicated and requires more than a personality test (which is a major part of the AI hiring system) or applications of neuroscience. We believe that effective selection procedures require many different types of information and multiple raters with different viewpoints rather than a single highly sophisticated algorithm. A more complex system is needed because an individual cannot be summarized in a few sentences and because

his or her psychological condition, attitudes, and behaviors can change in different contexts.

One potential solution is using AI hiring along with other traditional hiring practices. Combining multiple selection tests offers the highest predictive validity in multiple studies (Kavanagh et al. 1971; Schmitt and Stults 1986). In fact, one of our interviewees stated that his company was using AI hiring in this way and that it was more useful than relying solely on only one approach. Employee selection can benefit from the use of many different types of information and multiple raters, as described above. This approach has been shown to be effective in many previous studies on the multitrait multimethod (MTMM) approach (Campbell and Fiske 1959). Along with the use of this approach, the decomposition of the variance explained by AI hiring would be useful as well. At this point, it is unclear whether AI hiring alone explains the variance or whether variance can be explained by other test methods. More sophisticated analytical studies of AI hiring systems would be useful.

Using both AI hiring and traditional hiring practices helps improve the negative perceptions of job seekers. As some applicants are fearful of being inaccurately judged regarding their qualifications under an AI hiring system, the use of both approaches can signal a fairer and more accurate selection process. In fact, this can help to improve perceptions of HR professionals as well. Using AI hiring makes HR professionals uncomfortable, even though it reduces their workloads and costs associated with hiring in the long term. This is because HR professionals generally do not have a clear understanding of AI hiring and the necessity of its use. If HR professionals are not convinced of the benefits of the use of AI hiring, they cannot convince others.

Additionally, employers need to try to communicate with applicants about what AI hiring systems do. Job seekers feel insecure because they do not know what these systems do and how to secure a job under such a system. Some applicants might have developed misunderstandings about AI hiring. For this reason, many people are forming online communities to share information and tips, which are not proven to be useful for preparing for AI hiring. In fact, some companies have started to offer consulting services that are aimed at training job seekers to succeed in the context of AI hiring. Thus, employers need to communicate with applicants about what AI hiring systems do and inform them that AI is not replacing traditional hiring systems but rather only addresses some limitations. It would be useful for firms to publish a booklet or brochure to help applicants in this way, thus reducing their anxiety.

AI can be biased depending on the data used for (machine or deep) learning. Given that AI uses the internet to collect information and that most information on the web is generated by people, we cannot avoid bias in AI. In addition, the training data that an AI system designer feeds into the AI system can be biased, either intentionally or unintentionally. In other words, not only data collected from the internet but also data from other sources can lead to bias in AI. Consequently, AI hiring systems can lead to a biased employee selection mechanism. The belief that AI uses entirely objective coded algorithms is false, and people who design the systems and the internet can misguide it (Reuters 2018). For this reason, employers can potentially be responsible for employment discrimination even when it is not intended.

To address this problem, it is advisable that firms initiate audits of AI-based HR (i.e., AIHR audits) and conduct them regularly. AIHR audits would be similar to the HR audits that many companies have conducted. However, for an AIHR audit, firms need to incorporate AI-related components into their traditional HR audits. Specifically, firms need to set goals and plans for employee selection and revisit hiring outcomes regularly. If there is a gap, firms need to check the AI algorithm, the soundness of the data used for machine learning, etc. Additionally, companies need to review any updates in laws and regulations in hiring and determine whether their AI hiring systems fulfill those legal requirements.

## 2. For policy makers

Policy makers have roles as well. Job seekers fear AI hiring because they know little about AI (or AI hiring) and are not trained for these new hiring tests. Thus, it is necessary for the government to redesign its

national education and job training policies to reflect these changes in hiring. To do this, policy makers must develop a good understanding of AI hiring. Specifically, it is necessary to know the differences between AI hiring and traditional hiring practices along with the additional features involved in AI hiring. We believe that students, job seekers, and working employees need to learn about and receive training for AI hiring. Some experts say that performance on AI hiring tests does not improve with experience. We are unsure whether this claim is valid, but AI hiring would naturally be associated with discrimination issues if it is designed to test something that people cannot learn via training.

Regarding the matter of discrimination, the most demanding issue is laying the legal groundwork for the use of AI hiring (and AI in general). In fact, the provision of the legal basis for AI use should occur in conjunction with the provision of related laws such as those on labor, education, information and communication, and basic human rights. For example, the collection and use of individual information in an AI-based platform involves potential problems associated with breaching information security. Given that electronic information travels quickly, multiple threats to information security exist. For example, firms could use information in opportunistic ways that are not prohibited by law. For this reason, it is necessary for policy makers to establish a firmer legal groundwork for applicants and employers in using these systems.

To make these legal changes effective and protect both employers and applicants, we believe that a government-level agency or committee should enforce these new legal requirements. By establishing an institution that oversees employment selection procedures using AI hiring systems, policy makers can implement these changes more effectively. It might also be useful to publish a guidebook explaining fair employee selection procedures in AI hiring. Employers and applicants are using AI hiring somewhat blindly, without effective guidelines. Such a guidebook could be useful not only for applicants but also for employers. The guidebook could include information regarding the collection and use of data in AI hiring systems, applicants' rights for information requests, verification of the accuracy of AI assessment, a list of prohibited key words in analyzing text, etc.

## VI. Conclusion

AI-based hiring systems are rapidly diffusing across many companies in most advanced economies, including South Korea. As traditional hiring practices have shown many problems in Korea, expectations of the potential benefits of AI hiring systems are particularly high among Korean job seekers. In this study, we introduced the general features of AI hiring systems and explored labor market reactions to these new hiring systems. By analyzing both qualitative and quantitative data acquired from surveys and interviews, we found that job applicants are concerned about the use of AI hiring systems. Specifically, job seekers show low levels of trust in AI hiring in terms of its predictive validity and perceive that AI hiring cannot replace traditional hiring systems, a result that is not satisfactory but is consistent with the concerns and opinions of HR professionals and AC experts from our field investigations. However, we also found that the results differed between job seekers with experience with AI hiring and those without such experience. The analyses also revealed gaps in opinions about AI hiring between accepted and rejected applicants. Given that the use of AI will be unavoidable in most business functions in the near future, using AI hiring systems wisely is the expected path forward. For more effective implementation, employers and policy makers should identify potential issues and subsequently determine how to cope actively with them.

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## Digital Platform Labor in the Philippines: Emerging Configurations and Policy Implications

Cheryll Ruth R. SORIANO

- I. Introduction: Digitalization and the platformization of labor
- II. The Philippines and digital labor: A viable match?
- III. Digital platform labor conditions: Emerging issues
- IV. Reflections for policy

### I. Introduction: Digitalization and the platformization of labor

Technological development and rapid global connectivity are spurring on new business models, including the rise of ‘planetary labor markets’ (Graham and Anwar 2019). These include crowdwork labor platforms involving work arrangements where workers or “sellers of labor” (many of them located in the Global South) obtain work from digital labor platforms such as *Upwork* (catering to global workers) or *Onlinejobs.ph* (catering only to Filipino workers), which match them with potential clients or “buyers of labor,” often based in the Global North (Graham, Hjorth and Lehtdonvirta 2017; Wood, et al. 2018). In contrast to business process outsourcing (BPO) such as call center work, digital labor platforms represent a new model as they allow business processes to be outsourced without the mediation of formal BPO companies (Wood 2018; Soriano and Panaligan 2019).

Data on labor supply in online labor platforms show that the Philippines, together with India, Bangladesh, and Pakistan, are now the major sources of labor supply globally (Graham, et al. 2017). Payoneer (2020) data also shows the Philippines as first among the fastest growing freelancing economies in the world. Recent available statistics estimate that there are one and a half (1.5) million Filipino digital platform workers (also referred to as ‘online freelancers’) who are engaged in various project-based services or “gigs” (i.e. ranging from software development and writing to more commonly, administrative support, virtual assistance, digital marketing, content moderation, data entry, and language instruction, among others) for overseas clients (Ofreneo 2018; Schnabel 2018; Graham et al. 2017).

This paper presents key developments and issues concerning digital platform labor in the Philippines, and identifies implications for policy. It will unfold in three parts. First, I introduce the emergence of platform labor in the Philippines and situate it in the broader context and history of the Philippine labor economy, situating platform labor alongside other forms of global service-work promoted by the Philippine government as part of its labor policy. Then, I will discuss issues emerging from the intrinsic nature of labor platformization as well as the experiences of Filipino platform workers in this sector, including available government response. Finally, I conclude by identifying key implications to policy and action.

### II. The Philippines and digital labor: A viable match?

The Philippine government champions digital labor as a way to overcome employment woes faced by Filipinos across age groups and educational background (Fenol 2018). Ranked as having one of the highest unemployment rates in Asia but with a large English proficient population, the government’s support for platform labor aligns with promoting Filipinos as ‘world class service workers,’ a mantra that has also driven the country’s labor export policy over the past decades, often despite the precariousness associated with such work (Parreñas 2015; Rodriguez 2010). From foreign domestic labor to call center labor and now to digital

platform labor, Filipinos perform work that lead to them being recognized as the service workers of the world (Soriano and Cabañes 2020a, 2020b).

Labor platforms and BPO work arrangements arose in the context of what Weil (2014) called the “fissured workplace,” resulting from strategies of firms to shed in-house workers for jobs that they can outsource to workers in the Global South for much lower rates. Seen by government as a way of spurring national growth through job creation and countryside development via ICT, the Department of Information and Communications Technology or DICT (then Information Technology and e-Commerce Council) and the Department of Trade and Industry (DTI) were tapped to develop and sustain the growth of ICT industries and promote business process outsourcing jobs since the early 2000s (ITECC Strategic Roadmap 2003). DICT created a Cyberservices Group to eye the “next wave cities” (i.e. Metro Manila, Cebu, Angeles, Cavite, Davao) and make way for the growth of BPO industries there. Based on available statistics, over half a million Filipinos were involved in the BPO industry in 2017 (Philippine Statistics Authority 2018), and the sector is a major contributor to the economy, projected to generate \$29 billion in revenues in 2022 according to the Information Technology and Business Process Association of the Philippines or IBPAP (IBPAP 2020). BPO work includes call center activities, computer programming, data entry and processing, medical transcription, software publishing (Kleibert 2015). Many of these jobs are now also available from online labor platforms for workers who can perform the work from home and without the need to be formally employed in BPO companies.

In 2013, Elance and Odesk (now Upwork) and Freelancer.com coordinated with the DICT for the promotion of online platform labor, then foreseen as an emerging opportunity for meeting the same goal of job creation, but this time also addressing the needs of the marginalized sector, such as out-of-school youth, unemployed, persons with disabilities, or returning overseas workers, who may not qualify for regular employment in BPO work (Delfin and Fabricante 2020, Personal Communication, February 5, 2020). DICT co-organized roadshows with these digital platforms, which then started its “Rural Impact Sourcing” project (now rebranded as “digitaljobsPH”) which covers the roll out of ICT skills training in the countryside.

Now, platform labor is being promoted not only to address the needs of the unemployed and marginalized groups, but as a complement to BPO work, a catalyst for urban and rural development, and even an attractive option for young graduates and Filipino migrant workers. Filipino professionals are also migrating to online platform labor under the promise of autonomy, spatial flexibility, and the possibility for higher earning, especially in dollars (Soriano and Cabanes 2020a). Based on our research, many Filipinos who are currently involved in online labor platforms are former BPO (i.e. call center) workers, who left this work due to persistent night shifts and its toll on their health, considerable stress in the nature of the job, lengthy travel time from the home to the office, or personal circumstances that prod them to find opportunities to “work-from-home” (i.e. pregnancy, physical disability or major illness, and having to care for growing children or elderly parents). The label “OFW” which used to refer to the “Overseas Filipino Worker” has recently been appropriated to refer to the “Online Freelance Worker,” where one still earns dollars but now without having to leave the country (Go 2017). The continued popularity of platform labor in the Philippines is anchored in the continuing expansion of the country’s informal economy (Ofreneo 2013). There are many who belong to the “informal economy” (i.e. obtaining various gigs in their everyday lives as food or “mobile phone load” sellers in community stores, caregivers, student-research assistants, among others), who are eagerly jumping into opportunities for clinching a job in online labor platforms.

Yet, optimistic narratives about platform labor are challenged by evidence from scholars who point out the difficult conditions that online platform workers face (Graham, et al. 2017, Lehdonvirta 2016; Gandini 2016; Gregg 2013; van Doorn 2017; Soriano and Cabañes 2020a, 2020b). Amidst promotions of flexibility and empowerment, online platform workers are often construed to have ‘no secure occupational identity’ given the

continued movement across jobs that may not allow the full use of their educational qualifications (Standing 2014, p.10). Some of these workers perform jobs that their counterparts in the more economically affluent nations refuse to take on (Irani and Silberman 2013, p.18). Many companies in the Global North also take advantage of the large pool of digital workers from the Global South (Graham, Hjorth and Lehdonvirta 2017; Lehdonvirta 2016) that lead to exploitation. Local workers in turn accept low pay or dedicate long hours in hopes of securing long-term clients or obtaining impressive work portfolios (Hesmondhalgh and Baker 2010; Lehdonvirta 2016). Among the major concerns about platform workers also relate to issues of isolation and lack of opportunity for socialization (Gandini 2016; Graham et al. 2017). Paradoxically connected to the perceived advantage of flexibility pertains to being constantly at work and where the worker's personal space appears to be endlessly consumed by work, also reinforced by work trackers such as *Hubstaff* that are required by some clients.

Despite research and narratives of platform labor's pernicious and precarious conditions, it is undeniable that for many Filipinos, these jobs are perceived to be the best alternative given existing conditions and available options (Soriano and Cabañes 2020a, 2020b). In fact, some of the freelance workers we interviewed have found online freelance work to be highly fulfilling, allowing them to earn significantly, raise their families comfortably, and even obtain a sense of self-worth.<sup>1</sup>

### III. Digital platform labor conditions: Emerging issues

Despite government pronouncements promoting digital labor as a solution to unemployment, institutionalized mechanisms for supporting workers engaged in labor platforms remain limited. In contrast to the availability of established human resource offices or labor agencies that help regular workers in terms of expectation-setting, salary identification, taxation, or welfare protection, platform labor aspirants and workers are often left out on their own, with only a limited set of support mechanisms available. I summarize the major issues encountered by online freelancers below.

#### 1. Labor platformization and the mechanics of algorithmic control

Much of the recent work on digital labor in the Global South highlights the fraught conditions of platform labor, where workers assume a powerless position against their clients and the disciplinary features of the platform. Although our research has shown that some Filipino workers are able to navigate this environment, it is undeniable that many of the issues and difficulties faced by online platform workers are tied to the very platformization of labor.

Labor platforms match labor demand and labor supply and workers, upon constructing an attractive portfolio, can directly bid for jobs available in these labor platforms. Workers are paid directly through the platform or via global payment systems such as Payoneer or PayMaya. Different platforms have different policies on how many jobs a worker can bid on. Platforms also impose different fee cuts per transaction (e.g. Upwork charges 20% of the fee for new entrants in the platform, while Onlinejobs.ph does not charge a fee). In online freelancing Facebook groups, workers would complain about the increasing fee cuts imposed by the platform, to which they have no control over. They also report about unfair account suspensions and the lack of dispute mechanisms embedded in some of the platforms.

Workers do not possess formal employee-employer relationships with their clients, although workers may enter into separate agreements with specific clients on a case to case basis. The work is also characterized by the absence of non-wage benefits such as health coverage, paid leave, or retrenchment benefits (Kalleberg

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1. It is important to note that online platform labor covers a wide range of jobs—some of which command high rates such as software or applications development or web design to those that command lower rates such as virtual assistance, data encoding, search engine optimization, or transcription.

2009). Instead, workers enter into a ‘contract’ with the platform, for example, that disallows them from entering into direct transactions with clients outside the platform. Further, similar to Uber or Grab, clients may rate the workers for each project and these accumulated ratings constitute the workers’ portfolio, which in turn, also determines his or her chances of getting hired again. On the other hand, there are often no mechanisms for workers to rate their clients on the platform. This rating system may also contribute to self-exploitation, where some workers would take on large or difficult projects at low rates believing that when they can get good ratings they could eventually be able to command higher rates. Given that they are directly employed through the platforms that operate on a global level, they are also unlikely to be able to access state benefits or protections or other local support systems. Some workers we interviewed are able to establish good relationships with their clients who offer benefits such as bonuses or health allowances, but this happens a case-to-case basis and not a mandatory feature of platform work.

A particular emerging issue is ‘labor arbitrage,’ where clients have the capacity of selecting from amongst a global pool of workers and buy the cheapest available labor (Graham et al. 2017, p.142). This puts workers in a precarious bargaining position as they have minimal control—the only control they have is in the choice of bidding for jobs that they would deem to be reasonably priced. Yet given increasing competition and ‘labor seasonality’ (i.e. characterized by a period of good availability of jobs but also sudden periods of “job scarcity”), many workers are compelled to bid for any job available even at rates that go below their expectations (Soriano and Cabanes 2020a). As workers enrich their portfolios, the more experienced ones learn the art of strategic pricing and negotiation and they become more selective in the kinds of jobs and rates that they take on.

Tied to the platformization of labor is the fact that there are no clear standards (unlike in formal employment) for acceptable rates for the jobs offered in these platforms, and many workers have only minimal clues on how to price their work or which job-rate offers to accept. Pricing may differ depending on the unique characteristic of each job (i.e. depending on the size or capacity of the company, the complexity, size and duration of the job, the reasonableness of the client, and so on). In turn, workers would offer different rates for the same job given their varying profiles and conditions too (i.e. experience, confidence and aggressiveness in pricing, labor seasonality, or even desperation). Labor platforms rarely intervene in these pricing negotiations—their role is simply to match labor buyers and sellers. This nature of platform labor pricing is ambiguous especially for new entrants and is prone to exploitation. On occasion, some workers shared experiences of jobs that suddenly shutdown or clients disappearing before they can be paid for their services, and lamented the lack of mechanisms for “penalizing clients.”

## **2. Labor platform literacy and human capital development**

For newcomers, platform labor can be confusing: not only is the process of engaging in platform labor fully mediated, but one also needs to discern legitimate platforms and clients from scammers, and present oneself and one’s skills in a compelling manner and in a foreign language.

### ***Portfolio building and skill-selling***

A crucial first step for a platform worker considering to bid for a job in a labor platform is to develop a portfolio. This implies the need for a sense of understanding how to present one’s skills and related work experience in a compelling manner. Interestingly, some workers shared that a good portfolio is valued in the labor platform more than a college degree. Inability to create a good online portfolio can determine the likelihood of getting a client or their capacity to command high rates. Unfortunately, this poses a challenge for many workers, particularly the new entrants who have none to limited significant experience to display in the portfolio but also have no literacy for composing a compelling one. Portfolio building is offered by some

emerging “trainers” whom we referred to as “skill-makers” in an earlier work (Soriano and Panaligan 2019), but they usually charge fees that are not affordable for beginners.

### ***Skills development, skills-matching, upskilling and transitioning into “agencies”***

Workers entering the digital platform economy may not have educational or professional training for jobs that they are eyeing but believe that getting employment is possible if they can get the right training for success.

Since 2018, the Department of ICT has started offering free online freelancing training nationwide under their “digitaljobsPH” program. The program is reported to have produced over 2,000 graduates from 94 locations throughout the country (DICT 2020). DigitaljobsPH offers technical skills training modules that include (1) Digital Marketing and eCommerce, (2) Search Engine Marketing, Advertising, and Virtual Assistance, (3) Graphic Design, (4) Content Writing, (5) Website Development, and (6) Social Media Marketing (Ibid.). These courses comprise a “21-day online campaign” that includes requiring trainees to develop a website for a small-to-medium local enterprise—aimed at helping boost the trainee’s technical profile while making a contribution to the local economy (Delfin, E. Personal Communication, February 5, 2020). Apart from the DICT, the Department of Labor and Employment (DOLE) intends to carry out initiatives in preparation for what they term to be industry 4.0 (Rubia-Tutay et al. 2019). However, the agency has only recently started to grasp the realities of digital platform labor and its attendant issues and these are to be incorporated in the agency’s subsequent policy planning and programming (Avila, A. Personal Communication, January 30, 2020).

Much of existing government initiatives focus on technical training, and based on interviews with some workers who have attended these training, many of these sessions cater to entrants or beginners in online freelancing, again understandably due to the DICT’s direction of platform labor as a way to create jobs for marginalized groups in the countryside. Some workers expressed concern that DICT’s “digitaljobsPH” strategy tends to further expand the pool of low-waged aspirants with very limited skills that can end up “killing” existing freelancers, creating a false illusion of success yet with some ending up unhired after training. Some of the workers and industry influencers we interviewed suggest that the DICT consider offering strategies for upskilling and focus on higher quality and more specialized courses. Yet, although DICT digitaljobsPH team recognizes this need, they pointed out the importance of ample budgetary support, given that advanced trainings cost more even as these reach less number of workers (Delfin, E. Personal Communication, February 5, 2020).

### ***Strategic pricing and rate negotiation***

As aforementioned, many workers have difficulty estimating acceptable rates for different job scopes. More experienced workers would also advise workers to avoid accepting very low rates, as “they can be pegged as cheap workers” with difficulty in increasing their rates in the future. During an online freelancer event a speaker raised the issue of the tendency of Filipinos to charge lower rates in comparison to their competitors from other parts of the world. As we have argued elsewhere, online platform workers need help not only in discerning a pricing strategy given specific jobs, but also in diversifying platforms (Soriano and Cabanes 2020) that will prevent them from being unable to increase rates because of dependency on a single platform.

### ***Reputation and relationship-building with clients***

Another common emerging issue is how to “build a reputation,” “cultivate expertise,” and “maintain good relationships with clients.” In an economy underscored by the proliferation of project-based employment and

also a visible evaluation and ranking system, the role played by reputation is crucial for determining one's success (Gandini 2016, p.8; Wood et al. 2018). Getting 'repeat clients' or obtaining 'long-term projects' helps workers mitigate the threats of labor seasonality and increased competition. However, with many of the clients being foreign and without clear guidelines on how to maintain relationships in purely virtual work environments, relationship-building becomes a common issue among workers. In conversations in Facebook groups, workers reveal the competing experiences—with some displaying the generosity of clients while others lamenting experiences with abusive ones (for an expanded account, see Soriano and Cabañes 2020b).

Again, given that existing training provided by the government often center on technical skills development, these offer limited support for addressing the realities of dealing with foreign clients on an everyday basis, a peculiar nature of online platform work. Without guidance and training, some workers are compelled to invest in expensive coaching offered by 'skillmakers,' (Soriano and Panaligan 2019) or learn by experience, sometimes after having experienced exploitation or abuse.

### **3. Health and social security and financial literacy**

An often neglected concern among digital platform workers is the issue of health and wellness. Our interviews showed that many platform workers are exposed to stress, isolation, long hours of sitting, overwork, and lack of exercise. One platform worker shared that she gained over 100 pounds since she started with online freelancing, but has recently started to exercise when she was admitted to the hospital for hypertension and breathing difficulties. Following the notion that one's earning can grow limitless with the amount of time and effort, some platform workers would narrate that they would not come out of the house for days and eventually find it difficult to interact with people. Interestingly, we have seen in Facebook groups that some workers have illnesses or physical disabilities that compelled them to take on online jobs, primarily because their physical disabilities disqualify them from applying for regular jobs. Yet they may not receive guidance in preventing their conditions from worsening off. Existing initiatives of the DICT tend to focus on training workers for technical skills, but these do not cover wellness training crucial to the specific conditions of platform workers. What compounds this is that many of the workers do not subscribe to health insurance, and there is no current mechanism for documenting this number. This is voluntary and purely shouldered by workers, unlike workers for regular companies who may automatically enjoy the benefit of health insurance in accordance with the law or corporate policy.

Workers are also concerned about their financial security due to the seasonality of work. Yet, many workers do not consciously invest in social security arrangements believing that it is not necessarily an "urgent need." Given the health issues faced by these workers in the long-term, it is important for the government to assist digital platform workers in securing affordable and accessible mechanisms for social and financial security and in helping understand the value of investing in these as continuous freelance work may expose them to long-term risks that they may not have capacity to cope with.

DICT does not see the promotion of health and social security of online freelancers as within the scope of their mandate, which focuses on "ICT job creation." This is compounded by the issue that although platform labor is assumed to support job creation, the absence of effective monitoring mechanisms implies that their contribution to other tangible measures of economic growth, such as GDP (especially as many of them do not declare their earnings nor pay taxes), is not well-documented. Currently, no government agency is leading a program that attends to the social and financial security of digital platform workers, albeit such would naturally require the effective inter-agency collaboration of national government agencies which historically has been found to be difficult.

Recently, an online freelance worker cooperative, Filipino Online Professionals Cooperative (FOPSCO), has been formed and included in their proposed program is the promotion of health security mechanisms for

their members. Platform workers who are members of FOPSCO are also expected to earn from investments of the coop, aimed at addressing periods of low employment.

#### 4. Business development

Government can train workers towards becoming “worker-agencies.” Established workers who manage to acquire large projects become whom they call ‘agencies’ who outsource projects or segments of their projects to other workers (sometimes even family members or neighbors) and therefore wield a significantly larger social and financial capital. In the local digital platform scene, these agents are whom workers consider to be “successful” and whom they aspire to.<sup>2</sup> Worker-agencies who have managed to retain a stable pool of “loyal” clients and large projects also receive some protection from the blows of labor seasonality. As workers take on larger projects with long-term clients, the percentage rate of what they pay the platform can become lower (i.e. this is so for Upwork, but not for all platforms), also often with additional cash and non-cash benefits negotiated with clients directly. When they are able to sustain a loyal pool of large clients, a large portfolio of projects, and a pool of workers, some of the successful agencies establish their own tech start-ups and labor platforms.

Some of these local labor platforms are established by online freelance workers as a form of resistance and critique toward the precarious conditions underlying global crowdwork platforms or by rising industry influencers or worker-agencies who have managed to obtain a stable enough pool of loyal clients to build tech start-ups. While ‘planetary labour markets’ (Graham and Anwar 2019) remain outside government regulation, Philippine-based labor platforms and online freelancing-oriented start-ups (e.g. *Connected Women*, *WrupUp*, *Third Team Media*, and *EStrat Marketing*) are registered as local businesses and are expected to be more invested in promoting the welfare of local workers as they have been created precisely as a result of their experience with or to address the unfair conditions of planetary labor markets. For example, *WrupUp*, a tech-start-up labor platform based in the city of Iligan, is aimed at challenging established labor platforms and establishing a fairer source of digital jobs for Filipino workers. *WrupUp* seeks to promise fairer rates, provide training, and intends to promote forced savings from each job transaction to safeguard the workers during “low seasons” (Libradilla, A., Founder of *WrupUp*, Personal Communication, November 6, 2020). The downside is that *WrupUp* is having difficulty in competing with the larger and more popular platforms and in attracting more prominent workers. There is a need to examine the design and labor dynamics of these emerging initiatives. In comparison to global platforms, it is possible for the Philippine government to direct its attention to these start-ups, ensuring that they promote fair labor standards and to provide support for their growth and development.

#### 5. Infrastructure and materiality of digital labor

The issue of reliable and affordable internet connectivity in the Philippines is another concern that many workers raised during our research (Lopez 2020). Although most workers have no choice but to invest in high speed internet connectivity regardless of the cost, workers located in the provinces or suburban communities have narrated the high cost of connectivity as well as instances of internet downtime that would compel them to perform work in coworking spaces or cafes, thereby incurring more expensive costs.

In other countries, coworking spaces have sprouted across the cities and these offer sites for workers not only for affordable and reliable connectivity and workspace, but to function as spaces for training, ‘serendipity production,’ and collaboration (Moriset 2016). As we have argued elsewhere (Tintiangko and Soriano 2020),

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2. For example, a worker turned “agency” shared that a ‘virtual assistant’ would typically earn around \$2–\$6 per hour but a ‘project manager’ or agency would be able to command around \$10–20 per hour, despite performing the same job. The project manager can secure this position by being able to strategically develop one’s portfolio and having an ‘entrepreneurial mindset.’

while coworking spaces in more affluent countries serve as a means to ease the cost of independent work, the average rate of P550 (around US\$10) per day, which is higher than the average minimum wage in Metro Manila, proves too costly for most Filipino online freelancers to expend on a regular basis.

Recognizing the need for affordable infrastructure support, DICT is rolling out working facilities called ‘RIS Hubs’ (Sanchez 2020). Among these hubs is the DICT-Zamboanga hub, which offers free access to computers, high-speed internet, and digital skills training for online freelancers. Such initiative can be expanded in rural areas to address individual differences in material capacity of workers but these should ideally have intermediaries who can help train platform workers for upskilling.

#### IV. Reflections for policy

One emerging policy issue pertains to the fact that digital platform labor is being advanced by the Philippines government’s lead ICT agency following a rather narrow vision centered on jobs creation through ICT. The agency’s success on this aspect is measured in terms of how many ICT-related jobs it is able to create across the country and especially in the countryside, but not in terms of the value of these jobs, the health and welfare of the workers, or long-term sustainability of the sector. The primary labor and employment agency, DOLE, has only recently been paying attention to this industry as well. This means that although the DICT has been successful in expanding the talent pool by training aspiring workers, there is no other government agency paying attention to the welfare, social and financial security, advancement, and sustainability of these digital platform workers. Unlike regular employment which is covered by labor laws and with unionizing mechanisms that put them in bargaining positions with companies to safeguard workers against abuse, platform work presents a challenging arrangement.

The second main issue is that there are no workable mechanisms for monitoring the contributions of this sector in terms of the GDP or national growth that would push for the need to provide social security support for the workers. Developing a holistic approach to online platform labor and human capital development that includes a workable monitoring system would allow government to know what kind of training facilitate success in securing well-paid projects on the platform, whether advance training help them transition into ‘agencies,’ or the extent by which workers are paid or abused in the platforms. At the same time, a monitoring system could help determine the conditions of workers beyond job placement, and refer them to concerned agencies for support.

Given the limitations of policy and program support, many workers attempt to solve the problems by themselves, by joining worker cooperatives or Facebook communities of support or independently navigating their way through the digital platform environment (Soriano and Cabanes 2020b). This entrepreneurialism of workers should not be a ticket for the State to elide its responsibility over a large pool of workers involved in an industry that it also actively promotes. The absence of systematic interventions render the conditions unequal—accessible to those who are entrepreneurial and able to tap into available opportunities and social safety nets by themselves, while others are left to suffer its exploitative and pernicious conditions.

The third key issue concerns the regulation of labor platforms in ‘planetary labor markets.’ Platform work is typically characterized by the absence of mandated non-wage benefits such as health coverage, paid leave, or disability benefits. They also often have no clear employer-employee relationship with their clients, making bargaining to improve work conditions difficult. Some workers have also experienced scamming clients and agents, abusive work conditions, or below-the-industry average rates, apart from the regular struggles with labor seasonality given the increasing competition among global workers in these platforms.

Policy proposals for supporting digital workers are currently under deliberation. These include *House Bill No. 6759 (An Act Supporting the Growth and Development of Digital Careers in the Philippines)*<sup>3</sup> which was recently approved by the Philippine House of Representatives, and which seeks to provide for the extension of

social support systems and standards for ‘digital workers’ in the country, expected to rise in number given labor displacement caused by the pandemic. As a counterpart bill, *Senate Bill No. 1469 (An Act Supporting the Growth and Development of Digital Careers in the Philippines)*<sup>4</sup> has also been filed and is currently at initial discussion in the Philippine Senate. Further, *House Bill No. 5369 (An Act Providing Protection and Incentives for Freelancers)*<sup>5</sup> is being deliberated in Congress to spell out mechanisms for the protection of freelance workers from abuse, also with an accompanying Senate Bill.

While these policy proposals are specific to the unique nature of digital and freelance work, proposing to offer freelance workers economic safeguards (also as cushion for the pandemic’s impact), the bills need to take into consideration how social protection systems (including health and safety measures) will be arranged and bargained for given that clients and platforms operate both globally and locally. This is in consideration of the global nature of labor platformization and the multiple contracting arrangements that involve Filipino workers with foreign and local clients. Further, beyond the continued promotion of digital careers, government policies need to be clear in terms of how the condition of digital workers will be monitored and safeguarded, ensuring that they have access to these social support systems.

Given the difficulty for intervention by governments as regards labor platformization, global movements such as Fairwork are now supporting research and advocacy work to put pressure upon global platforms. In the Philippine scene, what might be more immediately feasible is for the government to attend to the emergence of local labor platforms as tech start-ups which it can both regulate and support.

In summary, I emphasize that a holistic policy and program response is necessary to support digital platform work. This implies assessing the limitations of current initiatives and coming up with programs and policies to address workers’ needs as regards: (1) platform labor literacy and human capital development that goes beyond technical skills training; (2) promoting access to affordable social and health security, and financial literacy of workers; and (3) business development; and (4) addressing issues concerning infrastructure and materiality of labor.

Given the peculiar operation of global digital labor platforms, it would be difficult for governments to intervene in the relative power imbalance posed by the platforms over the workers. But without any systematic form of assessment of existing conditions of workers, governments would not be in any position to negotiate labor issues emerging from this industry. Extant literature suggest that new collective formations may exert pressure upon platforms to work for fairer pays and to take more responsibility over the exploitation that occur in their platforms (Wood, Lehdonvirta and Graham 2018). We are seeing local forces of collective action, such as WrupUp and FOPSCO, to be spouting as a form of response. In order to be sustainable, such initiatives would require the support of the government as well as uptake by the platform workers themselves. At the global level, it would be imperative for international labor organizations to continually look into the many issues that the platformization of labor poses and exert pressure for platforms to address issues toward a fairer and more humane working environment for digital platform workers.

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# Marginalization of Graduate Freelancers in the Gig Economy<sup>1</sup>

Reuben NG  
Paul S. H. WONG

- I. Introduction: Marginalization of graduate freelancers in the gig economy
- II. Methods
- III. Results and discussion
- IV. Usage of technology in freelancing
- V. Conclusion

Similar to underemployment, a segment of graduate freelancers can marginalize into lousy and low-paying work. This paper performs a preliminary investigation on how graduate freelancers are thriving or languishing in the emerging gig economy through one of the first known survey study of freelancers in Singapore. The full-time graduate freelancers are grouped into two segments for comparison—the Optimally Utilized Freelancers (OF) and Under Utilized Freelancers (UF). The latter, given their bachelor degree qualifications, are primed for work at the professional capacity—they are underutilized when they perform work below this level as determined by the Standard Occupational Classification System. Findings show that OFs as better remunerated, using new ways of working but depending more on referrals for work, are more valued for their skills, have a higher propensity for learning new skills, possess growth mindsets and greater self-directedness, and less concerned about work security than their underutilized counterparts. This study contributes to the important topic on marginalized freelancers that is under-researched.

## I. Introduction: Marginalization of graduate freelancers in the gig economy

The world is evolving at an increasing rate due to technological advances. Together with the myriad of disciplines blending with each other, new jobs emerge and old ones recede with increasing pace. The nature of work has also been changing, with a pivot from traditional employment to gig work in the recent years. This shift is attributable to three main reasons: commoditization of work via debundling of jobs into tasks that can be more readily outsourced (Drahokoupil and Piasna 2017); emergence of digital platforms which allow the brokering of labor to such tasks; and the changing concept of employment from “a job as a career” to a “career of jobs.”

The rising polarization of work into “lousy and lovely jobs” (Goos and Manning 2007) and the shift of more workers into nontraditional work due to technological change (Martin and Schumann 1997) give rise to concerns of increasingly inequality. This is even more so in the gig economy era where freelancers are relatively understudied but could fall under the category of vulnerable workers (Kuhn 2016).

Whilst freelancing work is lauded by the more youthful and entrepreneurial generation, and acts as buffer during short periods of unemployment, artificially depressed employment rates as a result from lowly paid and persistent gig work can mask social costs as businesses shifts the economic risks and burdens to individuals (Friedman 2014). Freelancers with low leverage cannot bargain effectively and perform more precarious work, subjecting them to marginalization economically, socially and psychologically.

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This study investigates a potential marginalized segment of the freelancer community and its key working arrangement features, demographic attributes and psychosocial make-up. The descriptive findings provide insights on how freelancers are coping with precarious work, and elucidate some lessons on how the marginalized segment can better manage.

## 1. Work arrangements

A study on freelancing requires a close review on the nature of work and its arrangements. The nomenclature on work arrangements are many, such as traditional versus non-traditional employment (Rutledge et al. 2019), standard versus non-standard work (Pfeffer and Baron 1988), formal versus informal jobs (Husmanns 2004). It is not surprising as work evolves alongside demographic, economic and business changes across the years.

The International Classification of Status in Employment (ICSE-93) defined by International Labor Organization (ILO) was adopted by the Fifteenth International Conference of Labour Statisticians in 1993 to facilitate statistical research and enhance international comparability between studies. The classification dichotomises work into two main types of jobs—employed and self-employed, where the latter includes employers, own-account workers, contributing family members and members of producers' cooperatives. The demarcation between the two main types of jobs lies in employed workers being bounded by “an employment contract that provides remuneration that is not directly dependent upon the revenue of the unit they work for.” To understand the work arrangements of freelancers, we first turn to the target context in which they operate in—the Gig Economy.

## 2. The gig economy

The recent interest revolving around the changing nature of work is disproportionately represented by the rise of the gig economy, which is a free market system whereby short-term and usually one-off engagements are fulfilled. Heeks (2017) categorises the gig economy into physical and digital domains; the digital domain is further taxonomized into crowd work and online freelancing.

The rise of the gig economy is facilitated by technological advances and evolution of business models, increasingly dominated by platform economies (Todolí-Signes 2017). Laurenti et al. (2019) mapped out the sharing economy as a recent innovation disrupting the established socio-technical and economic regimes. Platform economies are the capitalistic evolution of the sharing economy, now evident with mobility (Uber), hospitality (Airbnb) and working (WeWork, UpTask), and are gaining traction in other areas such as finance. Botsman and Rogers (2010) laid down four principles that precipitated the platform revolution with increasing collaborative consumption: (1) trust between strangers—platforms becomes a neutral intermediary, (2) a belief in the commons—greater network benefits from higher participation, (3) idle capacity—excess resources that can be traded for added benefit, and (4) critical mass—sufficient volume to match supply and demand efficiently. It can be argued that platform work may first have started out as additional paid activity for workers, which in turn feeds further commoditisation of work. Drahokoupil and Piasna (2017) show work is increasingly fragmented with workers, especially high-skilled professionals, having more than one job in the recent years.

Whilst the fulfilment of gig work does not require an intermediary per se (as historically musicians are engaged directly for a single performance), the emergence of digital platforms as intermediaries accelerated the pace in the brokering of such gig engagements and extended them to more types of work. The triangular relationships of gig work (Steward and Stanford 2017) are commonplace and extensively studied in recent gig economy literature. De Stefano (2015), Farrell and Greig (2016) and Schwellnus et al. (2019) investigated platform-facilitated gig work and uncovered a great diversity in gig economy platforms' business and operating models. This makes it difficult to classify the variety of work carried out by freelancers into specific job

categories proposed by ILO.

Despite the huge attention the gig economy has attracted, Schwellnus (2019) estimates gig economy platforms engage only between 1 to 3 percent of total full-time employment in the West. In the US, workers' participation in online platform economies stands less than 2% and has peaked in 2014, due to high turnovers and reversion to regular employment (Farrell and Greig 2017). In Asia, such data are lacking and our study provides one of the first investigations of the gig workers in the region.

### 3. The freelancer

Given the variety of work in the context of the gig economy, how do we then define the freelancer? Broadly, we consider the following features of a freelancer before applying a reductive approach for classification: The freelancer usually maintains irregular work schedules in response to task or work demands; provides his own capital to carry out his work; is paid for tasks rather than time. From this, it is certain that the freelancer is not employed. Within the self-employed category of jobs, they most suitably fit into "own-account workers." However, it remains debatable whether taxi drivers, research assistants, insurance agents or even certain sole proprietors (e.g. one-man-show hawkers) are freelancers as they are considered relatively traditional job roles.

Globally, own-account workers contribute to 34% of labor participation. (ILOSTAT, 2020). There is a wide disparity across the globe, with developed countries having significantly lower proportion of own-account workers at 8%, and developing countries often in excess of 50%. Even so, this share is a much larger number from the 1–3% employment rate by gig economy platforms, indicating that freelancers on platform economies likely form a small subset of all "own-account workers."

Abraham et al. (2018) provides for a typology of work arrangements well-aligned with ISCE-93, incorporating gig work, though there are significant challenges in getting a consistency in reporting where such activity falls within self-employment. There are also significant challenges in quantifying the prevalence of gig employment using existing household data or admin data.

### 4. Economic marginalization and work precarity

It is assumed that an often long and usually expensive education through university will put individuals in a good stead for good work. Hence a study on freelancers, especially those highly educated, is essential. Within the employment sphere, there are numerous studies on unemployment and underemployment. However, there are fewer studies on the self-employed and much less on freelancers. In the same way that employed individuals can be disadvantaged (underemployed), freelancers could also be marginalized in the amount of work done and their rates of compensation. It is evident that own-account workers are more prone to marginalization, alongside contributing family workers, as these two categories constitutes the broader category of vulnerable employment (ILO 2018).

Studies on economic marginalization have focused on traditionally minority groups or in Africa. The extension of this concept to freelancers is merited as they form a growing minority. Todoli-Signes (2017) argues succinctly some form of regulatory protection may be required to mitigate market failures, inequality and unbalanced bargaining power that will give rise to worker marginalization.

Literature on vulnerable employment and freelancer work is closely linked to precarity. ILO (2005) defines precarious employment as a "work relation where employment security, which is considered one of the principal elements of the labor contract, is lacking." Cruz-Del Rosario and Rigg (2019) delves deeper into the definition of precarity and its social impact beyond economic marginalization. What is key is that some freelancers will fit into the precariat underclass.

A number of studies, and especially by Kalleberg (2009), provides clear evidence of precarity and its

consequences. The growth in job insecurity and non-standard work arrangements, as well as risk-shifting from employers to employees, results in economic inequality, insecurity and instability beyond the individual. Beyond financial stressors, the tensions of precarity also affects the social and psychological aspects of freelancers. (Sutherland et al. 2019).

This paper contributes to the ongoing discourse on new forms of work by focusing on graduate freelancers. Instead of limiting to only platform-mediated or online digital work, all forms of freelancing work are considered as long the individuals consider themselves as full-time freelancers.

## II. Methods

### 1. Dataset

We conducted an online survey of freelancers and received 1,298 responses. The data reveals that there are significantly more part-time than full-time freelancers, consistent with other similar studies (Abraham et al. 2018)—a total of 107 individuals identified themselves as full-time freelancers who graduated with a bachelor's degree (graduate freelancers).

This target group of full-time graduate freelancers is partitioned into two main segments defined below:

- (1) Optimally Utilized Freelancers (OF)—individuals who are working for an income, self-employed or are independent contractors or working casually/temporarily for organizations, have degree or above qualifications and working in a Professional/Managerial/Management capacity as determined by the Standard Occupational Classification System (SOCS; an internationally recognized of classifying job roles).
- (2) Under Utilized Freelancers (UF)—similar to Optimally Utilized Freelancers but working below the Professional/Managerial/Management capacity despite having a degree (or above) qualification. Given their bachelor degree qualifications, they are primed for work at the professional capacity—they are underutilized when they perform work below this level as determined by the SOCS code.

### 2. Measures

Demographic variables include gender, age (with year of birth as input), ethnicity, religious beliefs, marital status, number of children, housing type (a proxy measure for socio-economic status in Singapore) and highest education attainment. Working arrangement parameters are captured by first checking if one is working for an income, followed by work status coded between “employed” or “self-employed.” Further categorical variables for Work Status includes employment status as “Regular Worker,” “Temporary worker,” “Independent contractor” and “Casual worker,” as well as part-time or full-time status. Nature of work for Industry and Occupations adapts the International Standard Industrial Classification of All Economic Activities (ISIC) classifications and the ILO International Standard Classification of Occupations (ISCO) respectively. Lastly, the number of working hours per week, years of working experience and monthly income are polled.

Freelancer features include questions regarding how the individual markets one's skills and look for paid work and specifically if one is operating as a private hire or food delivery driver. In addition, this section asks if the individual utilizes a co-working space or participates in hackathons. Orientation towards employment and skills is coded on a 5-point scale, where a score of 5 denote “Agree” and a score of 1 denote “Disagree.” Questions include “I want but am unable to find a full time job” and “I would like to learn new skills so that it can be helpful when I change my job/get a new job or freelance.” Obstacles to learning skills are also coded similarly with questions like “I don't know what area I should be trained in.” and “I'm not sure what skills are in demand for my industry.”

Work-feature motivations for current work arrangements are also coded on the same 5-point scale on

factors like remuneration, flexibility of work, personal passion, job security, income security, ability to make a social impact and availability of statutory employment benefits. Work-centric motivations relating to work are also polled, with questions like “I get excited about going to work” and “I am pleased with the opportunities available to me.”

Work precarity is self-reported on a 5-point scale with questions like “I am satisfied with my overall income security” and “My skills will be relevant for the long-term.” General work concerns on the same 5-point scale covers retirement adequacy, redundancy from automation, inability to find work, insufficient money for medical treatments and housing. Work Marginalization is measured by using an adapted version of the Subjective Underemployment Scales (Allan et al. 2017), taking into aspects like underpayment (My pay is less than other people with my qualifications), status discrepancy (My rank at work is less than it should be for someone with my ability), field of work (I am forced to work outside my desired field), involuntary temporary work (I take short-term jobs because I have to) and poverty wage work (My job does not allow me to make a decent living). Growth mindset used a reduced version of Dweck’s (2013) Implicit Theories of Intelligence (Self-Theory) Scale.

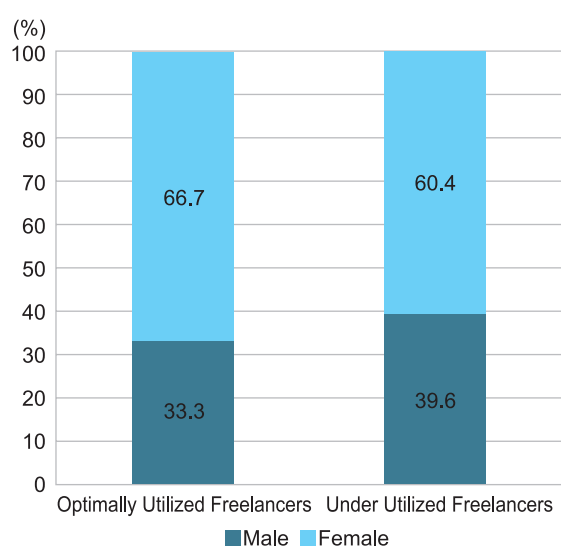
### III. Results and discussion

#### 1. Demographics

Women make up about two-thirds of all respondents across both groups. This is also comparable against the norm (total surveyed population).

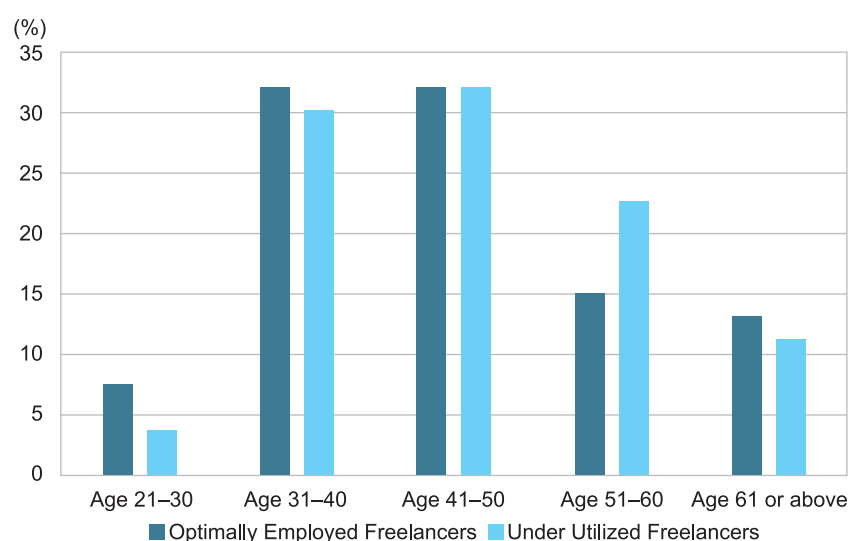
Against the norm, freelancers tend to be older. Whilst the difference is small, it may be worth investigating if UFs are older than OFs statistically.

More than three quarters of the respondents in each group rated their health as good or better. OFs generally rated their health better than UFs.



Source: Created by the authors.

Figure 1. Graduate freelancers by gender



Source: Created by the authors.

Figure 2. Graduate freelancers by age bands

## 2. Earnings gap

On gross monthly income, UFs earn less than OFs. The median gross monthly income band for each group are as follows:

- OF—S\$2,500–\$2,999 (US\$1,850–US\$2,220)
- UF—S\$2,000–\$2,499 (US\$1,480–US\$1,850)

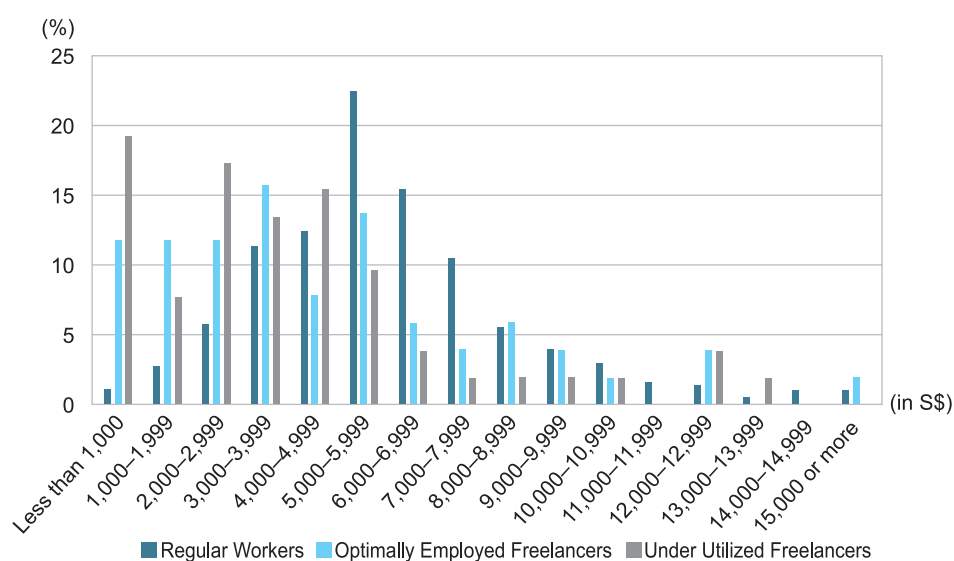
The income range distributions for OF/UF are skewed towards the lower end. There are more lower paid freelancers than there are higher paid freelancers, particularly so for UFs. The median gross monthly income of Singaporeans in 2017 is S\$4,232 (Ministry of Manpower, Singapore). Comparatively, 72.5% and 82.7% of OFs and UFs respectively earn less than \$4,000 a month, indicating that graduate freelancers may not be as fully compensated as graduate employees. The median gross monthly starting salaries of a degree-holder and a diploma holder are S\$3,500 and \$2,500 respectively. In his US study on gig workers, Friedman (2014) found that most gig workers earn less than their equally educated counterparts on traditional contracts; also, younger and less educated workers do much worse in alternative contractual arrangements.

Freelancers spend significantly less time working than the norm of 44-hour work week in Singapore, for full time employed workers. The average hours per week for each group are as follows:

- OF—27.9hrs. Men and women in this category worked around the same hours.
- UF—30.6hrs. Men in this category worked 10 hours more on average than women.

Computing the average hourly rate for each group reveals the following:

- OF—\$22.40 to 26.87 per hour (US\$16.58–US\$19.89)
- UF—\$16.34 to 20.42 per hour (US\$12.09–US\$15.11)



Source: Created by the authors.

Figure 3. Graduate freelancers by income bands

OFs earn around 34% more than their underutilized freelancing counterparts. Normalizing for hours worked, OFs and UFs would have earned S\$4,336 and S\$3,234 respectively, closer to the median full time employment salary. It is surmised that the lower pay earned by graduate freelancers is likely impacted more by the amount of work than the compensation rate, similar to another study by Prudential (2017) in the US.

### 3. Sectoral concentration

The top three job sectors for each of the OF, and UF groups form 61% and 70% of all the respective group's sector jobs.

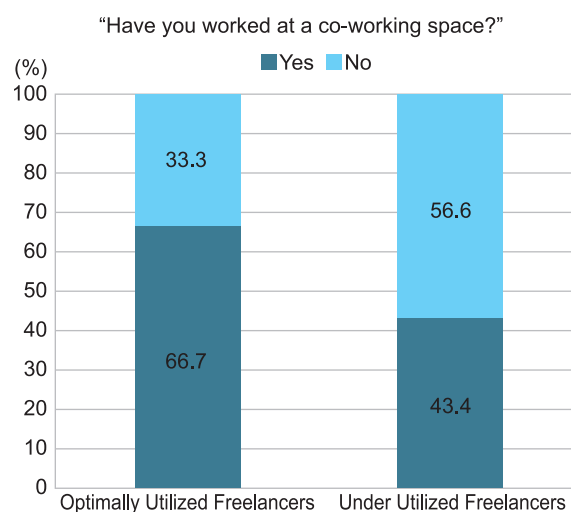
- OF—Education (31.4%), Professional Services (17.6%), Arts & Entertainment (11.8%)
- UF—Education (43.5%), Real Estate (15.2%), Transport and Storage (10.9%)

Freelancers have high concentrations in specific fields such as education (tutoring or lecturing), real estate, insurance and transport and storage (taxis or private car hires). Women, both UFs and OFs, tend to cluster in the Education sector, with many listing their roles as private tutors and teachers. Men are generally more spread out across sectors though a significant proportion of male UFs are also in Education and Transportation (mostly drivers).

### IV. Usage of technology in freelancing

Much has been said about how IR 4.0 is changing the face of work and fueling the growth of the gig economy. Singapore's Ministry of Manpower 2017 Report on Own Account Workers indicated that 8.4% of all residents are engaged in some form of freelancing work, and this proportion is within the 8%–10% ranged observed in the past decade.

It is our interest to find out if there is a significant proportion of our target group of highly educated freelancers using digital-sharing platforms or new ways of working to earn an income.



Source: Created by the authors.

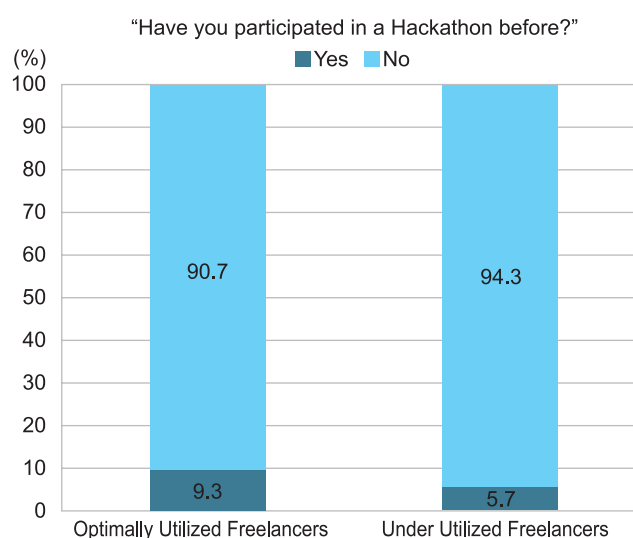
Figure 4. Usage of co-working spaces by graduate freelancers

### 1. Usage of co-working spaces

The interest on co-working spaces stem from the enormous benefits they bring to freelancers, so much so that large corporates are recently jumping onto the bandwagon on creating such spaces internally. The drivers of freelancers seeking co-working spaces are interaction with people (particularly so for those who usually operate on their own), random discoveries and opportunities, and knowledge sharing (Spreitzer et al. 2015). A significant proportion of OFs have worked at a co-working space, as compared to UFs.

### 2. Participation in Hackathons

Hackathons are run by organisations to foster innovations and are usually a way for them to co-opt talents to augment their workforce (Zukin and Papadantonakis 2017). For freelancers, they are excellent opportunities to secure work or prize money. In our sample, the participation rates are small, likely due to a small concentration of coding-savvy freelancers. Mentioned in verbatim are Singapore University of Technology and Design’s “What The Hack” and various Infocomm Media Development Authority hackathons.

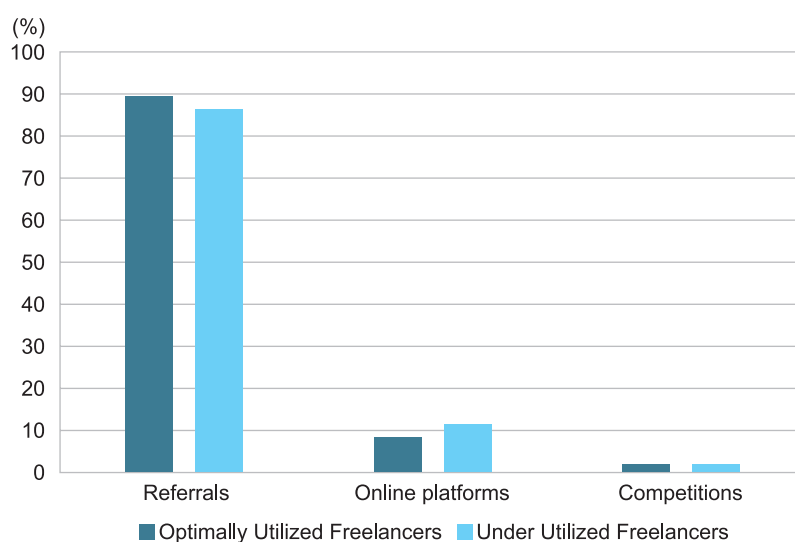


Source: Created by the authors.

Figure 5. Hackathon participation by graduate freelancers

### 3. Marketing of one's skills

Referrals are still the primary means of marketing one's set of skills, a little more so for OFs than UFs. This would hint that online market places like elance.com or upwork.com are not entrenched in the Singapore's freelancing ecosystem yet.

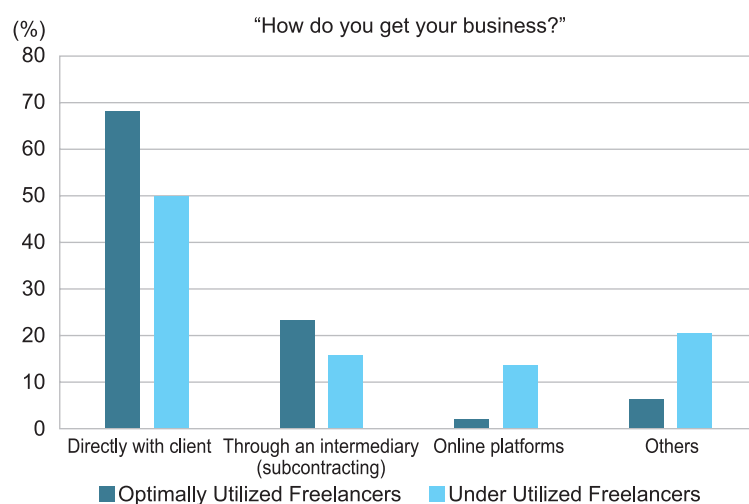


Source: Created by the authors.

Figure 6. Means of marketing by graduate freelancers

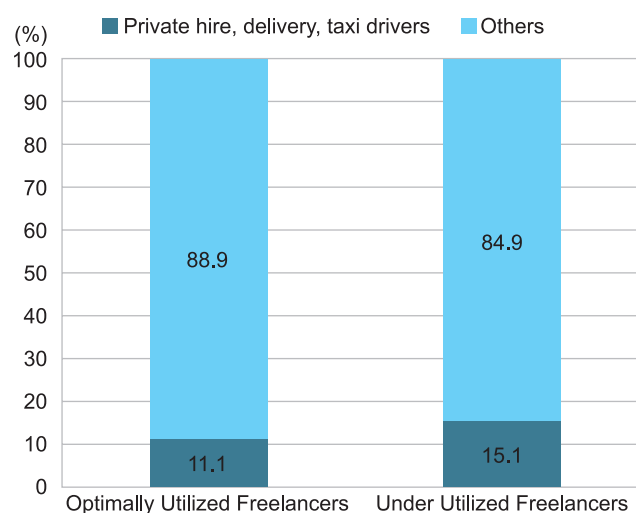
### 4. Business or income generation avenues

Similarly, freelancers derive their business or income largely through direct and indirect engagements with clients. Online platforms such as Grab or Uber form a small segment. Under others, freelancers list referrals by



Source: Created by the authors.

Figure 7. Means of securing jobs by graduate freelancers



Source: Created by the authors.

Figure 8. Graduate freelancers engaged in driving or delivery services

close contacts or agency brokering (including government) as sources of business and jobs.

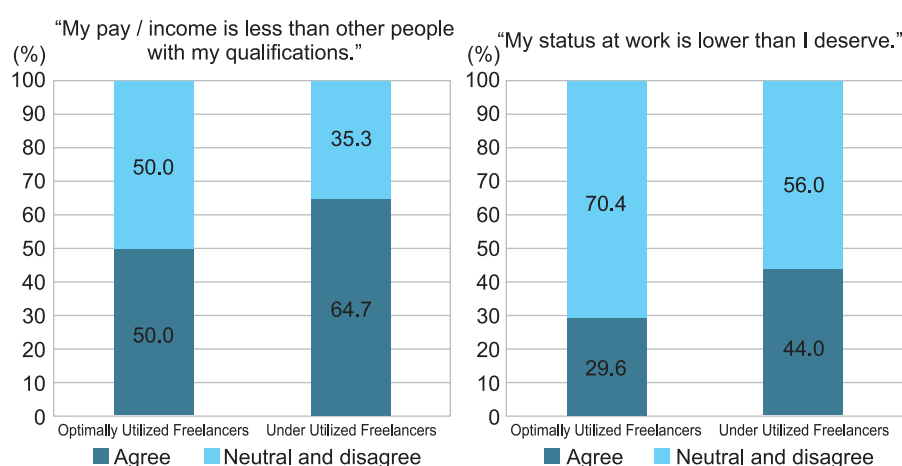
Local media cited concerns over individuals entering into ride-hailing roles long term, as these roles offer little professional growth (Channel NewsAsia 2019). Surie and Koduganti (2016) in their earlier work on “The Emerging Nature of Work in Platform Economy Companies in Bengaluru, India: The Case of Uber and Ola Cab Drivers” also highlights the precarity and the lack of skills transferability into other jobs.

Our survey shows that such roles continue to occupy a small proportion of the freelancing economy in Singapore. This still has to be watched closely as MOM’s data indicates an overall increase year on year from 2016 to 2017, as ride-hailing companies continue aggressive growth plans with unsustainable incentives. What is desirable are counterforces swaying the growing number of freelancers into mushrooming fields of data sciences that are in high demand across most industries.

## 5. Perceptions of underutilized freelancers with college degrees

### *Remuneration and status perception*

Whilst OFs feel that they are remunerated less than others with similar qualifications, the sentiments from UFs are more acute. This is supported by the demographics data shown earlier that UFs generally earn less monthly and on a per hourly basis. A similar result was obtained across the two groups when the respondents were polled about their remuneration given their skills and experience, instead of qualifications. With regards to their perception of status, less than half feel that their work status is lower than they deserve—for OFs, this proportion is lower, indicating they feel more recognized.



Source: Created by the authors.

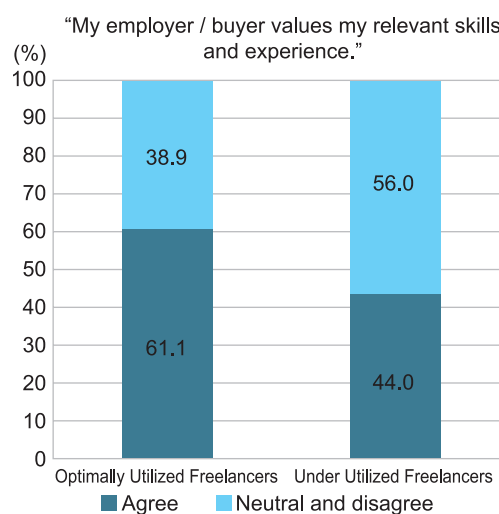
Figure 9. Pay and status perceptions of graduate freelancers

### *Perceptions on skills and relevancy of training*

Most freelancers agree training is needed for career advancement. Half are optimistic that their skills are relevant in the long term and interestingly, freelancers feel more so than the general population sampled. Three in four agree when polled if their skills were used effectively at their organizations. However, when comparing the perception of employer/buyer valuing their skills and experience, UFs have the lower score as compared to OFs.

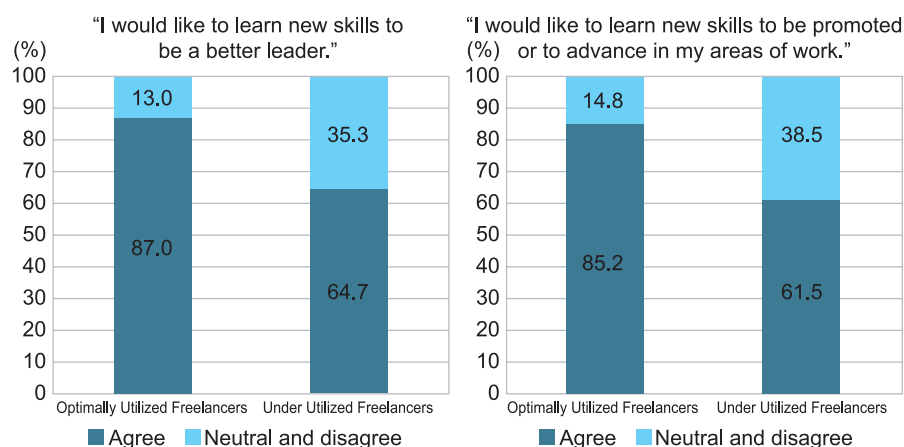
Leighton (2016) highlights that that risk of freelancers in the increasingly knowledge-based gig economy lies not only in income precarity but also the need to maintain their skill levels to earn income. Whilst employees undergo regular training sponsored by their hiring organisations, freelancers need to self-fund, which is a dim prospect as they tussle between skills-upgrading and feeding themselves.

In this study, though there are significant agreement on the need for continuous learning, whether freelancing individuals actually do so warrant further investigation. Here, OFs overwhelmingly agree that they would like to learn new skills for advancement. Interestingly, UFs agree to a much lesser extent, possibly due to lack of opportunities or motivation to do so in their current areas of work. The perception is similar when asked about learning skills to be a better leader. On the questions on their desire learning skills for transferability or becoming a specialist, generally both OFs/UFs agree to the same extent.



Source: Created by the authors.

Figure 10. Perception of client's towards the skills of graduate freelancers



Source: Created by the authors.

Figure 11. Skills learning orientation of graduate freelancers

In the open-ended questions with regards to the skills the respondents desire to acquire, full-time employees surveyed indicated technical skills specific to their work as well as some soft skills such as leadership and management. In comparison, for OFs and UFs, desired skills revolve more around teaching, sales/marketing and networking. Across all groups, desired tech skills like IT and coding are common.

### *Obstacles to learning skills*

Despite the recognition that skills training is desired for career advancement, a significant proportion of UFs indicate that they are unsure of what area to be trained in. OFs appear more self-directed and more aware of learning new skills as compared to UFs.

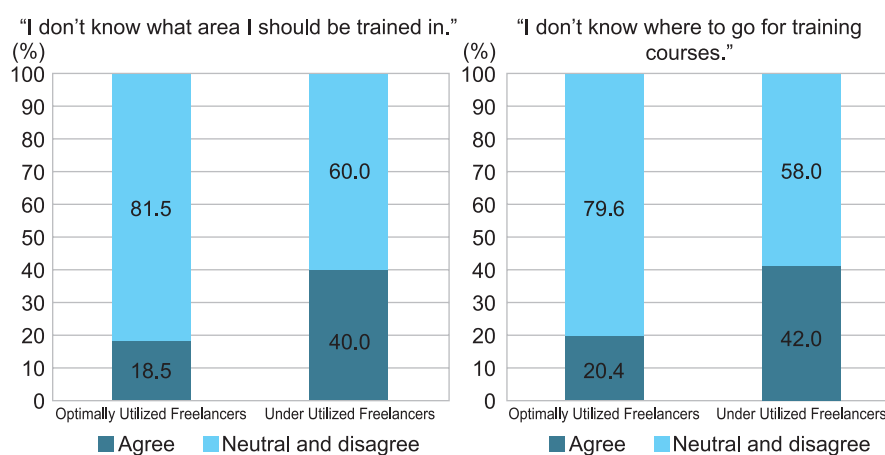
Similarly, OFs are generally more certain of the skills that are in demand for their industries. This may

have some impact on their responses with regards to the benefits of learning new skills. Across all groups, few agree that they had a previous bad experience which affects their outlook on learning new skills.

Aside from intrinsic factors like personality and motivation influencing skills upgrading, external factors can also pose as obstacles. Skills upgrading is one of the four interrelated concerns for workers in a study “Digital Labor and Development: Impacts of Global Digital Labor Platforms and the Gig Economy on Worker Livelihoods (Graham et al. 2017). The researchers uncovered that skills and capability development can be hampered by lower bargaining power to doing productive experience-building work, or isolation of work into a narrow scope such that does not provide information to gig workers to upgrade in a certain area of competency.

Once seen as a lifelong badge of professional competency, qualifications in the forms of diplomas and degrees have shorter half-lives and weaker signalling power in the labour market. To play catch up, many people continue to invest more time in “qualification accumulation.” This qualification inflation poses several trade-offs for the economy. First, productive years of youth are spent acquiring increasing amount of knowledge, which could be otherwise spent on value creation in the market economy, echoed by Yi and McMurtrey (2013). Second, a significant portion of the knowledge acquired are not used as inputs when many of these highly qualified individuals enter the workforce. Our current education system has built a lot of knowledge redundancy to ready our labour workforce, but this knowledge acquired may not be optimally utilized especially in the long run where we expect rapid knowledge obsolescence and multiple job changes in each individuals’ career lifetime.

The focus on skills instead of qualifications is pertinent as economic value-add is not contingent on knowledge acquired, but instead on tasks being done. As jobs are increasingly deconstructed into tasks (from which the gig economy is based on), the ability of an individual to complete tasks should be measured via the skill competency possessed. The emphasis on skills is fuelling a demand for micro-credentials as they are more quickly acquired and are more relevant contextually. The challenge would be to incorporate this into the existing education system so that the labour market participants such as UFs can consider the most optimal pathway to successfully contribute in the market economy as quickly as they can. Eventually, it is also important to reframe freelancers’ skillsets to be applied to adjacent jobs requiring similar skills; this will expand freelancers’ universe of roles they can perform.



Source: Created by the authors.

Figure 12. Obstacles to learning skills

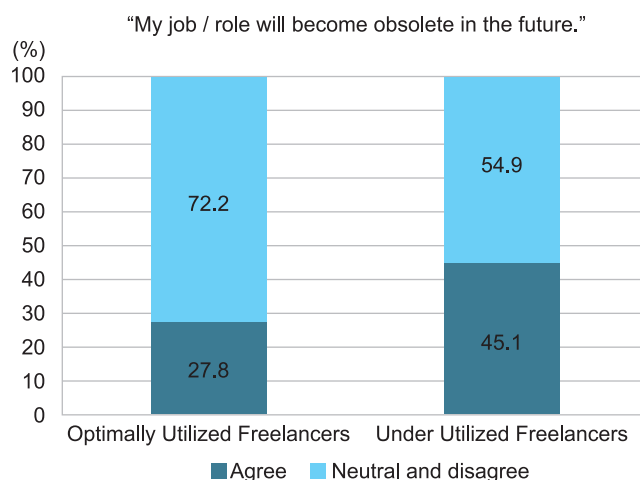
## Concerns

OFs are the least pessimistic that their roles will be obsolete in the future. However, when polled about automation, OFs opined to a larger extent that their jobs will likely be taken over a robot or automatic process.

Social safety nets provided in full-time jobs such as medical benefits, sick leave and employer's Central Provident Fund contribution are non-existent for freelancers. Coupled with fluctuating income, setting aside funds for retirement or up-skilling themselves can be low on the ladder of priorities. The key concerns of freelancers in this survey are job obsolescence, insufficient work, retirement and healthcare inadequacy.

The relationship between precarity and economic and other forms of insecurity will vary by country depending on its employment and social protections, in addition to labor market (Kalleberg 2009). However, policy interventions can facilitate a “flexicurity” system where there are flexible employment rules but a robust social security system, permitting work precarity with smaller impact on security on livelihoods. In Singapore, SkillsFuture and its varied initiatives serves to tackle skills retraining, job placement or improved task-to-skills matching can alleviate concerns regarding lack of work. To address concerns of healthcare, the Singapore government is currently mulling over a “contribute as you earn” model as well as an insurance scheme to protect freelancers from loss of income due to protracted sick leave. More can be done, either through policy implementations or financial education, in helping freelancers even out their earnings and better save for their retirement.

Flexibility of work schedule and passion are rated most highly as motivations for freelancers. The former may be driven by life stages or personal circumstances, whilst the latter is driven by self-fulfilment. However the reality is that the freelancer's choice is not dichotomised so cleanly between these two ends but rather a midway compromise in this spectrum (Adom 2014). The segment of greatest concern would be those underutilized freelancers who need some flexibility in their life and are structurally displaced. In addition to social protections mentioned earlier, this segment would likely need support in managing around their life stages and circumstances, whilst ensuring the longevity of their employability. As such, help would not only come in upskilling or reskilling efforts, but also from greater collective bargaining and communal assistance. Freelancers in the gig economy would be best suited for sectorial bargaining and regulation to achieve a democratic and progressive evolution to the future of freelancing work (Johnston and Land-Kazlauskas 2018).



Source: Created by the authors.

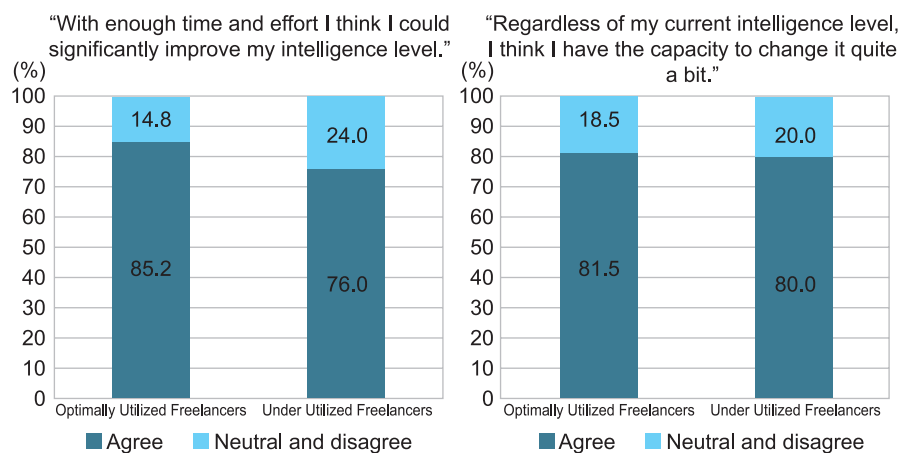
Figure 13. Perception of obsolescence by graduate freelancers

### Growth mindset and career planning

More than half of OFs have a career plan spanning the next 3–5 years compared to UFs at around one third. This may have an impact on their attitudes towards skills training and management around employability.

The following two charts related to Dweck's theory of intelligence as a predictor of success. Generally, both OF/UF groups adopt growth mindsets where individuals are open to learning and development, with OFs agreeing slightly more. The better score by OFs is also indirectly affirmed by the higher self-direction in knowing what skills to be trained in and where to go for such training. OFs also generally know what skills are in demand and their benefits.

The particular mention on growth mindset and having a career plan serves to underscore the importance of self-awareness, the belief of positive change, and having a clear direction. It is not uncommon to hear anecdotes of many individuals constantly “searching for what they can do best and be fulfilled,” exacerbated by the ballooning plethora of job options. Singapore's Career Support Services do a good job in providing timely and critical information in matching supply to demand. But perhaps what could supplement this would be elements of career coaching for self-awareness and self-fulfilment. Individuals should be able to formulate concrete career plans on their own so as to plot success pathways and anticipate issues as they progress in their career. Without clarity and direction, it is highly likely that working individuals, especially freelancers, will be subjected to buffeting market forces and drift along, instead of progressing. The nation's messaging and support services can do more to help individuals especially the UFs to plan better for their own future.



Source: Created by the authors.

Figure 14. Growth mindset by graduate freelancers

### Limitations and future study

While it is clear that freelancers are not employed, survey participants may be subjective interpretation whether some work roles are considered freelancing. In the study, a reductive approach was taken to set apart the target segment by first filtering those who are earning an income, are graduates, are self-employed and finally self-reported as freelancers. Within the self-employed group, it is noted that there are a fair number who did not indicate that they are freelancers share similar work with those who declared as freelancers, such as drivers and financial consultants. A refined criterion for freelancers can be adopted before deeper analysis can be made.

Earnings are polled into categorical ranges with only the main source of income is used, with the assumption full-time freelancers declare freelancing earnings as their only source of income. Categorical ranges were used for more accurate responses, with the disadvantage of lacking precise income data points for benchmarking. Future work could also consider comparing the responses of freelancers earning the first and last quartile, instead of the current approach by job-type, to identify correlations with economic marginalization.

The study presented only descriptive findings. Future studies can attempt to model demographic and psychosocial attributes that may predict successful freelancers. This can serve to educate individuals to develop essential characteristics before taking the plunge to be full-time freelancers.

## V. Conclusion

The emergent gig economy brings about new challenges to new ways of working. Capitalistic evolution of the sharing economy without sufficient regulation causes polarization of good and bad work. Freelancers, disadvantaged by circumstance or a lack of self-direction, may end up increasingly marginalized as they struggle with precarious work.

This study identified full-time graduate freelancers from a nation-wide survey, and dichotomized them into two distinct groups of graduate freelancers: The optimally utilized who engage in professional work that match their qualifications, and the underutilized group who engage in associate-professional/technical work that they are over-qualified for.

It is found that 1 in 2 graduate freelancers in the gig economy are underutilized. In comparison to the optimally utilized, the underutilized group is paid 34% less and works 10% more. They work mainly in education, real estate and transport. Gender has no bearing on median earnings but does influence sectoral concentration. Most freelancers continue to offer their services through traditional means; their leverage on online platforms is still currently low and generally limited to delivery or ride-hailing apps. More than half are acquainted with co-working spaces. Graduate freelancers reported that nearly 60% of clients do not value their skills and experience. Three factors further differentiate the optimally and underutilized graduate freelancers. One, the information gap is wider in the underutilized group where they are less knowledgeable of the in-demand skills and where to acquire them. Second, underutilized graduate freelancers expressed a greater fear of obsolescence, accelerated by technology and AI. Third, they evidenced a weaker growth mindset.

Underutilized freelancers can be better supported by: (1) creating a supportive labor market for freelancers to thrive; (2) shifting society's focus from qualifications to skills for quicker labor supply speed-to-market; (3) nurturing the growth mindset and encouraging career planning of individual freelancers; (4) closing the information gap of in-demand skills through the timely provision of relevant insights for upskilling decisions, pushing freelancers to areas of greater demand and likelihood of jobs such as data science and software development; and (5) strengthening social safety nets for freelancers.

This study adds to the body of knowledge on the gig economy and potentially marginalized freelancers. Marginalized freelancers are like their counterparts, the underemployed employees, with the added job and income precarity as the lack of unionized support. It is imperative that more research be done in this area to advancing the future of work transition smoothly into a new era, without leaving anyone behind.

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# The Digitalization of China's Employment Law?

Tian YAN

## I.

In recent years, observers have begun to discuss the possibility of China's employment law going digital. More precisely, people are concerned about whether, and to what extent, new occupations in the platform economy will change China's employment law. This paper attempts to answer this question. The primary conclusion is that China's employment law has established, and will continue to establish special rules differing from the general rules for these new occupations, thus creating a special zone of employment law, but the special zone for the most part does not affect other areas of employment law. In other words, digitalization does happen on China's employment law, but the process is only partial and depends mainly on the administration rather than the judiciary and the legislature.

## II.

Platform economy is a very newly emerging of economy. On March 12, 2014, Uber Technologies Inc. officially announced its entry into Chinese market in Shanghai, which can be seen as a sign of the rise of platform economy in China. The platform economy has given birth to new forms of business, such as online car-hailing and online appointing distribution; new occupations have been created accordingly, such as online car-hailing drivers and online distribution-appointing deliverymen. These occupations have attracted the attention of the Chinese government. In 2019, the Chinese government included the occupation of online distribution-appointing deliverymen in the official occupational classification, hoping to show respect and recognition for the deliverymen. However, this occupation is still commonly called as the take-out riders among the people, because most deliverymen drive motorcycles or electric motorcycles as a means of transportation, and the goods they delivery are mainly take-out foods.

Of the three main branches of the Chinese government, the administrative branch is often the first organ to respond to new social events. This is associated with the fundamental logic of China's economic reforms. The regulation of new social things may face many risks and uncertainties, so the Chinese government has a habit of trying the administration's regulation at first, then being followed up by the legislature after accumulating sufficient experience. Compared with the judiciary, the administration is more justifiable to consider policy factors in addition to the law, it means that the administration is more suitable for making rules, while the judiciary is more suitable to act as the pure rules executor. The administration has a broad mandate from the legislature, and its rule-making activities are not subject to judicial review. Therefore, there is no or little worry about the attitudes of the legislature and the judiciary when the administration is responding to new social matters. All of these factors combined, making the administration the first organ to regulate the new occupations in the platform economy.

Over the past few years, China's administrative authorities have focused on regulating two new occupations

in the platform economy, one after another: the first focus is online car-hailing drivers, and the second is online distribution-appointing deliverymen. On July 27, 2016, seven ministries, including the Ministry of Transport, the Ministry of Industrial and Information Technology and the Ministry of Public Security, etc. jointly issued *the Interim Measures on the Administration of Operation and Service of Online Car-hailing*, which is the first important administrative rule formulated by the Chinese government for new occupations.

In deciding whether and how to regulate, the administration always consider not only the labor policy, but also industrial policy and other factors of public interests, rather than considering the interests of practitioners only. This makes decision making very complicated, especially when labor policy is in conflict with industrial policy. On the issue of online car-hailing drivers, at that time, factors of labor policy that the administration needs to consider mainly include: firstly, when a traffic accident happens to a car hailed online, the driver, passengers and passers-by are likely to be damaged. While these damages may not be compensated by insurance, so should the platform enterprise bear certain compensation liability? The platform often argues that it just brokers deals between drivers and passengers, it is not the employer of drivers, and should not be held responsible for their actions. However, the driving behavior of drivers is subject to the dispatching and command of the platform. Since drivers obey the platform's orders, they seem to treat themselves as employees. Secondly, in order to gain more profits, some drivers often drive continuously for a long time or choose to drive at night, which causes considerable risks and damages to the physical and mental health of them, and even causes the phenomenon of so-called overwork death. The platform believes that the working hours are decided by the drivers themselves, and they do not force drivers to drive, so it should not assume any responsibility. However, the platform is adopting the remuneration rule of "more orders, more money," and often stipulating that orders at night can earn more than during the day, which will induce drivers to overwork, so it seems reasonable for the platform to assume responsibility for the tragedy. Thirdly, except online car-hailing drivers, traditional taxi drivers are not covered by employment law, but in some places they have been given some treatments in the employment law. For example, the Shanghai government stepped in to establish the traditional taxi drivers' union, and the union on behalf of the whole city drivers initiated collective negotiations with the taxi companies' league, and signed collective contracts, in which written some rights and interests of drivers that could only be protected under labor relations according to the law. The public holds the opinion that online car-hailing drivers should be treated equally with traditional taxi drivers, while the platform argues that the law does not require such equality.

In short, every factor of labor policy the administration has to consider is fraught with controversy. Not to mention that many actors, including platform enterprises, local governments, labor organizations and the academy, are trying to lobby the administration. Positions of platform companies and labor organizations are needless to say. The main motivation for local governments to lobby the central government is to protect the platform economy and promote economic development, which is especially important for governments at the regions where platform businesses are located. Scholars are often given the opportunity to advise in the rule-making process of the administration, and they can also use the mass media to make their voices heard. Scholars of employment law generally supports that online car-hailing drivers be protected by the employment law, and even the view that labor relation is established between drivers and the platform enterprise was once prevailed. In contrast, scholars of civil and commercial law and administrative law take a more cautious attitude towards legal intervention in the relationship between the platform enterprise and drivers.

For the administration, in addition to the above consideration of labor policy, industrial policy is also in its consideration. Firstly, the contribution of online car-hailing industry to the employment promotion. There is no denying the fact that this new industry provides part-time opportunities for some office workers. In big cities like Beijing, many commuters choose to pick up a separate order on their way to and from work, earning roughly enough to cover the gas cost of the commute. But the online car-hailing industry has rarely increased

the number of full-time opportunities, with most full-time workers coming from the traditional taxi industry. Secondly, the contribution to the travel convenience. In big cities, due to the government's strict control of vehicle license, the number of traditional taxis is seriously insufficient, which affects citizens' travel. Relaxing controls would not only lead to resistance from traditional taxi companies, but also lead to a surge in taxis and more congested roads. Online car-hailing is a better solution, which does not change the government's policy on vehicle license, and enhances transport capacity by increasing the utilization of existing vehicles rather than increasing the number of vehicles. On the whole, the consideration of industrial policy supports a more relaxed regulation of the industry.

Combining the considerations of labor policy and industrial policy, after intense lobbying and game, the *Interim Measures on the Administration of Operation and Service of Online Car-hailing* was issued. The Article 18 of which stipulates: "The platform enterprise of online car-hailing shall . . . in accordance with relevant laws and regulations, and based on working hours, service frequency and other characteristics, sign employment contracts or agreements with drivers in any variety forms to clarify the rights and obligations of both parties." It is widely believed that the meaning of this provision is that the nature of the relationship between the platform enterprise and drivers should be agreed by both parties rather than mandated by law. Article 18 has attracted much criticism. Firstly, the negotiating power of platform enterprise is often much stronger than that of drivers, so contracts between the two parties are usually drawn up unilaterally by the platform enterprise, which means that the platform can in fact determine the nature of its relationship with the drivers unilaterally. Then the possibility of establishing a labor relation between the two parties is very small, and it is almost impossible for drivers to obtain the protection of employment law. Secondly, the long-term position of the China's administration is that the establishment of labor relation does not depend on the agreement between the two parties, but on the establishment of a series of objective conditions. These conditions include: the party of drivers shall belong to the laborers in the employment law; the party of platform enterprise shall belong the employer in the employment law; drivers shall receive labor management of the platform enterprise (also known as subordinate to the platform enterprise), the drivers provide practical labor for the platform enterprise, and this labor should be paid. The then Ministry of Labor and Social Security issued an announcement in 2005 setting out the conditions for the establishment of labor relations as the above.<sup>1</sup> This position has long been upheld and has been recognized by the judiciary. Why departs from this position after 11 years and makes special provisions for online car-hailing drivers? Many observers think this is because the government's concerns about industrial policy have trumped that of labor policy. This argument is presumed convincing at least from the results.

### III.

After issuing the rules aimed at online car-hailing drivers, the online distribution-appointing deliverymen becomes the focus of regulating new occupations in platform economy. Again, the administration needs to consider labor policy and industrial policy at the same time, but the consideration of specific factors of each policy is different from that in the regulation of drivers. Factors of labor policy mainly include: firstly, online distribution-appointing deliverymen is an occupation with high incidence of traffic accidents. Because delivery times are concentrated in the lunch and dinner periods, deliverymen often have to deliver goods in large quantities in a short time, forcing them to drive at high speeds and even violate traffic rules. Once there is an accident, motorcycle and electric motorcycle can offer very limited protection to the rider. This means that the risk of traffic accident faced by deliverymen is significantly higher than that faced by drivers. In addition, in order to ensure the transport capacity during peak hours, the platform often carries out more strict management

1. Then Ministry of Labor and Social Security, *Announcement Concerning the Establishment of Labor Relations* (2005).

and scheduling on the deliverymen. Many accidents are caused as the result of deliverymen are driving illegally under the urging of the platform, so it seems that the platform should bear more responsibility for the accidents. Secondly, deliverymen are also at the risk of overwork as drivers. However, the vast majority of deliverymen choose to take orders only during lunch and dinner period and have more leisure at other times. Only a small number of deliverymen take orders during breakfast, lunch, dinner and midnight all four periods. In general, the overwork risk of deliverymen is smaller than that of drivers. Thirdly, the occupational nature of online distribution-appointing deliverymen is similar to that of couriers. However, due to the limited protection of employment law for couriers, few people advocate that protecting online distribution-appointing deliverymen in contrast with couriers. It can be seen that in terms of labor policy, the issues that the administration needs to consider are similar to those of online car-hailing drivers, but the specific situations are very different.

The bigger differences lie in industrial policy. First of all, the role of the deliveryman occupation in driving employment is obviously greater than the driver occupation. According to a survey released by the Chinese government, a total number of 3.987 million of deliverymen were paid through Meituan platform in 2019, up 23.3% from 2018.<sup>2</sup> This means that 929,000 job opportunities were added within a year. China has long been facing a heavy employment pressure. Every year, more than 10 million people should be employed, so the employment opportunities provided by online distribution-appointing deliverymen are precious. Secondly, the employment of the deliverymen has maintained a momentum of strong growth during the COVID-19 epidemic, which is conducive to China's recovery from the impact of the epidemic as soon as possible. According to the statistics of the Chinese government, after the outbreak of COVID-19, from January 20 to March 30, 2020, newly registered and gainfully employed deliverymen on Meituan platform have reached a number of 457,800.<sup>3</sup> The epidemic has depressed the manufacturing and service industries, many practitioners are in a state of unemployment or waiting back to positions, if there were no undertaking of online distribution-appointing deliverymen, would very serious economic and social problems be caused. The Chinese government has also issued a special notice, requiring that local governments should instruct platform enterprises to "share employees" with manufacturing and service enterprises, so the later can send employees who are waiting back to positions due to the epidemic to work temporarily as online distribution-appointing deliverymen in the platform and earn money.<sup>4</sup> From the perspective of industrial policy, the administration is very concerned that the rise of labor costs will affect the development of platform enterprises. In this case, consideration of labor policy may have to take a back seat.

In short, in terms of the regulation of online distribution-appointing deliverymen, although the administration's consideration is different from that of online car-hailing drivers, it involves both labor policy and industrial policy. And because the consideration of industrial policy on online distribution-appointing deliverymen is more prominent, it can be reasonably presumed that in the future, when formulating rules for the deliverymen, the administration of China will still let industrial policy plays the leading role and adopt relatively relaxed regulatory strategies. The government is likely to follow the regulating example of drivers by allowing the platform enterprise and the deliverymen to reach an agreement about the nature of their relationship. Meanwhile, aiming at some prominent problems in the labor policy, especially the high incidence

2. The Ministry of Human Resources and Social Security, "New Occupation - Analysis Report about Present Employment Index of Online Distribution-appointing Deliverymen,"

[http://www.mohrss.gov.cn/SYrlzyhshbzb/dongtaixinwen/buneiyaowen/202008/t20200825\\_383722.html](http://www.mohrss.gov.cn/SYrlzyhshbzb/dongtaixinwen/buneiyaowen/202008/t20200825_383722.html).

3. The Ministry of Human Resources and Social Security, "New Occupation - Analysis Report about Present Employment Index of Online Distribution-appointing Deliverymen,"

[http://www.mohrss.gov.cn/SYrlzyhshbzb/dongtaixinwen/buneiyaowen/202008/t20200825\\_383722.html](http://www.mohrss.gov.cn/SYrlzyhshbzb/dongtaixinwen/buneiyaowen/202008/t20200825_383722.html).

4. General Office of the Ministry of Human Resources and Social Security, *Announcement on Better Guidance and Service for Sharing Employees* (2020).

of traffic accidents among deliverymen, the deliverymen may be allowed to enjoy several protections from the employment law, particularly to participate in the insurance of work-related injury. However, it is almost impossible for the administration to impose a labor relation between the platform enterprise and the deliverymen. Including online distribution-appointing deliverymen and online car-hailing drivers, new occupations in the platform economy will remain a special zone of China's employment law, and will not affect the overall legal system.

#### IV.

Then is it possible that the judiciary and the legislature adopt different attitudes and make different rules for the new occupations in the platform economy, in addition to the administration? It is generally impossible. For the judiciary, the main limitation comes from the role this institution plays. According to China's *Constitution* and *Legislation Law*, the judiciary assumes the judicial function and is authorized to interpret the specific application of laws, but it has no power to make rules, let alone making rules differ from those of the legislature and the administration. Honestly speaking, the judiciary also takes into account policies except the law when deciding cases, but such considerations are often not explicitly written into the judgement, which would incur criticism. In 2018, Haidian District Court in Beijing ruled that a deliveryman named Li Xiangguo had a labor relation with the platform that he serviced called Flash Delivery APP, which caused widespread controversy.<sup>5</sup> The court tried to couple the facts of the case with the elements of the labor relation one by one in an attempt to prove that it made a judgement according to law. However, at the end of the judgment, it also frankly acknowledged that the judgment had took labor policy into account and believed that denying the existence of a labor relation between Li and the platform would cause too adverse consequences for Li's personal interests. Being aware that its policy judgment was on suspicion of exceeding authority, the court tried hard to limit the impact of the judgment. The judge said Li worked up to 10 hours a day, a rarity among online distribution-appointing deliverymen, meaning his case did not apply to most of his peers. The appeal court promoted the two parties to reach an agreement through mediation. As a result, the judgment of first trial never took effect. Observers speculate that the reason why the appeal court settled the case through mediation rather than judgment was to avoid evaluating the judgment of first trial. This might well indicate that the appeal court did not endorse the practice of deciding cases based on policy of the first trial court. Haidian District Court in Beijing is one of the courts with highest level of labor trial in China, yet it has no authority and ability to make policy judgment, then this kind of judgment can only be left to the administration.

As for the legislature, as mentioned above, the legislative process is rarely initiated until the rules established by the administration have been generally applied and sufficient experience has been accumulated. So in the short term, the digitalization of China's employment law will remain restricted to specific occupations and will remain subject to the administration.



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5. Civil Verdict of Haidian District People's Court, 2017, (Beijing 0108, First Trial of Civil Case, No.53634).

# The Internet Platform Labor in China: The Rise, Controversy and Policy Trends

Tianyu WANG

1. The rise of Internet platform labor in China
2. Main legal issues of employment on Internet platforms
3. Academic debate on the legal aspects of platform labor
4. Policy trends for the platform labor

After the rise of Internet platform labor with mobile network technology worldwide, China has taken the lead in the scale and type of platform labor with its information infrastructure and labor resources. Platform labor has also triggered legal controversies, mainly on how to characterize its legal relationship. Based on the diversity of platform labor, it cannot be generalized but should be divided into self-governing platforms and organizational platforms according to their different functions. Autonomous platforms are based on mediation contracts, and platforms only provide transaction media services. Organizational platforms take the platform as the center of labor transactions, including the regular employment of labor contracts and the innovative employment of civil agreements. There are corresponding legal regulations for the intermediary contract and the labor contract, but the legal nature of the innovative form of labor is unclear, and the main dispute is the liability of the service provider for his injuries or damages caused by him to third parties, and there are divergent results in the decisions of local courts. As for this innovative form of employment, rules should be formulated with the vision of the digital era, and existing labor laws should not be applied rigidly but should be classified and adjusted according to the characteristics of platform labor. At present, the focus of institutional development is on the occupational injury protection system for platform workers, while government supervision must be strengthened, the responsibilities of the platform are scientifically defined, and the social risks arising from platform workers effectively controlled.

## 1. The rise of Internet platform labor in China

Driven by the combination of mobile internet technology and the concept of the sharing economy, Internet platform labor has been on the rise dramatically worldwide since 2014. Platform labor refers to the service or labor provided by labor providers to pay for specific content based on an Internet platform. The first model to develop is the online car booking service represented by Uber, where drivers download the platform app and register for approval to receive car requests from the platform and complete specific delivery services independently.

In this wave of internet technology, China, by its good information infrastructure and widespread use of intelligent terminal equipment, started almost simultaneously with developed countries in the field of platform labor, and rapidly expanded to several social service areas, such as take-out food delivery, online contract driving, city express, etc., and has achieved an advantage over developed countries in terms of business models, types of services and scale of employment. According to the Annual Report on the Development of China's Sharing Economy (2019), the number of participants in China's sharing economy was about 760 million in 2018, and the number of those involved in providing services was about 75 million, up 7.1% year-on-year. The number of platform employees was 5.98 million, an increase of 7.5% year-on-year.<sup>1</sup> The scale of

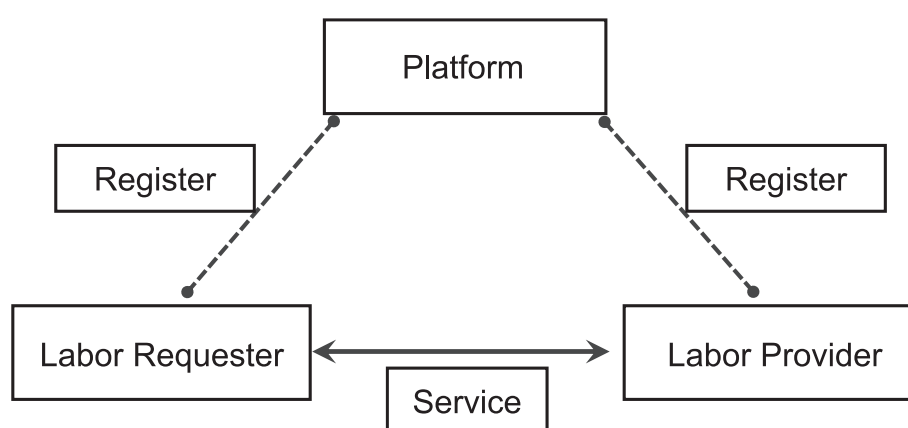
1. Sharing Economy Research Center of the National Information Center and the Sharing Economy Working Committee of the Internet Society of China. 2019. "China Sharing Economy Development Annual Report," 2019 Edition, p. 1.

this employment platform labor is hard to compare with any country.

When the scale reaches a certain level, the forms of platform labor tend to be diversified, and the organizational model of employment also evolves continuously, and China's Internet platform labor has developed a complex form that other countries do not have. The so-called platform labor is not a single pattern but can be divided into different patterns due to differences in platform functions and operation models.

### 1.1 Autonomous platform

The platform does not directly participate in the labor transaction process, but rather the two parties independently search for partners to contract and reach an agreement, and the platform receives a certain percentage of commission after the labor transaction is completed. The transaction structure of such platforms is shown in Figure 1 below.



Source: Compiled by the author.

Figure 1. The relationships between the platform, labor requester, and provider in an autonomous platform

A typical example of such a transaction model is the well-known Chinese website Zhu Baji. According to the service rules of the website, the two parties to the transaction are the employer and the knowledge worker, and the employer reaches an agreement with a knowledge worker and completes a specific labor transaction through hiring, bidding, comparing manuscripts and other trading methods.<sup>2</sup> Besides, according to the transaction rules of the website, the platform collects a certain percentage of the technical service fee from the knowledge worker when the transaction is concluded, according to the transaction amount.<sup>3</sup> In this model, the platform meets the characteristics of an intermediary, that is, Article 424 of the Contract Law, which stipulates that “an intermediary provides the principal with media services for the conclusion of a contract, and the principal pays remuneration.” The platform is outside the specific transaction behavior, and the subject, price, and period of the labor transaction are all agreed upon by the labor supply and demand parties through negotiation.

2. See Zhu Baji Platform Service Rules, <https://rule.zbj.com/ruleshow-0?pid=158&categoryId=278>, accessed Sept 26, 2020.

3. According to the trading rules of this website, when an order is completed (including partial completion) under the hiring and bidding trading model, for member knowledge workers, Zhu Baji has the right to collect technical service fees from knowledge workers by 2%–20% of the transaction amount according to different membership levels; for non-member service providers, Zhu Baji has the right to collect technical service fees from knowledge workers by 20% of the transaction amount. The technical service fee will not be refunded if there is a transaction dispute or if the negotiation between the two parties involves the report of a refund. See “Trading Rules of the Zhu Baji Platform,” <https://rule.zbj.com/ruleshow-0?pid=430&categoryId=278>, accessed Sept 26, 2020.

By the advantages of information technology, the platform can realize cross-regional and large-scale matching of trading opportunities and integrate the original scattered and local labor supply and demand into a national remote service industry. Even though the scale, time, and space of labor transactions have changed, the nature of the autonomous platform as a mediator has not changed, and its function is to provide an online market and rules to ensure the successful completion of transactions, rather than providing specific content of labor services or participating in individual transactions.

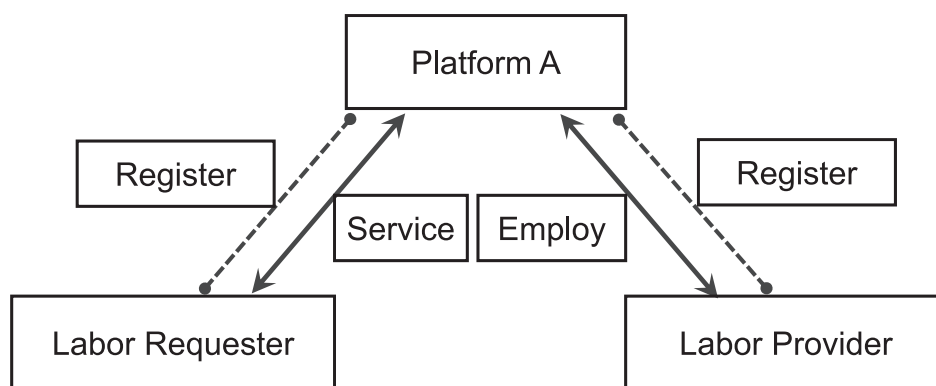
## 1.2 Organizational platforms

The function of such a platform is to provide labor services of specific content and is essentially an organizer of a certain type of labor transaction. After registering with the platform, the labor demander sends an order for labor to the platform, which then organizes the labor force to fulfill the order. Labor demanders and labor providers do not have direct contracting behavior, both to the platform for the transaction object. In my opinion, the labor platforms with the largest number of employed people in China all belong to the organization-type platforms, such as online car booking, takeaway delivery, same city express delivery, and online contract driving. Depending on how they organize their workforce, these platforms can be divided into the following three categories.

### 1.2.1 Model A

The platform hires the labor provider directly and enters into a labor contract with it, i.e., the platform is the employer and the labor provider is the worker. The platform receives an order from the labor demander and sends instructions to the laborer through the app. The contractual relationship in this model is shown in Figure 2 below.

There is no difference between the platform under this model as the main body of employment and the regular employer, only the way of a labor organization has adopted the means of information technology, but there is a clear labor contract relationship between the platform and the labor service provider, which belongs to the adjustment of labor law and is not innovative. However, the labor law stipulates that the employer is responsible for several guarantee obligations, such as written contract, termination protection, economic compensation, social insurance, etc., which makes the labor cost of this model high. Therefore, the platform usually adopts this model in the start-up phase.

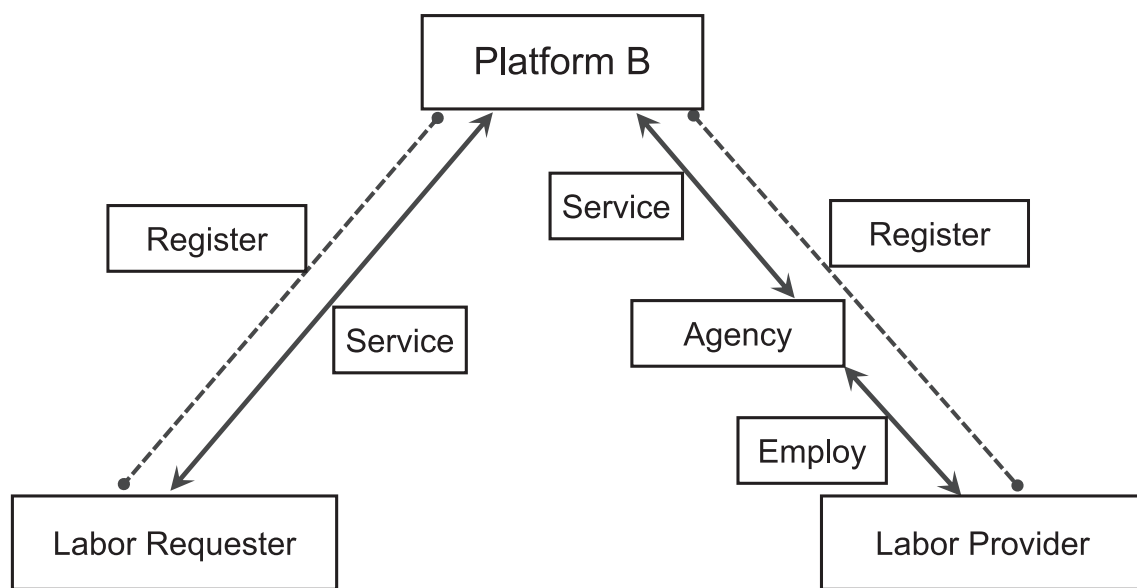


Source: Compiled by the author.

Figure 2. The relationship between the platform, labor requester, and provider under the Platform A model

### 1.2.2 Model B

The platform outsources the entire business of a specific region. The platform outsources the entire business of a specific region to an agent, who hires a labor provider to perform the work. This model is an evolution of Model A, where the platform is transformed from a direct provider of labor to a contractor, strengthening its position as a labor transaction organizer and improving the efficiency of labor organization and management through its agents. In the process of outsourcing, the platform also transfers the obligations of the employer in the labor related to the agent, who enters into a labor contract with the labor service provider, constituting a labor relationship between the agent and the labor service provider. In this model, the platform collects and processes the orders of labor demanders and assigns them to specific agents according to regions, who organize and manage their workers to provide specific labor services. The contractual relationship under this model is shown in Figure 3 below.



Source: Compiled by the author.

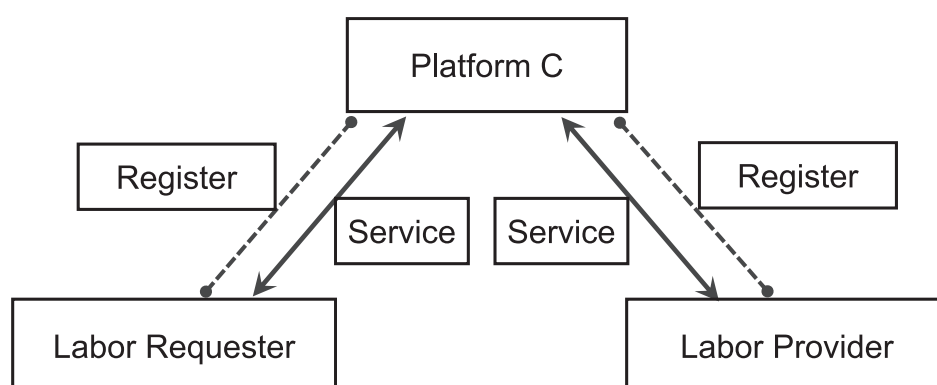
Figure 3. The relationship between the platform, labor requester and provider under the Platform B model

### 1.2.3 Model C

The labor service provider downloads the platform app and registers, and then becomes the platform's labor service provider after verification; no labor contract is concluded between the platform and the labor service provider; the labor service provider decides independently whether to work, when and where to work; the platform does not provide labor tools and does not carry out daily labor management, but only completes the labor service according to the platform's rules and the format of the contract between the platform and the labor service provider.<sup>4</sup> The contractual relations under this model are shown in Figure 4 below.

This model is an innovative Internet platform for employment, where labor service providers can use convenient information channels to obtain labor demand orders and use their free time to provide labor services, which is precisely the labor transaction model referred to in the concept of the "sharing economy." There is no direct communication and contracting behavior between the supply and demand of labor services,

4. See Wu Qingjun and Li Zheng. 2019. "Labor Control and Task Autonomy under the Sharing Economy: A Mixed-Method Study of Drivers' Work," *The Journal of Chinese Sociology* 6(1).



Source: Compiled by the author.

Figure 4. The relationship between the platform, labor requester, and provider under the Platform C model

the platform and labor demand side of the relationship remains unchanged, only the platform and the labor service provider to form a loose cooperation relationship, from the perspective of the contract is to complete the specific labor services for the target contractor relationship, the labor service provider to complete a specific outcome as the consideration for remuneration, the platform is the payer of the remuneration.

However, with the expansion of the business scope of the platform, more and more people are aware of the work autonomy they can enjoy by participating in platform labor, so some of them leave the regular employment organizations and engage in platform labor full-time, such as full-time online car drivers, which is a departure from the “sharing economy” that originally only emphasizes the use of free time to participate in work, and changed to rely on labor orders compensation for means of livelihood “gig economy.”<sup>5</sup> This makes the original loose cooperation between the labor service providers and the platform from the original loose relationship to a more closely integrated relationship, mainly reflected in the labor service providers’ reliance on the platform income as a source of living.

According to my observation, the platform labor in Europe and the United States are limited to this model, and there are no A and B models mentioned above. In terms of contractual relations, the two models A and B are not innovative but are in essence “conventional employment in Internet clothing,” in which the organization and management of the workforce are still based on the labor contract, and the protection of the rights and interests of the labor providers involved is just a manifestation of old problems such as the lack of implementation of the labor law, which does not go beyond the existing “labor law.” The scope of adjustment provided for by the law does not, of course, constitute a challenge to existing legislation.

What needs to be confronted by law and legal theory is the C model, which is the new model of labor and employment under digital conditions. Given the large scale and complex pattern of China’s employment in the Internet platform, the judiciary and policy-making authorities are actively searching for regulatory solutions that meet the requirements of the information age.

## 2. Main legal issues of employment on Internet platforms

### 2.1 Scale of employment in organizational platforms

The major markets for organized platform labor have become dominated by one or more players, and estimates of the number of participants should capture the online car-hailing, chauffeur-driving, same-city

5. See Aloisi, Antonio. 2016. “Commoditized Workers: Case Study Research on Labor Law Issues Arising from a Set of ‘On-Demand/ Gig Economy’ Platforms,” *Comparative Labor Law & Policy Journal* 37(3): 654.

courier, and food delivery platforms that employ the largest number of people. If you can roughly estimate the number of labor providers employed by these types of platforms, you will be able to make a basic judgment about the size of the platform's labor force. After all, the net chef, net nail, and other market share are very low, the number of participants is very limited, and the net car drivers, chauffeured drivers, Flash Delivery, takeaway riders are the main object of labor relations to identify disputes, but also a typical group with social protection needs.

In terms of net-contractor drivers, according to the statistics of the net-contractor regulatory information interaction platform, as of August 2019, more than 1.5 million net-contractor driver certificates have been issued in various places, and about 2 million drivers provide transport services daily.<sup>6</sup> In terms of chauffeured drivers, Didi has the largest market share in the chauffeured driver industry, and its National Chauffeured Driver Consumption Report released in 2016 shows that 250,000 drivers have passed various assessments and are officially employed.<sup>7</sup> In the City Express, the main platform "Flash" website shows that the platform in 2020 has 800,000 Flash Delivery staff.<sup>8</sup> In the takeaway delivery, according to the Meituan Research Institute report, in 2018 there are 2.7 million riders' delivery orders;<sup>9</sup> ranked second platform "Hungry" report shows that the platform's Hummingbird Delivery registered riders have reached 3 million.<sup>10</sup> According to the above-mentioned data combined, can roughly estimate the main group of platform labor for 8.8 million. In the past two years, there has been no explosive growth in platform labor, it can be inferred that the scale of platform labor of concern to labor law should not exceed 10 million.

## 2.2 Main forms of legal disputes in organization-based platforms

From a risk perspective, since the main platform labor is currently related to road transport, the risk of traffic accidents is the greatest risk posed by platform labor, which can lead to damage in two ways: first, when the labor provider itself is injured, and second when the labor provider causes damage to third parties other than itself and the platform, including labor demanders and other third parties, such as road pedestrians.

The question of the contractual relationship between the labor provider and the platform has to be legally clarified, both in terms of the protection of the labor provider in case of his injury and whether the platform is liable for the damage caused by third parties. Under an autonomous platform, the supply and demand of labor are the two parties to the contract, and the platform is the interlocutor, which is not involved in the specific transaction and certainly not responsible for the damages in the performance of labor services, and the aforementioned common types of platform labor are not based on an autonomous platform. Under the organizational platform, both models A and B organize labor based on labor contracts, with clearer legal relationships and clear legal bases.

**2.2.1** If a labor provider is injured, the platform or agent, as the employer, shall apply for work injury insurance for the labor provider following article 33 of the Social Insurance Law and article 2 of the Regulations on Work Injury Insurance, and shall apply to the social insurance agency for work injury insurance benefits when the injury occurs; if the platform or agent should have applied for work injury insurance for the labor provider but failed to do so, then, under the Regulations on Work Injury Insurance, article 62(2) of the Tort Liability

6. Beijing Youth Daily. 2019. "Over 1.5 Million Legal Online Taxi Drivers," Aug 29, 2019, [http://www.xinhuanet.com/tech/2019-08/29/c\\_1124934243.htm](http://www.xinhuanet.com/tech/2019-08/29/c_1124934243.htm), accessed Sept 10, 2020.
7. Didi Releases, "National Report on Chauffeured Driving Consumption," <http://www.techwalker.com/2016/0201/3072467.shtml>, accessed Sept 11, 2020.
8. Official website of Flash Delivery, <http://www.ishansong.com/aboutUs>, accessed Sept 11, 2020.
9. Meituan Research Institute. "New Urban Youth: 2018 Delivery Rider Employment Report," <https://about.meituan.com/institute>, accessed Sept 11, 2020.
10. Hungry Hummingbird Delivery. "2018 Takeaway Rider Group Insight Report," <http://www.nbd.com.cn/articles/2018-12-28/1286600.html>, accessed Sept 11, 2020.

Law, after the occurrence of a work-related accident, the platform or agent, as the employer, shall pay the costs related to the work-related injury insurance treatment.

If the labor service provider causes damage to a third party, the platform or agent, as the employer, shall be liable for the damage compensation for the worker's official acts, according to Article 34(1) of the Tort Liability Law, if the employer's staff causes damage to others by performing their work tasks, the employer shall be liable for the tort. In practice, part of the agent's management is not standardized, did not enter into a written labor contract with the labor provider, then the court by examining the agent's command management of the labor provider, that the two constitute a labor relationship, the agent is liable for damages to third parties.<sup>11</sup>

**2.2.2** C model of legal application is a divergence. The author through the "decision documents network" to 2014–2019 platform labor dispute case judgment to search, combing found that the court on the platform and labor service provider contract between the characterization of the two types of opposing views of the judgment.

The first type of judgment holds that labor service providers and online platforms constitute labor relations, or employment relations. The number of such judgments is relatively small, all of which are personal or property damages occurring during the performance of labor services, a few of which are caused by the labor service provider itself, and most of which are caused by the labor service provider to third parties' personal or property damages. The court determines the legal relationship between the labor service provider and the platform to determine the subject of liability, and the main points of investigation include the labor service provider engaging in the business of the platform, accepting the management of the platform, and being bound by the relevant system, and the payment of labor remuneration by the platform. Different courts have used different concepts of the contract of employment,<sup>12</sup> contract of service,<sup>13</sup> and contract for service,<sup>14</sup> to qualify the contractual relationship, and some courts have not explicitly defined the relationship, but using only the descriptive concept of "staff" and "performance of duties."<sup>15</sup>

The courts have taken two routes of analysis in such decisions: first, they have relied on the elements listed in the Notice on Matters Relating to the Establishment of Labor Relations issued by the former Ministry of Labor and Social Security (Ministry of Labor and Social Security [2005] No. 12) to determine labor relations, confirming that labor relations are the responsibility of the platform as the employer.<sup>16</sup> Second, the minority courts have not determined labor relations, by alternative concepts such as "labor," "employment," "staff," "performance of functions," etc., as long as they can be introduced into the Code of Civil Procedure. Article 34 (1) of the Tort Liability Law, which states that "if a staff member of an employing unit causes damage to another person in the performance of his or her work, the employing unit shall be liable in tort," holds the platform responsible, which means that it can complete the task of adjudication of attribution of liability

11. See Changchun Nanguan District People's Court (2017) Ji 0102 Civil Judgment No. 223, Hefei Luyang District People's Court (2017) Wan 0103 Civil Judgment No. 5604, Hefei Luyang District People's Court (2018) Wan 0103 Civil Judgment No. 2653, Hefei Luyang District People's Court (2017) Wan 0103 Civil Judgment No. 5604, Shanghai Qingpu District People's Court (2016) Hu 0118 Civil Judgment No. 13396.

12. See Beijing Haidian District People's Court (2017) Beijing 0108 Civil Judgment No. 53634, Chongqing Fifth Intermediate People's Court (2017) Chongqing 05 Xing Final Administrative Judgment No. 351.

13. See Xi'an Intermediate People's Court (2017) Civil Judgment No. 11374 of Shaanxi 01 Min Final.

14. See Shanghai Pudong New Area People's Court (2014) Pu Min Yi (Min) Chu Zi No. 37776 Civil Judgment, Guangzhou Intermediate People's Court (2017) Yue 01 Min Final No. 13837 Civil Judgment, Shanghai Railway Transportation People's Court (2017) Shanghai 7101 Min Final No. 621 Civil Judgment, Shanghai Railway Transportation People's Court (2017) Shanghai 7101 Min Final No. 617 Civil Judgment, Tianjin Second Intermediate People's Court (2017) Tianjin 02 Criminal Final No. 62 Criminal Judgment.

15. See also Hangzhou Intermediate People's Court (2017) Zhe 01 Min end 4425 Civil Judgment, Shanghai First Intermediate People's Court (2017) Hu 01 Min end 10822 Civil Judgment, and Shanghai Minhang District People's Court (2017) Hu 0112 Min end 12313 Civil Judgment.

without extending to the labor law system, and can avoid other safeguard matters based on labor relations.<sup>17</sup>

The second type of ruling holds that the platform does not constitute a labor relationship with the labor service provider. There are a large number of such judgments, including two types: one is a rare case where the labor service provider petitions the court to determine the labor relationship to obtain protection for labor rights and interests, such as work injury relief;<sup>18</sup> the other is a more frequent case where the performance of labor services causes personal injury to a third party, and the court determines the contractual relationship between the platform and the labor service provider for attribution.<sup>19</sup> The court relied on the characteristics of the labor service provider's work, including its right to decide whether to work, as well as the time and place of work, and the income from work is not remuneration for labor; the platform does not provide the tools of labor, does not have management, domination or mandatory constraints on the labor service provider does not meet the characteristics of subordination, the two parties do not constitute a labor relationship. Therefore, the platform does not assume the employer's obligations under labor law to the labor service provider and is not liable for any third-party damages caused by the labor service provider.

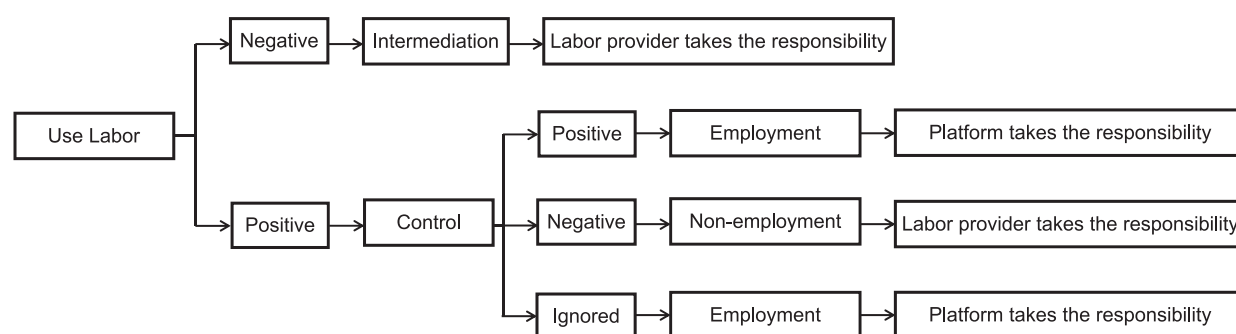
While denying the labor relationship, some courts further analyzed the nature of the contract, pointing out that the online platform is engaged in intermediary services by providing information, and the relationship between it and the labor service provider is an intermediary contract.<sup>20</sup> Besides, in cases in which the third party claimed damages, a few courts did not take the labor relationship as the starting point, but directly identified the online platform as an intermediary based on its behavior and functions.<sup>21</sup>

16. The Notice on Matters Relating to the Establishment of Labor Relations is the basic basis for the judicial determination of labor relations in China. Article 1 of the Notice stipulates that a labor relationship is established if the employer has not concluded a written labor contract but, at the same time, the following circumstances are present: 1. the employer and the worker meet the main qualifications stipulated in-laws and regulations; 2. the labor rules and regulations formulated by the employer following the law apply to the worker, and the worker is subject to the labor management of the employer and engages in remunerated labor arranged by the employer, and 3. the employer and the worker meet the main qualifications stipulated in-laws and regulations; and 4. the worker is subject to the labor management of the employer and engages in remunerated labor arranged by the employer. The work provided by the worker is part of the employer's business.

17. For example, in a case where the platform was found to be in an "employment relationship" with a labor service provider, the court stated: "The workplace, working hours and monthly remuneration for labor are all factors to be taken into account in determining whether a labor relationship exists between the parties, but they do not prevent the establishment of an employment relationship between the parties." See the Guangzhou Intermediate People's Court (2017) Civil Judgment No. 13837; in another case in which the labor service provider was found to be "performing its duties," the court, after ruling that the platform was liable to the injured third party, stated that the platform and the labor service provider "were what kind of legal relationship has nothing to do with the personal injury compensation dispute involved in this case, and the parties may deal with it separately based on the agreement." See Shanghai No. 1 Intermediate People's Court (2017) civil judgment No. 10822 of Shanghai 01 Minzhong.

18. See Beijing Shijingshan District People's Court (2016) Beijing 0107 Civil Judgment No. 4021, Anhui Province Chuzhou City Intermediate People's Court (2017) Anhui 11 Civil Judgment No. 938, Shandong Province Weihai City Intermediate People's Court (2017) Lu 10 Civil Judgment No. 1858, Jiangsu Province Wuxi City Liangxi District People's Court (2017) Su 0213 Civil Judgment No. 8149, Beijing Third Intermediate People's Court (2018) Beijing 03 Civil Judgment No. 5233, and Shanghai Second Intermediate People's Court (2019) Shanghai 02 Civil Judgment No. 755.

19. See Nanjing Gulou District People's Court (2015) Gumin Chuzhi Civil Judgment No. 7340, Shanghai Hongkou District People's Court (2016) Hu 0109 Min Chu No. 22401, Shanghai Pudong New Area People's Court (2016) Hu 0115 Min Chu No. 81742, Beijing Xicheng District People's Court (2017) Jing 0102 Min Chu No. Civil Judgment No. 32348, Beijing Dongcheng District People's Court (2017) Jing 0101 Civil Judgment No. 6586, Beijing Xicheng District People's Court (2017) Jing 0102 Civil Judgment No. 10084, Beijing Fengtai District People's Court (2017) Jing 0106 Civil Judgment No. 14428, Wuxi City Liangxi District People's Court (2017) civil judgment No. 8149 of Su 0213 Minchu, civil judgment No. 187 of Qingdao Licang District People's Court (2017) civil judgment No. 187 of Lu 0213 Minchu, civil judgment No. 7604 of Tianjin Hedong District People's Court (2017) civil judgment No. 7604 of Tianjin 0102 Minchu, civil judgment No. 1322 of Nanjing Gulou District People's Court (2017) civil judgment No. 1322 of Su 0106 Minchu; Nanjing Qinhuai District People's Court (2017) Su 0104 Civil Judgment No. 937, Nanjing Xuanwu District People's Court (2017) Su 0102 Civil Judgment No. 5396, Shanghai Pudong New Area People's Court (2017) Shanghai 0115 Civil Judgment No. 25255; Shanghai Pudong New Area People's Court (2017) Shanghai 0115 Civil Judgment No. 25257 Judgment, Shanghai Jing'an District People's Court (2017) Hu 0106 Civil Judgment No. 8770, Shanghai Xuhui District People's Court (2017) Hu 0104 Civil Judgment No. 8948, Hangzhou Binjiang District People's Court (2017) Zhe 0108 Civil Judgment No. 1626, Hangzhou Binjiang District People's Court (2017) Zhe 0108 Civil No. 1046 Civil Judgment, Beijing Xicheng District People's Court (2018) Beijing 0102 Minchu 4883 Civil Judgment.



Source: Compiled by the author.

Figure 5. The court's reasoning logic for platform labor

Combining the above two types of decisions, the courts have developed a variety of decision logic for cases with essentially the same facts, as shown in Figure 5.

### 3. Academic debate on the legal aspects of platform labor

What kind of control does the Platform exert over the service provider and does that control prove the subordination of the labor relationship? This is the source of the argument. The opposite of platform control is the autonomy of the labor provider, which constitutes a contradiction between the two poles. From the existing literature, one side emphasizes control, arguing that platform control is a new type of control under the condition of information to prove the establishment of labor relations; the other side emphasizes autonomy, arguing that labor service providers have autonomy different from that of workers in labor relations, thus arguing that labor relations are not established. In this debate, at least we can establish that platform labor is different from conventional labor relations in terms of the basic characteristics of “control and autonomy,” then we should review our way of answering the core question of “what is platform labor” and clarify how we are discussing it.

#### 3.1 The myth of “control” and “autonomy”

The fact of platform labor is clear in the study, and the two most legally significant points of concern to the researcher are: on the one hand, the platform controls the service process of the labor provider through scoring mechanisms and data collection, and on the case of online car service, “the way the driver completes the work and the working environment is controlled by the scoring mechanism. The scoring mechanism implies a shift in supervisory authority and conflict.”<sup>22</sup> On the other hand, labor providers enjoy a high degree of autonomy in deciding whether to work, when to work, and where to work, which is not possible under conventional labor relations.

20. See Shanghai Pudong New Area People's Court (2016) Shanghai 0115 Civil Judgment No. 81742, Jiangsu Province Wuxi City Liangxi District People's Court (2017) Su0213 Civil Judgment No. 8149, Shandong Province Qingdao City Licang District People's Court (2017) Lu0213 Civil Judgment No. 187, Tianjin City Hedong District People's Court (2017) Tianjin Civil Judgment No. 7604, Nanjing Xuanwu District People's Court, Jiangsu Province (2017) Su 0102 Civil Judgment No. 5396, Shanghai Pudong New Area People's Court (2017) Shanghai 0115 Civil Judgment No. 25255, Shanghai Jing'an District People's Court (2017) Hu 0106 Minchu 8770, Shanghai Xuhui District People's Court (2017) Hu 0104 Minchu 8948, Hangzhou Binjiang District People's Court (2017) Zhe 0108 Minchu 1626, Hangzhou Binjiang District People's Court (2017) Zhe 0108 Minchu Civil Judgment No. 1046, Beijing Fengtai District People's Court (2017) Jing 0106 Minchu 14428, and Beijing Xicheng District People's Court (2018) Jing 0102 Minchu 4883.

21. See Nanjing Gulou District People's Court, Jiangsu Province (2015) Civil Judgment No. 7340 of Gumin Chuji, and Nanjing Qinhuai District People's Court, Jiangsu Province (2017) Civil Judgment No. 937 of Su 0104 Minchu.

22. See Wu Qingjun and Li Zheng. 2019. “Labor Control and Task Autonomy under the Sharing Economy: A Mixed-Method Study of Drivers' Work,” *The Journal of Chinese Sociology* 6(1).

**3.1.1** Scholars who focus on “control” argue for a labor relationship between the platform and the labor provider. For example, Professor Chang Kai points out that “any operation of the workers on the platform is within the scope of the procedures set by the Internet enterprise, and it can be said that the Internet enterprise is giving work orders and work instructions to the platform workers all the time, and the Internet enterprise is also giving work orders and work instructions to the platform workers all the time. Workers in the economy are subject to stricter personality discipline than the direct surveillance in traditional enterprises.”<sup>23</sup> Researcher Zengyi Xie also argues that “compared to traditional labor relations, in a sense, the control of platform companies over their workers has increased rather than decreased.”<sup>24</sup>

Another view is that platform control over labor providers is weaker than in conventional labor relations, with the result that the subordination of labor providers is consequently weakened. To describe this state of affairs, the existing literature has developed the concept of “atypical labor relations,” and Associate Professor Zhang Sufeng, in her study of online car booking, suggests that “an atypical labor relationship is formed between the software operator of a private car and the driver of a private car in which the subordinate attributes are weakened and the nature of the employment relationship is ambiguous.”<sup>25</sup> Professor Tian Silu argues that flexible employment forms such as shared labor on online platforms weaken subordination, “for example, practitioners provide services based on the instructions of user companies or online platform companies, which have the characteristics of partial subordination, in the middle realm of employment and self-employment.”<sup>26</sup>

**3.1.2** Scholars who focus on “autonomy” argue that there is no labor relationship between the platform and the labor provider. Among them, Professor Yu Ying points out that “since labor providers can control the time and intensity of work by themselves, the subordination of their personality is very weak. The platform does not control wages, and the economic subordination is relatively weak. In addition, at this time the labor provider is even more not subordinate to the corporate system, and has not been incorporated into the corporate organization, the organization’s subordinate attributes are also more difficult to comply with, and do not meet the requirements of the theory of subordination.”<sup>27</sup> Ban Xiaohui argues that platform labor is “the task-based employment of the gig economy,” and “the feature that labor providers are controlled by platform enterprises is not obvious.” The continuation of the employment relationship, the blurring of the personal subordination of the employment relationship, the weakening of the organizational subordination of the employment relationship, and the lowering of the economic subordination of the employment relationship.”<sup>28</sup> Associate Professor Lou Yu is even more direct in pointing out that “the way workers participate in economic life and receive remuneration has also changed fundamentally, they are no longer employees in the employer’s organization, but have evolved into self-employed people working with platform companies.”<sup>29</sup>

**3.1.3** Summary. The sticking point in the existing discussion, where no consensus has emerged, is whether the platform’s control over the labor provider is stronger or weaker than the employer’s control over the worker in a conventional labor relationship. The answer to this question determines whether the labor provider has the

23. Chang Kai and Zheng Xiaojing. “Employment Relationships or Cooperative Relationships: An Analysis of the Nature of Employment Relationships in the Internet Economy,” *Journal of Renmin University of China*, No. 2, 2019.

24. Xie Zengyi. “Identification of Labor Relations of Internet Platform Workers,” *Chinese-Foreign Law*, No. 6, 2018.

25. Zhang Sufeng. “The Atypical Employment Issues in the Operation of ‘Special Vehicles’ and its Regulation,” *Journal of East China University of Political Science and Law*, No. 6, 2016.

26. Tian Silu. “The Subordinate Labor Theory in the Era of Industry 4.0,” *Law Review*, No. 1, 2019.

27. Yu Ying. “The Recognition of Sharing Economy Employment Relationships and its Legal Regulation: Taking the Understanding of the Current Domain of the ‘Sharing Economy’ as a Starting Point,” *Journal of East China University of Political Science and Law*, No. 3, 2018.

28. Ban Xiaohui. “The Labor Law Regulation of Task-Based Employment under the Gig Economy,” *Law Review*, No. 3, 2019.

29. Lou Yu. “The design of social insurance system for new employment form groups,” *China Medical Insurance*, No. 1, 2020.

subordination of the worker under the labor relationship, and if the platform control is stronger, then it should be clear from the existing subordination theory that the problem of platform labor is also a problem of enforcement of existing subordination rules; if the platform control is weaker, leading to “fuzzy employment,” then. Should the existing subordination doctrine and criteria be amended to include platform workers in labor law adjustments? Or should a separate safeguard mechanism be structured according to the characteristics of the Platform’s workforce? So, no matter how you ask the question, there is no way around the “must do” from the property.

## 3.2 Subordinate criteria

**3.2.1** The first view is that we should adhere to the existing subordinate criteria, “the traditional concept of labor relations and judgment criteria are flexible and adaptable, not entirely obsolete, but can still be accommodated in the network platform labor relations.”<sup>30</sup> The first view is that we should adhere to the existing subordinate criteria, “the traditional concept of labor relations and the criteria for determining them are highly flexible and adaptable,” and that “the traditional concept and criteria for determining them are not completely outdated and can still accommodate employment relationships on online platforms,” “the existing problem is that in the face of new forms of labor relations,” “directly applying the existing legal provisions will face the problem of adaptability,” and the corresponding response is that “we should adhere to the criteria for determining labor relations in the following areas.”<sup>31</sup> Based on the standards and the corresponding labor legislation, appropriate adjustments should be made in accordance with the characteristics of the platform and the platform’s employees.”<sup>32</sup> It can be seen that this view is based on a stronger control of the platform’s employment, in line with the existing subordinate criteria.

**3.2.2** The second view is that the criteria for recognizing labor relations should be relaxed by revising the dependent attribute theory. For example, Professor Wang Quanxing believes that “based on the principle that labor relations are dependent and continuous employment relations, we should explore the index series for recognizing atypical labor relations based on some organizational dependent attributes, external economic dependent attributes, and continuity recognizes ‘internet workers’ with a certain degree of subordination and continuity as atypical labor relations” and selectively applies the means of labor law protection.<sup>33</sup> Professor Tian Silu points out that “even if the practitioner does not have human subordination when economic subordination is deemed to exist, legal provisions consistent with the purpose of the labor contract can be applied more broadly and provide a certain level of legal protection corresponding to that degree of subordination.”<sup>34</sup> It can be seen that this view is based on the fact that the degree of control of platform employees is weak, and it is difficult to identify labor relations according to the existing subordination standard, so by amending or relaxing the standard, the purpose of applying labor laws can be achieved, and by positioning “atypical labor relations,” the labor law protection of platform employees is different from that of conventional labor relations.

30. Xie Zengyi. “Identification of Labor Relations of Internet Platform Workers,” *Chinese-Foreign Law*, No. 6, 2018.

31. Chang Kai and Zheng Xiaojing. “Employment Relationships or Cooperative Relationships: An Analysis of the Nature of Employment Relationships in the Internet Economy,” *Journal of Renmin University of China*, No. 2, 2019.

32. Fan Wei. “The Dilemma of Rights Protection for Internet Platform Employees and the Analysis of Their Judicial Decisions,” *China Human Resources Development*, No. 12, 2019.

33. Wang Quanxing and Wang Xi. “Labor Relations Identification and Rights Protection of Online Contract Workers in China,” *Jurisprudence*, No. 4, 2018.

34. Tian Silu. “The Subordinate Labor Theory in the Era of Industry 4.0,” *Law Review*, No. 1, 2019.

**3.2.3** The third view is that we should adhere to the existing subordinate criteria to identify labor relations, and since platform labor does not meet the current standards, it is not a labor relationship, and a new type of legal relationship should be created. According to researcher Ban Xiaohui, the object of adjustment of labor law should be changed from the traditional “labor relations” to “work relations,” and “the subjects of employment who personally provide labor services in the status of economic dependence should be included in the scope of protection of labor law. It is not included in the adjustment of the labor law, but is guaranteed in terms of wages, hours and social security.”<sup>35</sup> According to Professor Yu Ying, “a third model of employment relations—gig relations—is established in the middle of the labor relations and labor relations, which is not included in the adjustment of the labor law, but is guaranteed in terms of wages, working hours and social security.”<sup>36</sup>

### 3.3 Recent academic developments

On September 26, 2020, the Institute of Law of the Chinese Academy of Social Sciences held an academic seminar on “Legal Protection for Workers in New Employment Forms,” which was attended by all major domestic labor law scholars, most of whom believed that labor law is not suitable for adjusting the platform labor of the organization-based platform C model and that a relatively independent normative system should be explored.

I maintain that the challenge to platform labor is not the labor law, but the dichotomy of “dependent labor-independent labor.” The so-called “labor dichotomy” refers to the fact that the current law divides various types of labor payment activities into “dependent labor” and “independent labor,” and that the labor law regulates the “dependent labor” and “independent labor.” Labor relations with the content of “subordinate labor” emphasize the inequality between workers and employers; civil law regulates civil relations with the content of “independent labor” based on the equality of the two parties, including employment, entrustment, contracting, custody and so on. There are many forms of labor law in China. And because China’s labor law has formed an independent development path in history, it has never been united with the civil law, so the two have developed into their independent legal departments, and the “dependent labor” and “independent labor” are also separated into two parallel fields.

Under this dichotomy, the characterization of labor relations determines the level of protection of the rights and interests of the parties, and the only two options of labor law and civil law form a “bipolar” either labor relations that are adequately protected by a large number of peremptory norms, or civil relations that are difficult to guarantee due to the lack of peremptory norms. It is under this legal framework that platform labor emerged, and the system, the judiciary, and the doctrine have tried to respond to the “choice between the two,” but have been unable to come up with a circumspect answer.

In my opinion, the fundamental reason for the difficulty of explaining platform labor from the perspective of labor law is that the starting point of platform labor is the contract for service, which can be viewed as the result of the socialization of the contract for service. As a fundamental characteristic of the contract for service, a contractor is required to perform services independently and deliver a specific result. The other contractor does not interfere with the contractor’s labor process, and it is not often imagined that the contractor will primarily serve a single contractor. For example, in the social division of labor formed by industrialization in Germany, there were a large number of people who provided ancillary processing or services to the factory. As early as the nineteenth century, there was already “a manufacturer of ballpoint pens who, after producing the parts, delegated the assembly work to several families.”<sup>37</sup>

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35. Ban Xiaohui. “The Labor Law Regulation of Task-Based Employment under the Gig Economy,” *Law Review*, No. 3, 2019.

36. Yu Ying. “The Recognition of Sharing Economy Employment Relationships and its Legal Regulation: Taking the Understanding of the Current Domain of the ‘Sharing Economy’ as a Starting Point,” *Journal of East China University of Political Science and Law*, No. 3, 2018.

Under this production structure, those who provide ancillary processing or services to the factory are unconsciously integrated into the social division of labor, and as contractors, although they are still remunerated for the delivery of a specific product, the fact that their main remuneration for their subsistence comes from having a specific contractual counterpart makes this long-standing contract a guarantee of their right to subsistence, and thus the right of the State to individual subsistence. The obligation to guarantee is linked. At the same time, this type of contract, as part of the social division of production, does not exist in isolation but shapes a population that depends on it for its livelihood. Although this group of people is not as large as the group of employees, it is an important group that cannot be ignored and requires social protection, both as a unit of labor in the socialization of production and as part of the social community. Accordingly, the contract between the contractor and the plant has been socialized, and the performance of that contract is not simply a private event between the subjects of the contracting relationship but is infused with social elements. As a result of this process of socialization, the contractor's independence in the contract is gradually lost and, by attaching economic subordination to the contract, the contractor also becomes the employee-like person.

The platform uses work as the new form of the employee-like person in the network environment, which is essentially the scattered, individually occurring, labor content of the contract, through the network technology to quickly upgrade to a social service form. The common take-away food delivery and city courier are distinctive features of the contracting, even if it is an online car or a driver, as a delivery contract, also belongs to the contracting. Based on this point of view, platform labor is a contract for the contractor (labor provider) to perform specific labor results to a third party other than the contractor (platform), and the labor results are agreed upon between the contractor and the third party, so the contract of employment also stipulates the way and standard for the contractor to perform the labor results to the third party, which is the appearance of behavior factor. The right to evaluate the results of the services performed by the contractor (the provider) is partially transferred to a third party (the customer), but the final evaluation is still made by the contractor (the platform), i.e., the contractor (the service provider) is rewarded or punished based on the evaluation of the third party (the customer) by the contractor (the platform). Since the contracting relationship is continuous over a while, the performance of the contractor's services and the evaluation of the third party have an impact on the consideration and the contracting opportunity, and this impact has been objectified as "platform points," which I believe can be included in the "economic subordination." This is to be understood in the context of the "platform credits." As a result of the closer economic integration between the "platform points" and the platform, labor service providers are more willing to comply with the platform's pricing mechanism and service standard requirements, their independence as contractors is weakening, and their need for social protection is intensifying. It can be seen that labor providers have become an integral part of the social division of labor in the Internet era, with a clear need for social protection, but also because of the efficiency of online matching, which allows them to connect with a large number of unspecified third parties (customers), and the socialization of contracting is deepening with the efficiency of the internet era.

#### 4. Policy trends for the platform labor

Against the backdrop that the development of the Internet platform labor model is maturing and the exploration of the rule of law has touched on the substance of such issues, the General Office of the State Council issued the Guiding Opinions on Promoting the Normative and Healthy Development of the Platform Economy (Guo Ban Fa [2019] No. 38) (hereinafter referred to as the Guiding Opinions) on August 8, 2019, which can be described as comprehensively defining various issues of the platform economy from the height of top-level design, particularly capturing the focal issues of platform labor and indicating the direction of

37. See Hromadka, Wolfgang. 1997. *Arbeitnehmerbegriff und Arbeitsrecht: Zur Diskussion um die 'neue Selbständigkeit'*, 11 NZA, S. 569–573.

development of the future system, including.

**4.1** Existing labor law norms are not rigidly applied to platform workers, but rather are categorized and adjusted according to the characteristics of platform workers. As stipulated in Article 2(1) of the Guiding Opinions, “For those that can be seen accurately and have already formed a good momentum of development, the appropriate regulatory model should be tailored by category, avoiding the use of old methods to manage new business forms; for those that cannot be seen for a while, a certain ‘observation period’ should be set up to prevent them from being controlled to death at once.” Accordingly, the autonomous platforms and organizational platforms A and B models, which have a clear contractual nature and legal basis, can be tailored to the corresponding regulatory models.

At the level of local practice, Chengdu City issued the Implementation Opinions on Promoting the Participation of Employees in New Economy and New Businesses in Social Insurance, which classifies the forms of platform labor into full-time, part-time, labor dispatch, labor outsourcing, and civil agreement, and requires the employing entity to assume corresponding obligations according to the contractual relationship between it and the employees. This policy direction is precisely in line with the differences between different models of organizational platforms, and does not mix up platform labor, but focuses on distinguishing the two models of organizational A and B from model C. The forms of labor that fall within the scope of regular labor relations are adjusted according to the existing labor law, while the innovative models that cannot be included in the adjustment of the labor law are first included in the civil agreement, which precisely reflects the idea of “avoiding the old way of managing the new industry.”

**4.2** The system for safeguarding occupational injuries of platform workers is the focus of current system construction. Based on the causes of platform employment dispute cases, it can be found that the proportion of cases in which the labor service provider directly requests to recognize the labor relationship is very low when no damage is caused by the accident, but after the accident, which party should bear the consequences of the damage is the focus of the dispute, and the different understanding of the responsibility for the damage can form the differences in the ideas of court decisions. Therefore, occupational injury protection for platform employees can be said to be the crux of the current legal problem, and whether or not the labor relationship can be recognized makes the solution of this problem dilemma.

Against this background, the Guiding Opinions goes beyond the existing thinking and arguments, and looks at this issue out of the dual legislative framework of civil law and labor law, and addresses the issue of occupational injury protection for platform workers as an independent issue, and proposes a two-step approach to solving the problem: the first step is to protect labor service providers of platform workers utilizing commercial insurance. “The platform is encouraged to spread the risk by purchasing insurance products to better protect the rights and interests of all parties.” This approach has been adopted by many platforms to play the function of protection, for example, the Meituan platform deducts 3 yuan from the rider’s first order labor fee that day, to ensure accident insurance.<sup>38</sup> The second step is to focus on the future and build a special social security system, which is stipulated in Article 5(1) of the opinion, “to closely study and improve social security policies for employees of platform enterprises, such as employment and flexible employment, to carry out pilot projects on occupational injury protection, and to actively promote a universal insurance plan to guide more platform employees to participate in insurance.” From this provision, it can be seen that the policy level integrates platform labor and flexible employment, and to adapt to the trend of flexible and flexible labor methods in the future, the construction of the social security system is the main focus, and in addition to the

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38. Meituan Crowdsourced Rider Labor Agreement.

guarantee mechanisms provided by the civil law and labor law, the construction of an integrated social safety net is built, and the “universal insurance scheme” is taken as the system.

The direction of development is to go beyond the established model of risk-sharing between the parties to a specific transaction and to spread occupational risk throughout society. It can be expected that this institutional development will not only further promote the development of platform employment and other forms of flexible employment, but will also facilitate the shift to a dual legislative framework of “independent labor” and “subordinate labor,” with a view to the development of other forms of employment beyond current institutional protection of the form of labor, to move from the existing dualistic legislative framework to a multi-level network of legal protection.

**4.3** Strengthening the government’s supervisory responsibility, scientifically defining the responsibilities of platforms, and effectively controlling the social risks arising from platform labor. As mentioned above, the current social risk of platform labor is mainly the risk of traffic accidents, which covers labor service providers, labor demanders, and the general public. Besides, there are also other types of risks, such as the risk of personal safety and security of passengers of online contracted vehicles and the risk of personal information protection of platform clients, but from the perspective of judicial practice, the risk of traffic accidents constitutes the largest proportion of social risks.

As to how to prevent and control the risk of traffic accidents arising from the employment of platform workers, one viewpoint is to advocate strengthening the responsibility of the platform, because labor service providers, under the pressure of the platform, generally and frequently violate traffic rules, thus increasing the risk of traffic accidents, and the conclusion is to strengthen the supervision of the platform. On the one hand, the algorithm of the platform, if the platform based on the algorithm to the labor provider to set the completion of the order is too short, then the government should intervene to correct; on the other hand, we should see that the labor provider to complete the order as a source of income, even without the platform to set the time pressure, it will still in a certain period to complete the order as much as possible. If the traffic law enforcement department fails to investigate and deal with such violations promptly, it seems a “rational” choice to reduce the cost of delivery time by breaking the traffic law. It is impossible to require the platform to constantly supervise a large number of labor service providers in a wide range of areas, and the result is that the government’s supervisory responsibility is not consolidated, the platform management responsibility cannot be realized, and the social risk accumulates and accidents are more likely to occur. Therefore, Article 2(2) of the Guiding Opinions stipulates that “the corresponding responsibilities of the platform in terms of protection of workers’ rights and interests shall be clearly defined, and the supervision and law enforcement responsibilities of government departments shall be strengthened, so that the regulatory responsibilities that should be borne by the government shall not be transferred to the platform.”

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# Recent Development of Legal Framework of Labor Law in Indonesia

Ike FARIDA

- I. Introduction
- II. The situation of Indonesian labor in facing the Industrial Revolution 4.0
- III. Digitalization and fulfillment of basic labor rights
- IV. Omnibus Law
- V. Conclusion

## I. Introduction

Indonesia is the fourth most populous country in the world<sup>1</sup> with millions of labor force. The dominance of informal workers has been one of the features of the Indonesian labor market. According to the latest announcement of the Central Bureau of Statistics (BPS) dated November 5, 2020, due to the influence of coronavirus, the unemployment ratio became higher at the time of August by 1.84% to be 7.07%. The number of unemployment increased by 2,670,000 people comparing with the same month (August) last year and the total unemployment population became 9,770,000 people. According to the announcement, in addition to the development of a digital economy, the working force in the informal sector has increased due to coronavirus by 4.59% and the total number in the informal sector became 77,680,000 (60.47%) and formal sector became 50,770,000 (39.53%) people which occupies 7.07%.<sup>2</sup>

With the implementation of digital technology, the number of unemployment is considered to further increase to add to the already large number of unemployment, especially for the workers who have a lack of knowledge and skills, though it might realize economic efficiency.<sup>3</sup> Indonesia's employment situation also will depend on the investors from abroad, where rapid changes in information technology and digital economy will be brought in or transferred its skill-to-operate and technology which are expected to improve Indonesia's national economy. Additionally, though it might be a tentative wave, the effect of Covid-19 has resulted in the drop of foreign investors and regulations for ease of exporting and government aid to business owner in terms of import tariff during Covid-19.<sup>4</sup> Further, for the continuation of the economy amid Covid-19, the Government have granted aids to business owner by relieving import fee during the pandemic which is regulated by the Decree of the Ministry of Finance No. 134/PMK.010/2020 and Ministry of Industry No. 23 of 2020 regarding the Implementation of Import-Duty Tariff Utilization under the User Specific Duty-Free Scheme and the Framework for the Agreement between the Republic of Indonesia and Japan on Economic Partnership during the Corona Virus Disease 2019 Public-Health Emergency, Regulation of the Minister of Industry No. 31 of 2020 regarding Implementing Guidelines for the Utilization of Government-Borne Import Duty Facilities for

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1. The total population of Indonesia in 2019 was 271 million. See United Nations, Department of Economic and Social Affairs, Population Division. *World Population Prospects 2019: Highlights*, Pg. 12.
  2. Statistics Indonesia [Badan Pusat Statistik (BPS)]. Official Statistic News, November 2020 [*Berita Resmi Statistik*], Pg. 4.
  3. Utomo, Susilo Setyo. "Guru Di Era Revolusi Industri 4.0" [Teachers in the Industrial Revolution Era 4.0], Pg. 6.
  4. Bureau of Communication and Information Services, Ministry of Finance of the Republic of Indonesia [Biro Komunikasi dan Layanan Informasi Kementerian Keuangan RI]. 2020. *Pemerintah Waspada Dampak Pandemi Covid-19 Terhadap Ekonomi Indones* [The government is alerted of the Covid-19 pandemic's impact against Indonesian economy], at a press conference held on April 17, 2020, <https://www.kemenkeu.go.id/publikasi/siaran-pers/siaran-pers-pemerintah-waspada-dampak-pandemi-covid-19-terhadap-ekonomi-indonesia/>, accessed November 9, 2020.

Imports of Goods and/or Services by Certain Industrial Sectors affected by the Corona Virus Disease 2019 (Covid-19) Pandemic.

Digitalization has been on-going in Indonesia. One of the well-known samples will be Gojek. Even today, business models in the transportation service sector have developed in the form of *ride-hailing* and *ride-sharing* applications, known as Gojek. Gojek is an Indonesian pioneer in application-based online transportation services directly to customers. It has expanded its network to many major cities in Indonesia. The application itself does not limit to providing transportation services, but also financial services. Users can virtually transfer and store money within the application, which later used to pay for services or products they have ordered. In fact, according to New York-based CB Insights, Gojek has a valuation of US\$10 billion.<sup>5</sup>

Another sample of digitalization in Indonesia will be the high increase of consumption by the middle-income groups. The group consumption has grown at 12% annually since 2002. 15 million credit cards are circulated in Indonesia and 90 million internet users are shopping through e-commerce of which market is forecasted to reach US\$50.7 billion in 2024 according to the Fitch research.

In South-East Asia, Indonesia is one of the leading countries in terms of digital economic growth as reported in the fourth South-East Asia e-Conomy report by Google, Temasek and Bain & Company released. Indonesia's digital economy this year is projected to approach US\$40 billion and is predicted to reach US\$130 billion in 2025. Jakarta, as well as its surrounding districts, is still the main driver of Indonesia's digital economic growth weighing US\$555 per capita compared to those of non-metropolitan areas which are only US\$103 per capita. However, non-metropolitan areas are expected to grow twice as fast in the next 6 years.<sup>6</sup>

## II. The situation of Indonesian labor in facing the Industrial Revolution 4.0

From the labor perspective, digitalization has both positive and negative impacts. This could open up opportunities for business development, which has positive and negative impacts on employment.<sup>7</sup> One of the characteristics of Industrial Revolution 4.0 or the digital revolution is the application of Artificial Intelligence (AI), which is characterized by automation in various fields.<sup>8</sup> It has made many jobs that are normally done by humans being replaced by machines which have happened in several sectors such as banking, factories, construction, and other sectors.

According to Indonesian Bank Workers Union's Communication Network, from 2016 until the end of 2018, 50,000 bank employees have been terminated<sup>9</sup> because they were disrupted by the digitalization system. In the legal industry, AI has been utilized to review business contracts, because it has an accuracy rate of 94% and only requires a shorter time which about 26 seconds in reviewing business contracts, hence took over some of the advocates' jobs.<sup>10</sup>

Another example of applying digitalization is non-cash transactions at toll gates. The change in the payment system has resulted in the redundancy of toll booth officers because it has been replaced by card

5. Sarna, Karlis, "Go-jek Joins 'Decacorn' Ranks With \$10 Billion Valuation," *Bloomberg*, April 6, 2019, <https://www.bloomberg.com/news/articles/2019-04-06/indonesia-s-go-jek-joins-decacorn-ranks-with-10b-valuation>, accessed January 20, 2020.

6. Google, Temasek, Bain & Company, *e-Conomy SEA 2019: Swipe Up and To The Right: Southeast Asia's \$100 Billion Internet Economy*, Pg. 18.

7. Sayekti, Nidya Waras. 2018. "Tantangan Perkembangan Ekonomi Digital di Indonesia" [The challenges of Digital Economy in Indonesia]. *Info Singkat* 10 (5): Pg. 21.

8. Tjandrawinata, Raymond R. 2016. "Industri 4.0: Revolusi Industri Abad Ini dan Pengaruhnya pada Bidang Kesehatan dan Bioteknologi" [Industry 4.0: Industrial Revolution in this Century and its Impact to Health and Biotechnology]. *Jurnal Medicinus* 29 (1): Pg. 39.

9. Rachman, Fadhly Fauzi. "Digantikan Mesin, 50.000 Karyawan Bank di RI Kena PHK" [Replaced by Machines, 50,000 Bank Employees in Indonesia Are Terminated], *detikFinance*, January 16, 2019, <https://finance.detik.com/moneter/d-4386840/digantikan-mesin-50000-karyawan-bank-di-ri-kena-phk>, accessed February 10, 2020.

10. See, Putro, Widodo Dwi. 2019. "Demitologisasi Metode Penelitian Hukum" [Demitologization of Legal Research Method], paper presented in Legal Research Methods Seminar held at Faculty of Law, Mataram University, January 17, 2019.

reader machines for cashless transactions with electronic money. Although some toll officers are still stationed to serve and guarantee smooth transactions, most of the officers are no longer in charge of this job.<sup>11</sup> PT Jasa Marga (a company who provides toll road services) revealed that workers who were affected by the change were given a worker empowerment program called “ALIFE.” In the program, the affected workers are given choices such as (i) move to become Head Office staff, (ii) move to become branch office employees, (iii) move into employees at the subsidiary, (iv) become entrepreneurs at the restaurant in the company’s toll road area and (v) early retirement.<sup>12</sup> Other samples of the digitalization that have affected a number of workers in Indonesia are shown in Table 1.

Table 1. Digitalization in public services field

No.	Online Services Field	Location	Remarks	Affected Labor Areas
1	Immigration Auto Gate <sup>13</sup>	International airports (Jakarta, Bali)	Immigration inspection services in the checkpoints	Inspectors at immigration gates
2	Investment Coordinating Board	Jakarta HQ and branches in cities	Online Single Submission (OSS)	Administration officers on the front desk
3	e-Court	Jakarta and other big cities	Filing Law Suit in Civil Court without attending the court	Court clerks
4	e-Citizenship Identification Card	National level	ID card using electronic chip	Entry data officers (e-Citizenship identification card lasts forever)
5	Mobile Driver Licenses Extension Services	Big cities and selected regents	License extension services inside the car (for cars & motorcycles)	Administration officers
6	e-Billing <sup>14</sup>	National level	Tax payment by using billing code	Payment administration officers on the front desk
7	Electronic Traffic Law Enforcement (ETLE)	Jakarta and other big cities	Drivers will get a penalty for any violation to traffic rules	Traffic Police

Source: Compiled by the author.

Another example of a rather advanced digitalization is e-Court. Now, in Jakarta and other big cities, civil lawsuits are already facilitated by the e-Court. Advocates are now able to register their cases online after they register themselves in the system (*e-Filing*), then make payment of the case fee online (*e-Payment*), arrange summons by electronic channels (*e-Summons*), and online-conducted trials (*e-Litigation*).<sup>15</sup> While e-Court services have brought convenience for justice seekers throughout Indonesia, it has also negatively affected

11. Jasa Marga (Persero) Tbk. 2017 *Annual Report: Transformation for Sustainable Growth*, Pg. 85.

12. *Ibid.* Pg. 50.

13. The auto gate provided for electronics passport holders to pass the immigration to enter and exit Indonesian territory. This auto gate system provides ease of immigration inspection services in the checkpoints for Indonesian citizens. Directorate General of Immigration, Ministry of Law and Human Rights, Republic of Indonesia. 2020. *Implementasi Autogate Keimigrasian Di Bandara Internasional Soekarno-Hatta* [Implementation of Immigration Autogate in Soekarno-Hatta International Airport], <http://www.imigrasi.go.id/index.php/berita/berita-utama/79-implementasi-autogate-keimigrasian-di-bandara-internasional-soekarno-hatta>, accessed January 29, 2020.

14. The electronic tax payment method uses the billing code, an identification code issued through the billing system for a type of tax payment or deposit to be made by a taxpayer. All process done by online. Directorate General of Taxes, Ministry of Finance of Republic of Indonesia, *e-Billing*, <https://www.pajak.go.id/id/electronic-billing>, accessed January 24, 2020.

worker registration at the court. The court clerks must begin to improve their competency to continue providing services according to e-Court service standards or else face redundancy because it has been taken over by an electronic system. Referring to the table above, digitalization in the field of government services has increased. This has caused a decline in the recruitment of workers in the government field. Based on the Supreme Court Decision No. 3 2018 and perfected with Supreme Court Decision No.1 2019 that refer to Presidential Regulation No. 95 2018 regarding Electronic Governmental System. This is one of the examples of technological disruption in Legal and Courtship with prevalent laws, including Law No. 3 of 2009 regarding the Second Amendment of Law No. 14 of 1985 regarding Supreme Court, Law No. 49 of 2009 regarding the Second Amendment of Law No. 2 of 1986 regarding General Court, Law No. 51 of 2009 regarding the Second Amendment of Law No. 5 of 1986 regarding the State Administration Court, Law No. 50 of 2009 regarding

Table 2. Digitalization in private services field

No.	Online Services Field	Location	Remarks	Affected Sector
1	Grab Group <sup>16</sup>	222 cities & regents <sup>17</sup>	Providing online services such as online taxi; sending or picking up any good/document; ordering food; and grocery	Conventional taxi services
2	Gojek Group <sup>18</sup>	167 cities & regents <sup>19</sup>	Providing online services, such as sending or picking up any good/document; cleaning house; massage; shopping at supermarket and beauty salon services	Conventional taxi services
3	Tokopedia <sup>20</sup>	Indonesia	Online shop for various products, from buying books, electricity payment, goods, material and others	Conventional markets & shops
4	Shopee <sup>21</sup>	Indonesia	Online Shop with various products	Conventional markets & shops
5	Ruangguru <sup>22</sup>	Indonesia	School tutoring	Conventional tutoring

15. Supreme Court of the Republic of Indonesia [Mahkamah Agung RI]. 2019. *e-Court Manual Book: 2019, The Electronic Justice System* [Buku Panduan e-Court: 2019, The Electronic Justice System], Pg. 7.

16. Grab is a company that started in Kuala Lumpur, Malaysia. Now Grab has become one of Southeast Asia's largest mobile technology companies that connects millions of consumers to millions of drivers, merchants, and businesses that provide services such as GrabRide, GrabCar, GrabFood, GrabExpress, GrabRewards, GrabFresh, Subscriptions, GrabKios, GrabGifts, GrabKios, GrabAds, Grab for Business. Grab, <https://www.grab.com/id/en/>, accessed January 24, 2020.

17. Grab, Where We Are, <https://www.grab.com/id/locations/> accessed February 11, 2020.

18. Gojek's journey began in 2010 as a motorcycle ride-hailing call center in Indonesia. Gojek is now a leading technology group of platform serving millions of users in Southeast Asia. Gojek has contributed around Rp44.2 trillion (US\$3 billion) to the Indonesian economy as of end of 2018. Gojek's ecosystem supports the growth of MSMEs in Indonesia. 93% of MSME partners experience an increase in transaction volume and 55% of them experience an increase in earnings. Gojek, About Us, <https://www.gojek.com>, accessed January 24, 2020.

19. Gojek, "Kini Gojek hadir di 167 kota dan kabupaten Indonesia" [Now Gojek exists in 167 cities and regents in Indonesia], <https://www.gojek.com/blog/gojek/go-jek-dimana-mana/>, accessed February 11, 2020.

20. Tokopedia is an Indonesian e-commerce company. There are 6.4 million Indonesians who have started and developed their business with Tokopedia, spread in 96% of cities / regencies in Indonesia where 86.5% of them are new entrepreneurs, who are building Indonesia's future brands by marketing more than 200 million types of goods to all corners of the country, reaching up to 97% of districts in Indonesia. Tokopedia, <https://www.tokopedia.com/about/>, accessed January 24, 2020.

21. Shopee launched in 2015, is the leading e-commerce platform in Southeast Asia and Taiwan. Shopee, <https://careers.shopee.com/about/>, accessed January 24, 2020.

22. Ruangguru develops various technology-based learning services, including virtual classroom services, online exam platforms, subscription learning videos, private tutoring markets, and other educational content that can be accessed through the web and Ruangguru applications. Ruangguru has a mission to provide and expand access to quality education through technology for all students, anytime and anywhere. Ruangguru, <https://ruangguru.com/general/about>, accessed January 24, 2020.

Table 2. Continued.

No.	Online Services Field	Location	Remarks	Affected Sector
6	Halodoc <sup>23</sup>	Indonesia	Consultation of common illness	Conventional doctors & clinics
7	Traveloka <sup>24</sup>	Indonesia	Travel agents	Conventional travel agents, hotels
8	Digital Payment (Ovo, GoPay, Dana)	Indonesia	Digital Wallet Service for online payment by using application on smartphone	Cash money, credit cards
9	E-Money	Indonesia	Payment using electronic card contains money in form of electronic data	Cash money, credit cards
10	Online Loan Service (Kredivo, Tunaiku, KreditPintar)	Indonesia	Giving loan to customers requiring ID card only and no warranty, but the interests are quite high	Conventional banks, credit cards

Source: Compiled by the author.

the Second Amendment of Law No. 7 of 1989 regarding Religious Court, Law No. 31 of 1997 regarding Military Court, Law No. 18 of 2003 regarding Advocate, Law No. 19 of 2016 regarding changes to Law No. 11 of 2008, Law No. 14 of 2008 regarding Public Information Transparency, Law No. 25 of 2009 regarding Public Service, Law No. 48 of 2009 regarding Judicial Power.

Similar to the services provided by the government (public services), private businesses also provide various online services. The services provided are listed in Table 2.

E-commerce companies, such as Shopee, Tokopedia and transportation application technology companies including online food delivery services, such as Gojek and Grab, have helped to develop Indonesia's digital economy. With the rise of digital transactions in Indonesia through these digital applications, it is estimated that in 2025 the value of Indonesia's digital economy will reach US\$100 billion.<sup>25</sup>

### III. Digitalization and fulfillment of basic labor rights

Although digitalization affects the labor force in some industries and reduces job demands in some fields, digitalization also brings a tremendous innovation in creating a new opportunity. In Indonesia, one such innovation manifested in unique digital transportation services provided by a tech startup known as Gojek. Gojek is a multi-service tech platform, which was founded in 2010, providing access to a wide range of services including transportation, payments, food delivery, logistics, and many more.<sup>26</sup> It was first served as an online motorcycle taxi, and then cars. The service extends to various fields, such as *GoSend*, *GoClean*, *GoMassage*, *GoMart*, and *GoGlam*. Because of its easy and practical use, Gojek has gained public attention and dependence. Gojek has partnered with more than 2 million drivers in Indonesia as of March 2019.

As explained above, digitalization and labor sector have a tight and inseparable relationship. The usage of technology in the Industrial Revolution 4.0 has to be in harmony with the fulfillment of basic labor rights. At the time being, Labor Law No. 13 of 2003 only stipulates rights and obligations for workers with direct

23. Halodoc is a technology company from Indonesia where people can talk to specialist doctors, buy drugs, and conduct laboratory tests via a smartphone anytime, anywhere for 24 hours. Halodoc, <https://www.halodoc.com/media>, accessed January 24, 2020.

24. Traveloka is a leading Southeast Asia online travel company that provides a wide range of travel needs in one platform. The company has established partnerships with more than 100 domestic and international airlines, serving more than 200,000 routes worldwide. Traveloka, <https://www.traveloka.com/en-id/about-us>, accessed January 24, 2020.

25. Pusparani, Indah Gilang. 2018. "Tahun 2025, Nilai Ekonomi Digital Indonesia 100 Miliar Dollar AS" [In 2025, Indonesia's Digital Economy Value is USD 100 Billion] *GoodNews from Indonesia*, November 20, 2018, <https://www.goodnewsfromindonesia.id/2018/11/20/tahun-2025-nilai-ekonomi-digital-indonesia-100-miliar-dollar-as>, accessed February 10, 2020.

26. Gojek, "About Us," <https://www.gojek.com/sg/about/>, accessed February 10, 2020.

employment. The protection as mentioned in the Gojek or Grab group services as a partnership has not been regulated. The current terms and conditions for direct-contract workers are as follows:

1. Protection of wages and welfare
2. Rights to workers' social security
3. Occupational safety and health protection
4. Legal protection to form and take part as members of workers/labor unions
5. Protection of basic rights of workers/laborers to negotiate with employers<sup>27</sup>

In Gojek situation, Partnership Cooperation Agreement (*perjanjian kerjasama mitra*) is a set of provisions that govern the relationship between the user, the individual driver (partner), and PT Paket Global Semesta (limited liability company of Gojek).<sup>28</sup>

This agreement is not yet regulated in any of the legal instruments for labor laws in Indonesia, including the rights and obligations that follow. Because Gojek drivers are deemed as “partners” and not employees, they cannot be classified as neither permanent worker nor fixed-term worker.

Indonesian labor law dictates that the elements of a labor relation must contain work, wage, and order. While work and order are implicitly present in the partnership agreement between Gojek and their partner, wage is a less clear element in the relationship. This is due to the fact that the end-consumers, not Gojek itself, are the ones who pay these partners. Further Article 1 point 6 of the Labor Law says “hiring a worker by paying wage or reward in any other form” which means paying rewards as a form of incentive can also be categorized as paying wage and included as hiring a worker. Gojek itself incentivizes its drivers based on individual target, hence the wage element is fulfilled further, the definition of wage refers to Article 1 point 30 of the Labor Law, which is a reward in the form of money. Wage itself is categorized into a number of types, one of which is wage based on result. In the case of Gojek, drivers have the incentive after meeting the target of a certain threshold. Therefore, Gojek indirectly applies remuneration system based on the quantity of the work result. As a result, the work system at Gojek meets the element of remuneration.

As for regulations relating to online transportation, a number of them are already in effect in Indonesia. These regulations include Regulation of the Minister of Transportation (*Permenhub*) No. 12 of 2019 concerning Protection of Safety of Motorcycle Users Used for Public Interest, Minister of Transportation No. KP 348 of 2019 concerning Guidelines on Calculating Service Fees for the Use of Motorcycle for Public Interest Conducted with Applications, and also *Permenhub* No. 18 of 2020 concerning Transportation Control in the Context of Preventing the Spread of Covid-19, just to name a few. However, these regulations are insufficient to accommodate current pace of digitalization since they are only derivative regulations. As a starter, a law is needed to regulate partnership as a form of working relation for legal certainty.

The lack of social security for online transportation drivers is also an emerging issue since companies such as Gojek do not provide it. Provisions regarding social security are stipulated both in the 1945 Constitution and in Law No. 24 of 2011 concerning the Social Security Organizing Agency (BPJS).<sup>29</sup> In essence, it states that “Every person has the right to social security which enables his/her development as a dignified human being.” BPJS security should consist of health and employment social security. Additionally, companies have other obligations that must be given to their employees, such as providing training, severance payment in case the working relations are ended, annual leave, maternity leave, long sick leave, and many other facilities and

27. Suhartoyo, S. 2018. “Perlindungan Hukum Bagi Pekerja Peserta BPJS Kesehatan di Rumah Sakit” [Legal Protection for Workers Participating in Social Insurance Health in Hospitals] *Administrative Law and Governance Journal* 1(1): 49–66.

28. As seen from *Partnership Cooperation Agreement of Gojek*, <https://www.gojek.com/app/kilat-contract/>, accessed February 10, 2020.

29. National Social Security System program is regulated in Law No. 40 of 2004 concerning the National Social Security System.

allowances protected by labor law.

However, as partners, Gojek drivers are not entitled to those rights because the labor partnership agreement is not yet regulated in any of the labor law instruments. Gojek can also not be blamed since there is an absence of law to set out rules for this matter. The agreements set up among partners stated that their position is as a partner (partnership agreement) and not an employee (employment agreement). Therefore, there is no obligation to pay health insurance or employment guarantees to the drivers. Since the number of online drivers continues to grow, the rules and protections for online workers must be regulated as soon as possible by the government.

With the conditions mentioned above, the employment situation in Indonesia faces challenges and also the impact of digitalization implementation such as:<sup>30</sup>

1. The application of digital technology requires new competencies
2. Engineering technological innovation
3. Changes in structural position and profession
4. Many workers will be replaced by automatic machines
5. Potential cases of layoff disputes
6. Changes in the pattern of work relationships: flexible work agreements, flexible hours and working days, wage arrangements, occupational safety, and health protection, social security protection, adjustment of laws and regulations.

Due to the problems presented as the effects of the Industrial Revolution 4.0, the Indonesian government ought to overcome these problems, one of which is supposed to be through the development of Omnibus Law.

#### IV. Omnibus Law

On October 5, 2020, the Indonesian Parliament has signed the draft of Job Creation Law, the so-called “Omnibus Law.” Further, Ir. Joko Widodo, the President of the Republic of Indonesia, signed Law No. 1 of 2020 concerning Job Creation on November 3, 2020. The “Omnibus Law” itself is not a common and familiar term for most Indonesians, especially because it is a system used in the *common law* countries. The concept of the Omnibus Law itself is to pass a new law by amending several laws at once.<sup>31</sup>

The Omnibus Law, or also known as Job Creation Law, is consisted of 5 chapters and 174 articles. It also affects 1203 articles from 79 related laws. Areas affected by this new law include Enhancement of the Investment Ecosystem; Employment, Facilities, Protection, and Empowerment of Union and Small and Medium-Sized Enterprises; Ease of Doing Business; Research and Innovation Support; Land Acquisition; Economic Region; Central Government Investment and Acceleration of National Project; Implementation of Government Administration; and Penalty,<sup>32</sup> among others.

In summary, matters of interest outlined within the Job Creation Law including the simplification and adjustment of a number of rulings taken from a number of existing laws which amount to a total of 79 laws. Job Creation Law is divided into 10 clusters, specifically:

30. Simanjuntak, Payaman. 2019. “Peran Konsultan Hukum Ketenagakerjaan di Era Digital” [The Role of Labor Law Consultants in the Digital Age], paper presented at National Seminar on Industrial Relation Pattern in the Industrial Revolution 4.0 held by Indonesia Labor Law Consultant Association (ILLCA), Jakarta, August 29, 2019, Pg. 8.

31. See *Black’s Law Dictionary*, 10th ed. The term “omnibus bill” defined as follows: 1. A single bill containing various distinct matters, usu. drafted in this way to force the executive either to accept all the unrelated minor provisions or veto the major provision. 2. A bill that deals with all proposals relating to a particular subject, such as an “omnibus judgeship bill” covering all proposals for new judgeships or an “omnibus crime bill” dealing with different subject such as new crimes and grants to states for crime control. Garner, Bryan A. and Henry Campbell Black. 2014. *Black’s Law Dictionary*, 10th ed. St. Paul, MN: Thomson Reuters, Pg. 196.

32. Article 4, Law No. 11 of 2020 concerning Job Creation.

1. Enhancement of the investment ecosystem

## **2. Labor**

A number of provisions that inhibits investment are changed in 6 areas: **(1) Wage, (2) Severance payment, (3) Fixed-term employment agreement, (4) Outsourcing, (5) Termination, and (6) Foreign workers**

3. Facilities, protection and empowerment of union and small and medium-sized enterprises' investment terms
4. Ease of doing business
5. Research and innovation support
6. Land acquisition
7. Central government investment and strategic national project acceleration.
8. Exclusive Economic Zone (EEZ)
9. State administration
10. Penalty

In the Labor Law Clusters, the laws affected by the Omnibus Law comprise of:<sup>33</sup>

1. Law No. 13 of 2003 concerning Labor
2. Law No. 24 of 2011 concerning the Social Security Organizing Agency
3. Law No. 40 of 2004 concerning the National Social Security System
4. Law No. 18 of 2017 concerning Protection of Migrant Workers

In the labor force itself, this law will apply several provisions to improve protection for workers and expand employment opportunities, which include:

### **a. Wage**

In determining the increase in wages or regarding minimum wages, the Job Creation Law regulates wage increases using a formula, so that in the future, labor unions and employers' organizations are expected not to experience deadlocks when determining minimum wages. Another new issue that is regulated in this law is the existence of hourly base workers. Also, the minimum wage of District/City must be higher than minimum wage of Province.

### **b. Severance payment**

In Job Creation Law, the amount of severance payment to be paid by a company has been reduced from the initial maximum of 32 times of the salary, to a maximum of 19 times with an addition of Job Loss Social Security for 6 months. In total the terminated worker will receive the maximum severance payment amounting 25 months' salary. There is also benefits for the labor including cash benefits, access to job market information and job training. This provision organized based on the principles of social insurance.

### **c. Fixed-term employment agreement**

The provisions regarding fixed-term employment agreement are now more flexible and friendlier. A fixed-term employment contract may be extended or renewed for unlimited number of contract, which previously was three times at most, within a five year period.

### **d. Outsourcing**

Unlike the previous rules, the provisions regarding outsourcing are simplified and more flexible. Among

33. Parikesit, Satya Bhakti, Deputy Cabinet Secretary for Economic Affairs. 2020. "Penjelasan RUU Cipta Kerja" [Explanation of the Job Creation Act] Paper presented at Omnibus Law Seminar held at Faculty of Law, University of Indonesia, February 6, 2020, Pg. 20.

other things, there are no restrictions on the types of work that can be outsourced; other than that, to protect outsourcing workers who were promised through a contract. In the new regulation, there is protection for workers with Transfer of Undertaking Protection of Employment.

#### e. Termination

The terms and conditions of the termination of worker become less hurdle for employer. Also, in this Job Creation Law deletes issuance of the detailed regulation for termination, instead the issuance of the detailed rules is to be arranged in Government Regulation.

As explained in the Severance Payment above, in addition of the severance payment, one of the benefits received by workers terminated is Job Loss Social Security. This social security is comprised of: benefit, vocational training, and job placement access. This will also be supported by other social security such as Old Age Insurance, Death Insurance, Pension and Work Accident Insurance, and National Health Insurance.

#### f. Foreign workers

The new regulation is about the ease of issuing work permits for foreign workers who will do emergency work such as maintaining machinery. The employers are not needed to obtain an approval for Plan for Employment of Foreign Workers (RPTKA), only a short-term visit visa is required.

### V. Conclusion

Although Indonesia is a developing country, digitalization in its various sectors is developing rapidly. The development of digitalization especially in the service sector needs to be developed in providing, for example, the track record information of a prospective worker that can be accessed rapidly through technology.

As the country with the fourth largest population of 264 million in the world, rapid digitalization will have a significant impact on the economy. However, in order to maintain a sustainable economic development of people's lives to be safer and richer, as Omnibus Law shows the sectors and field of the law became wider and crosses the border of each laws to cope with reality. Therefore, in Indonesia, argument of labor law should not be focused only on conventional areas of increasing the income of laborers such as unemployment, wages, or welfare, but also on sound economic growth in a broader range which is a challenging labor law issue.

As for Omnibus Law which was originally aiming to increase FDI, most of the substantial elements needed in business are not yet clear and we have to wait for the further detailed regulations and actual implementation of the law, including decision-making in the labor court. The government is now planning to offer tax incentives to foreign investors in addition to the Omnibus Law which might promote foreign investment more effectively. The following will be the conclusion of this research:

1. In the midst of massive digitalization in Indonesia, the government has responded by carrying out administrative and regulatory reforms through the omnibus law (job creation law) so that it is digitally integrated to follow-up the vision of the ease of doing business.
2. This is a good step for the investment climate to stretch and grow in Indonesia, where legal instruments have been prepared as legal certainty and government administrative instruments to facilitate licensing.
3. The government needs to further regulate the regulation on informal workers.

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# Better Opportunity or Extended Sweatshop? —Labor Law and Policy in the Age of Digitalization in Korea—

Sukhwan CHOI

- I. Introduction
- II. Present situation and requests for changes
- III. Legal responses
- IV. More to do

## I. Introduction

Dynamic times for all of us. Digital transformation which has been accelerated rapidly is now making unexpected changes in this pandemic age. We are apparently in the course of revolutionary change, but it is not only by digitalization in the work but also with the effect of coronavirus. Each has a huge influence on our lives, but when we face these two components together, they do have a synergic interaction, and now we are on the road.

Is this a better opportunity for the people who want more control over their life? Or is it just another form of sweat shop which takes all the profits produced by workers to the capital side, mainly represented by platform business owners? (Vallas 2019). It is a little too early for us to answer this question. However, we can realize digital transformation around our working environment, and we need to respond to the urgent requests, at least, by policy or law.

First, I would like to take a look at the present situation in Korea about labor regulations, with requests for changes arising therefrom (in Section II). After that I would like to show two recent issues on the debate table. They are issues about labor regulations, reflecting changes caused by digitalization, and new legislation for this area accomplished recently (in Section III). With this, we can check what has been done, what is still unsolved and (or) what is a new hurdle (in Section IV). I expect to get an inspiration for other areas of employment / labor law, especially in the sense that the need for universal rules or additional regulations in employment relations.

In a sense, however, it looks like a repetition of the old question: who should be regarded as an employee? But with the same question, we still can think of a new answer, from the view point of velocity, not the view point of direction. We may direct for the whole different goals, or we may not even specify what the goals are. On the other hand, we may think of the possibility of going not so different way, but we do feel strange because the speed of the changes is not ever experienced.

## II. Present situation and requests for changes

### 1. General surroundings

We are in the midst of the digital transformation, not only in manufacturing industry, but also (and more rapidly) in service industry. Technological background of the digital transformation represented by AI and IoT is getting popular, and digital platform, sharing economy, on-demand service, subscribing economy are all main components stimulated by the digital transformation, and causing changes in working styles such as keeping work and personal time separate, work-life balanced lifestyle, and so on. Changes in perspectives about social value is also advancing. Non-salary value, well-being at work and life satisfaction, enhanced respect for personal value including human rights are key words reflecting these changes.

Changes in employment are represented by separation and decentralization of labor market;<sup>1</sup> rise of insecure or precarious work such as atypical work, indirect employment, subcontract, independent contract, freelancing. These new types of working styles diminish typical standard employment, makes employment relation unstable. Social security system established upon typical employment relation is getting weaker while needs for social security are sprouting. We have major challenges to deal with such as population crisis, inequality, global supply chain and human trafficking, and, consequently, sustainability.

## 2. Situations in Korea

In Korea, we did pursue rapid improvement in protection for working people as a whole. Labor policies include employment plan for changing atypical workers into regular workers, and attempt to revise labor law to be more harmonized with the international standard. Making atypical workers into regular workers was the manifesto of President Moon Jae-in, and Incheon Airport was the first place he visited in his early period, concerning insecure job issue. He declared, “No atypical workers in public sector,” and nearly 5,000 employees have become regular workers in the last 4 years, including 1,900 security workers in Incheon Airport. This is a symbolic movement of recent reformation of employment plan especially in public sector. At the same time, the revision of labor law<sup>2</sup> to make union organizing easier is heading for the ratification of the ILO’s three key conventions: Conventions 87 and 98, concerning the freedom of association, and Convention 29, which bans compulsory labor.

Changes in social security policies are also important issues in Korea. Partly as a component of a series of reforms on labor law and social security system, and partly as a response to the recent coronavirus situation and unemployment caused by it, from the unemployment insurance for all (not just for the salaried workers), to the basic income, we put the very hottest debate on the table, and we are thinking of the new logic of social security system from the beginning (MOEL 2020; MOEL 2021). We also are in the speedy changes of work styles; and *untact* society, application-based business, automaton, platform-based business is expanding rapidly. In this situation, employment relations are becoming more precarious.

Working any time anywhere is a new chance for various people. Some make use of it as an opportunity for self-development or preparation for new works. But for some people, it just means extended working time because of reduced income caused by depression. Anyway, this is diverse ways of working, and “work from home” caused by coronavirus is accelerating the tendency.<sup>3</sup>

Will there be enough decent work for everyone? Digital transition could provide more working opportunities, but at the same time it makes situation worse by aggravating conflict between two extremes in the labor market. In addition to this conflict inside the labor market, we do have another issue with digital transition and working force, misclassification. In an attempt to cope with this problem, we are thinking of making a general rule for working people as a whole, which is not limited to “employee” in the classical context.<sup>4</sup> Digitalized society makes the old question of drawing a line between employees and independent contractors very vague, and, consequently, we are confronted with legal issues here.

1. Chang et al. 2019; Schauer 2018.

2. The National Assembly passed the amendment to the Trade Union and Labor Relations Adjustment Act on Dec. 9, 2020. Ratifying ILO fundamental conventions was one of the targets by this amendment, [https://www.moel.go.kr/english/poli/poliNewsnews\\_view.jsp?idx=1587](https://www.moel.go.kr/english/poli/poliNewsnews_view.jsp?idx=1587).

3. Reich 2020.

4. Making rules which are aimed at protection for working people as a whole is one of the research themes in Korea. This can be a solution to supplying basic fair rules for people who sell their labor, regardless of their status as an employee in the legal context, as well as can be an answer for regulating platform labor market where employees and independent contractors are working together.

### III. Legal responses

#### 1. New work style, old work regulations: Platform workers—employee or not?

We have an old, but still valid question here again. Concerning those who work in digital working environment, are they employees or independent contractors? Replacement driver services, food delivery services, housework services are main areas representing these new environment of digitalization in Korea. Of course, there are totally new types of work based on digital platforms, e.g., “Remember.” If you scan business cards via smartphone app “Remember,” they will input scanned information to database so that you can use the data on your smartphone at any time. You do not meet an employee who carry out your work in order to give your directions, and you are able to convert all the analog information to digital form. You may think this system is based on highly developed technologies such as artificial intelligence or robotics, but as a matter of fact, they are using many workers who enter every single information manually by hand. We should not get the wrong idea about the backside of the fact here, and as a whole, it would be fair to classify many of these workers as an employee in the traditional context.

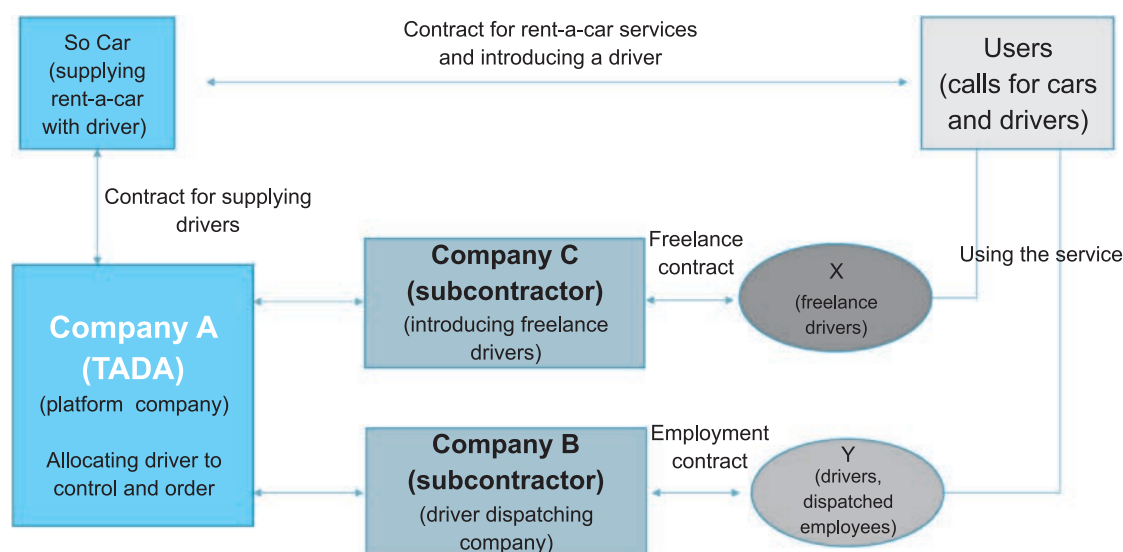
It seems that there are new working styles, where we cannot see any supervisor, nor can we hear a bell rings to indicate working time. In this environment, we feel like lying under the whole new working regulation system. But actually, we do have a just a little different type of direction, which are made possible by digital technologies. From the employer or company side, new technologies satisfy the needs for just-in-time workforce, reducing cost. Naturally, attempt to detour the strict regulation of employment law has long been prevailing, which is not a totally new phenomenon. As an intermediate stage from the traditional employment to the digitalized one, in-house subcontracting operated by MES (Manufacturing Execution System) could be a good example. Invisible control and direction from the employer are given to the employees of the subcontract company through digitalized manuals and automated orders. Is MES system just a standard needed when performing tasks? Or is it practically substitute for direction and order, from the human voice to the thick manual book and MES?

We can see one case study of app-based ride share drivers, TADA case. With an accumulated 1.7 million registered users on the app, the number of outsourced TADA drivers reaches around 12,000, and the freelance drivers requested that they should be regarded as an employee. Here is the outline (Figure 1; Baek 2020).

A was a company supplies services with TADA. If a user requested a share ride via app, then a car with TADA driver was dispatched. B was a subsidiary company affiliated with Company A (Company A owns 100% shares of Company B). Company B made the app, and took the tasks of TADA’s services from Company A, the services include advertising for users, payment agency, dealing with costs for services. C was a service operating company introducing drivers. X made a freelance driver’s contract with Company C. X checked the allocation table (driving schedule) made by Company C every week, submitted record of date, garage, office hours and provided driving service according to the fixed allocation table. Company C sent a message saying that Company C will no longer give a driving work to some part of freelance drivers including X.

The Seoul Regional Labor Relations Commission (SRLRC) decided that X was not an employee of Company A. The reasons are as follows:<sup>5</sup> SRLRC said that the drivers could select the time and date, garage where they start their work. If the drivers do not want to join the work, there were no way to force them to come. No evidence of direction, control or supervision. Payment for the driving service could not be regarded as a salary.

However, the National Labor Relations Commission (NLRC) said that X was an employee of Company A. It showed that the drivers made a working contract as freelance drivers with Company C, but in practice they were told to perform tasks according to Company A’s manuals and materials on the app. They had to wear uniform, follow specific way of responding to passengers, and follow the procedures for driving. If they



Source: Compiled by the Author.

Figure 1. Structure of TADA's services and drivers

violated the orders from the company, then they could get notice, additional education, sometimes would be fired. There were both freelance drivers (X) and employee drivers who were dispatched from other company (Company B). While employee drivers (Y) were regarded as employees, directions and controls from the Company A to their employee drivers were the same as those to the freelance drivers. The freelance drivers had to go to work according to the fixed schedule (allocation time).<sup>6</sup>

With these, NLRC decided that the freelance drivers (X) are employees under the control of Company A. After this, NLRC also made a decision about who is an employer. NLRC said that, Company B is an agency which had a contract for doing the tasks of TADA service operations in place of Company A, and Company C is also not an employer, because Company C was just introducing drivers to Company A, they did not have a right to decide salary, working hours and working conditions, but just followed every single direction from Company A and was not regarded as an independent entity for the HRM (Human Resource Management) tasks. The conclusion was that Company A was an employer.

Actually, there had been some precedent cases for the persons who work via smartphone applications, for the food delivery services. About the question whether they are employees or not, some of the Supreme Court's cases<sup>7</sup> said that they are not employees, because (a) they were free to accept or decline the order and no discipline were imposed even if they refused to take the order, (b) in the specific case, the application didn't have GPS, (c) the company didn't decide working time and working place of the delivery persons, (d) delivery persons could take multiple orders at once, make other person carry out the order he/she took instead, and could take orders from various companies, (e) there were no payment from the company, and delivery fees were paid by restaurants which asked for delivery via the app, (f) there were no contract documents, no earned income tax withholding, etc.

However, this TADA decision by NLRC was a remarkable case, though it has not been decided at the level of the Supreme Court yet. It admitted working persons in the platform via smartphone application as an

5. SRLRC 2020. 1. 21. 2019BUHAE3118.

6. NLRC 2020. 5. 28. 2020BUHAE170.

7. Supreme Court of Korea 2018. 4. 26. 2017DU74719; Supreme Court of Korea 2018. 4. 26. 2016DU49372.

“employee” under the Labor Standards Act. Direction and order by employer have been changing from traditional way into the new way like application on the platform or highly detailed manuals instead of real human voice. Can we take these facts as a ground for categorizing people working there as “employees” in the legal context? In the face of the workers without employment contracts in the rapid-growing digital economy, we need to have a new approach to explore what is a direction and order which make a relation as an employment contract, and the NLRC decision can be one good example.

## 2. Multi job workers

We have another issue with the digitalization; multi job workers. Actually, this also is not a totally new issue, and there have been debates about multi job work or “moonlighting,” concerning fiduciary duty. But development in digital technologies made it easier to participate in the multi job work. For example, thanks to the Covid-19 pandemic, we have far more demand in delivery, but autonomous vehicles and drones are not able to deliver things yet, which means more and more persons working for deliveries would be needed. Many persons are doing this as a secondary job.

Digital technologies make it possible to work anywhere anytime. In a way this means that you can work wherever you are, by using teleworking. It became so vivid especially in this Corona age. At the same time, ubiquitous workplace means that you can find your workplace everywhere, which result in multiple jobs per person. You can make use of your niche time for an optimized job just for that time and in the place where you are right at that time.

Of course, there are legal responses to this relatively new phenomenon. Supreme Court of Korea said that, absence of exclusivity—the fact that you work for more than one employer—does not disturb for the actors/actresses who work for various broadcasting companies to organize and have a collective bargaining.<sup>8</sup> From the view point of regulation, relation-based regulation was created in a traditional way, expecting one employer and one employee, employment contract between them, and for quite a duration. But focus has been slowly moving to create new regulations for employees, regardless of the number of jobs held or stable relation with the employer.

### 2-1. Insurance benefits for multi job workers

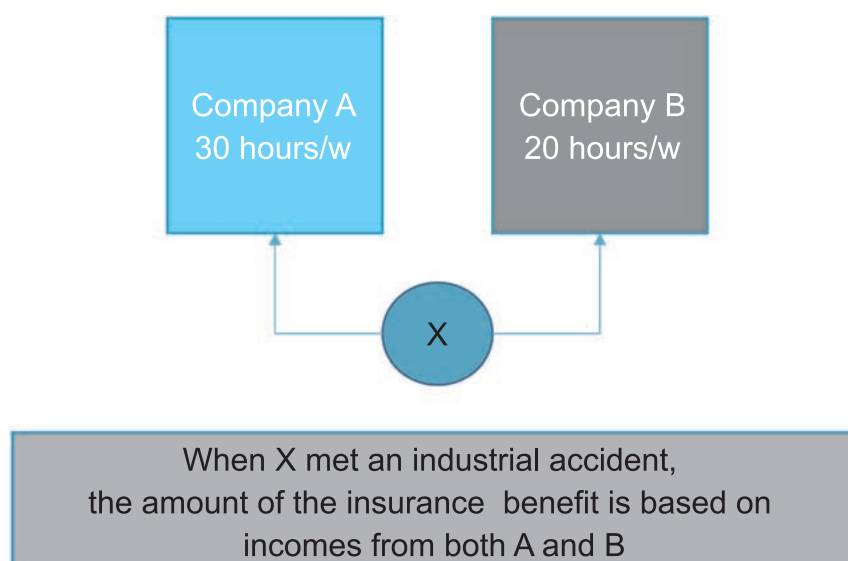
When you have more than one job, and if you are involved in an industrial accident, you have two problems to solve. First, when you had the accident while you were moving from one job to another, can this be regarded as an accident on commuting? IACIA (Industrial Accident Compensation Insurance Act) art. 37 says “any accident that occurs while he/she commutes to or from work using a transportation means provided by his/her business owner or another similar means under the control and management of his/her business owner,” and “any accident that occurs while he/she commutes to or from work using other common route and method” is regarded as an industrial accident covered by IACIA.

We have another problem for multi job holder. When you calculate insurance benefits, can you add up the whole income from your jobs? In the perspective that IACIA should cover up the ordinary income level, the income that he/she used to get to run his/her ordinary life, of the employee who had the industrial accident, then it would be better to add all the incomes. This becomes problematic, especially if an employee is holding multi jobs all on part-time basis (Figure 2).

Labor Standards Act art. 18 says “the terms and conditions of employment of part-time workers shall be determined on the basis of relative ratio computed in comparison to those work hours of full-time workers engaged in the same kind of work at the pertinent workplace” (para.1), and “criteria and other necessary

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8. Supreme Court of Korea 2018. 10. 12. 2015 DU38092.



Source: Compiled by the Author.

Figure 2. Insurance benefit by IACIA for multi job workers

matters to be considered for the determination of terms and conditions of employment under para.1 shall be prescribed by Presidential Decree.” With this, articles including holiday’s protection “shall not apply to workers whose contractual working hours per week on an average of four weeks (in cases where their working periods are less than four weeks, such period of working) are less than 15 hours.” This is a regulation that makes part-time workers vulnerable.

We had the regulation of IACIA art.36. para.5. which says, “In computing insurance benefits (excluding pneumoconiosis compensation annuities and pneumoconiosis survivor’s annuities), where it is deemed inappropriate to apply the average wage to any worker due to his/her unusual type of employment as prescribed by Presidential Decree, an amount computed according to the computation method prescribed by Presidential Decree shall be deemed the average wage for the worker.” Also accompanied by the amendment of Enforcement Decree of the IACIA (2016) indicates “Where applying the average wage to a part-time employee ... who works for two or more businesses (art. 23), as one example of the “deemed inappropriate to apply the average wage to any worker due to his/her unusual type of employment.”

Thanks to this revision, for employees holding more than one part-time work, an amount calculated by dividing the aggregate of the wages that the relevant part-time employee received in the business where the accident occurred during the average wage calculation period and the wages he/she received in other businesses during the same period, by the number of days of the relevant period (art. 24). Though it is only applied for the workers who work as part time, among multi job holders, this is a new attempt to include multi job holder into the legal framework of social security.

## 2-2. Working time for multi job workers

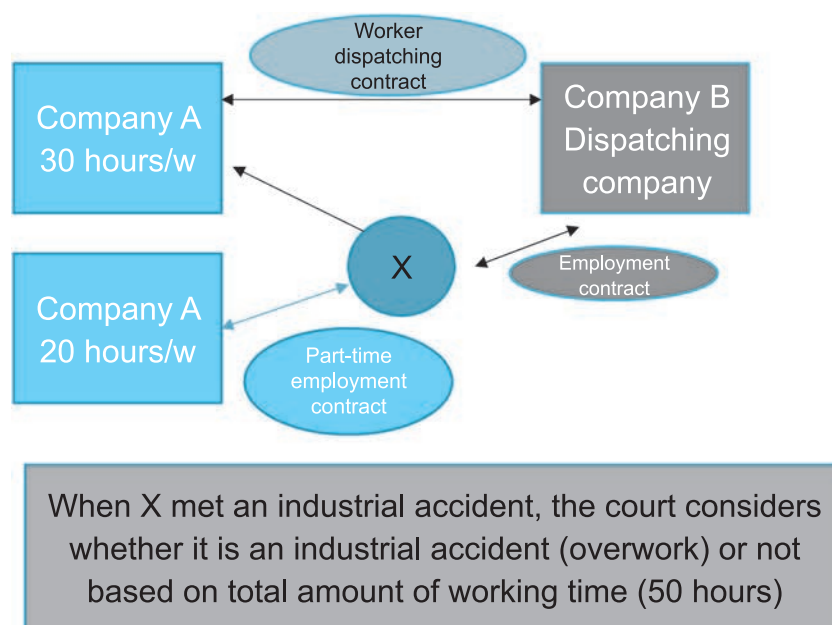
Another issue that can be aroused is about working time regulation of multi job holder. This issue has not been on the table of debate yet, but it does cause a conflicting problem. We have 40- hour ceiling on weekly working hours (LSA art. 50), but do not have any regulation about cases on working for more than one employer and working more than 40 hours a week.

Traditional employment contracts are made between one employer and one employee. Recently, there has

been much debate about plural employers who may have an impact on employment contract, usually discussed as ‘joint employers.’ However, instead of the debate over joint employers, now we will see about plural employers and an employee who has individual contract with each employer.

We may be confused about protection for employees’ health and self-determination, especially when we talk about working time regulation. The rights to decide one’s own job and freedom of privacy can collide with employer’s managerial process and rights arising there. Working time would be also a unique problem when you have more than two employers, with regard to an upper limit of working hours and time-and-a-half overtime payment. Adding up whole total working hours with multiple employers can be an answer to cope with regulation on the ceiling of working hours by Labor Standards Act. In addition, we do have problems about calculating total hours, which is concerned with privacy and autonomy of employees. This approach can also help to get an inspiration for understanding how to regulate further areas like combined situation of multiple contracts of employment and self-employment (Figure 3).

I would like to introduce a new type of work, which is very popular in Korea, “Coupang Flex.” It is delivery service you work as an independent contractor. You can choose the time and place, and the amount of work as you like. Actually, they say “FREE time and place, right now, short period” when they recruit new delivery riders. Many people join the service, just working when they are coming from work to home. With the increase of delivery in the pandemic age, there has been an increase in the number of riders. This is a little different from the classical way of maximum working hours issue, in the sense that the person work there acts partly as an employee (maybe in their original workplace), and partly as an independent contractor (in the relation with an e-commerce company, Coupang). But we still have the challenge to be solved by creating regulations for working hours. Concerning health and safety of workers there, it is necessary to think of new regulations to address the issue of long working hours by both employees and independent contractors. We can take a stance observing the maximum working hours, not just as an employer’s duty, but also as a public order which we all should comply to a limited extent with.



Source: Compiled by the Author.

Figure 3. Industrial accident and working hours of multi job workers

#### IV. More to do

With this new environment in Korea and the changes caused by it, we are making a step by step progress. To some extent, we have dealt with the changes by revision in law. But we still have more to do, advanced by speedy innovation in technologies and application to the real society.

On the one hand, digitalized control could be an authority that does not permit even a little loss between work, optimizing and making full use of labor, leading to a new type of sweat shop. On the other hand, it could be a good chance to make full use of one's life and ability. There apparently are persons who work for the diverse needs. But it is difficult to identify a specific employer among various persons concerned with their work. To whom should the responsibility be assigned? A joint obligation could be one answer. Designating one specific employer in consideration of the importance that each employer takes up could be another answer.

Is this a time that we need an additional rule for a new type of working persons, while maintaining the old labor regulations? Or do we need to make new rules which are more inclusive and comprehensive for all the working persons? Some say that we need a totally different working rule, regulation system, in view of the changed working environment and new technologies that enables it. Of course, there is an argument that we need to maintain basic regulations and add more regulations for non-employees when they are in need, or exemptions when rigid regulations disturb the new situation. In Korea, a new Act bill<sup>9</sup> has just been introduced and is waiting for deliberation at the National Assembly. It mainly contains basic principles about contractual duty by both sides, such as a clear statement of terms and conditions of the contract, equal status in establishing terms and conditions of contract, and it seems to intend to protect new types of working people even if they are not employees. But there also exist concerns about misclassification, and platform workers and unions say that it will categorize marginal employees out of the classical range of the employees, consequently proliferating second-class workers, who do not have full protection of traditional employment law.

We cannot make solutions easily, but what we can and must do at once is creating a basic safety net in this age. Social security system is a primary field where voices asking for reformation is high. Long-term employment for one specific employer which has been a stereotype in Korea is declining, and social security system based on that need to be changed. This is a part of the reasons that Basic Income is such a hot issue recently in Korea. Who is in charge of employers' responsibility? More specifically, who will replace the role that employers have been assigned in the social security system? As the traditional roles of employers in employees' welfare is waning, we should not overlook the government's initiative in social security, e.g. extending the coverage of unemployment insurance.

Developed technologies and changed working styles say that alliance of the employees could be one answer.<sup>10</sup> New technologies can also be utilized as a means for the new type of working people's organization, such as app-based union or *ad-hoc* bargaining unit. Digital technologies can be a Janus-faced weapon for unions as well as associations of working people. It may make fragmented working environment, enable working people to realize and to individualize their diverse needs and conditions, which looks like a bad sign for traditional solidarity. However, digital technologies also can be used as a way to help far remote persons to organize and share opinions, making united argument to the employee(s). This part of effect should not be overlooked in rule-making and policy-making process.

Are we still trying to utilize the new 'technology for decent work' (ILO 2019; Lyon-Caen 2021)? Or will this whole situation substitute direction of the employer for the technology and artificial intelligence? Fundamentally, it might be time that we can and must think of a new labor regulation. As we examined, MES or new type of direction from the employer side can be interpreted into other ways of direction. We can cope

9. Act on the protection and support for platform workers, introduced on Mar. 18, 2021.

10. López eds., 2019.

with this hurdle by analyzing every single part of the work performed by the person who actually takes order, moves, carries box, and delivers it (Tomassetti 2020). As we can see from the experiences in Korea, invisible directions and orders can be considered as characteristics of employees, and this is a matter of interpretation. As a next step, we may try to find and analyze employers' orders from the system of algorithm (Adams-Prassl 2019; Tomassetti 2021; O'Connor 2016).

But in another perspective, it may be time to think in a different way. Who should be covered by labor law, and who should be protected by compulsory binding law? In other words, it is time to ask again what the concept of the employee is, and what the characteristics of the employee should be. In many countries, we can see similar situations especially about the digitalized environment. Our main concerns are still focused on exploring new way of finding traditional evidence from the new phenomena. Many of the issues have been handled by the traditional labor law. But the concept of the subordination itself, as main basis of the concept of the employee, can be also approached with contemporary views. At the same time, some of the problems can be approached by laws in other fields. Collective action and bargaining by freelancing delivery riders are interesting issues of labor law, but competition law is another way to solve these problems.

Last but not least, recent situation definitely suggests controversial issues between traditional dogmatic of labor law and needs for advanced regulation for a new type of workers. As we can see from the dilemma about the way to regulate working time of multi job holders, this is closely connected with the ideal image of an employee. Self-determination of the workers and protection for them by compulsory, binding law can be contradictable in many situations. Are the workers' needs to be protected, sometimes against their will? If not, should we make them do whatever they want on their own will? Are we giving them enough information for their decisions? Do we get a different answer when they are together, in solidarity? What about the role of collective autonomy? Can a platform be a new chance for the new way of union making? Many of our old issues are still to be debated and explored in more various ways, but we need to think more seriously about the very nature of working people and the role of regulations for them, especially in this age of digitalization.

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# The Contemporary Challenge and Government Responses on Delivery Platform Worker Rights and Benefits in Taiwan: The “MOL Guidance 2019” and the “Taipei City Ordinance 2019”

Bo-Shone FU

- I. The delivery platform worker and its controversy in Taiwan
- II. The differences between an employee and an independent contractor in Taiwan: Eligibility of employment-based labor rights and social security benefits
- III. The Ministry of Labor Guidance and Taipei City Ordinance
- IV. The swift responses from the platform business
- V. Conclusion

The traditional dichotomy of employee and independent contractor is no longer a practical test to properly decide the modern workers' legal status and the surrounded labor rights. It is particularly true when facing the diversity of the gig economy work styles. It has been a well-known but unsolved issue for years in Taiwan, and the Ministry of Labor and the Taipei City initiated some preliminary steps to intervene in the dilemma by guidance and ordinance in 2019.

This article aims to discuss the worker classification issue on Taiwan's delivery platform and the most current government guidance and local city ordinance. By introducing the government guidance, the city ordinance, and the gig platform's responses, this article strives to provide an image of the current power dynamic among the government, the platform, and the labor.

## I. The delivery platform worker and its controversy in Taiwan

The classification of delivery platform workers and the labor rights and benefits upon their legal status are among the most controversial issues in Taiwan. Like other states' universal experiences on platform workers, the traditional dichotomy test did not seem to be a tailored approach to determine the platform workers' appropriate classification. This legal deficiency has long been on the need-to-solve problem list and was lifted to the top priority in October 2019, after the two tragic car accidents that took away two delivery agents' life within three days. The media's intense attention urged the Ministry of Labor (hereafter MOL) and Taipei City Government (the city with the highest number of delivery agents) to actively respond and prevent the same accident from occurring again.

The high public awareness, however, did not make finding a solution for this particular problem any easier. It is an issue caused, although with some different arguments, by the developing technology and the social change, which is the future trend that has no return. Discussions that believe it is a positive change usually focus on the flexibility and employee autonomy that these platforms can provide. It also creates the chance for workers to have multiple jobs and extra income by granting them access to customers who need their service through the platform. For those workers who want to utilize their free time better, the platform job is definitely a plus.

The counter-arguments, on the contrary, are applying a more critical lens on these jobs. They raise the concern of willful misclassification to avoid the mandated labor right and benefits. From their perspective, the digital delivery platform is abusing a loophole, and that legal vacancy needs to be covered. The fact that people are working hard for the company without having appropriate labor rights and benefits is the symbol of

exploitation, and the new technology is just the sugarcoat on it.

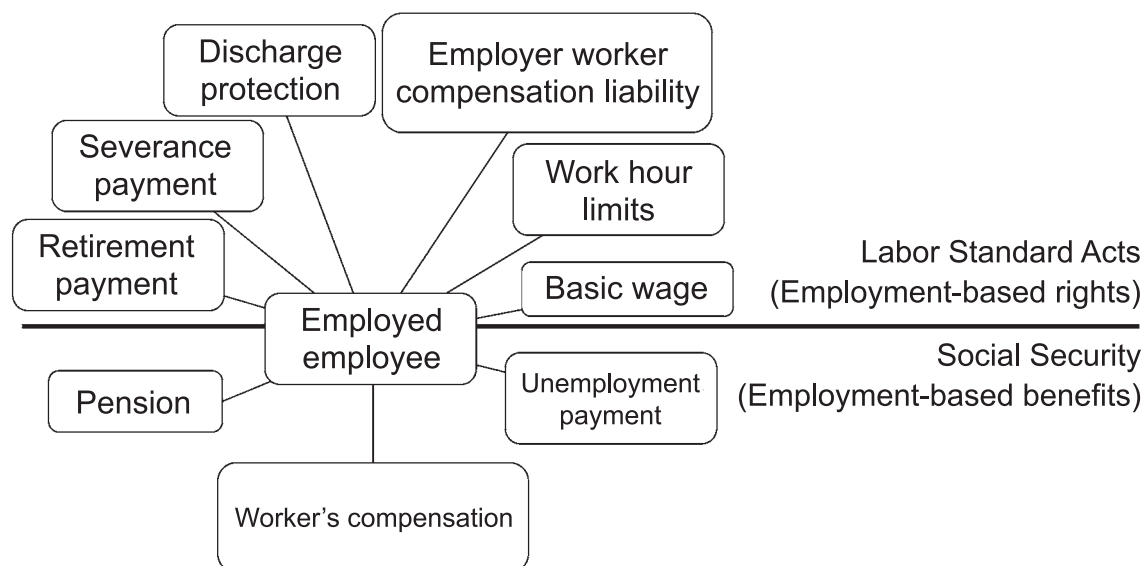
A statistic report generated by one of the major job banks may provide more information to think about this issue. Among 300 delivery agents, 70% work as a full-time worker, and in these full-timers, their monthly salary can range from NT\$ 20,000 (USD 650) to NT\$ 180,000 (USD 6,000). Moreover, the average monthly salary for all 300 agents is NT\$ 42,000 (USD 1,400). In the meantime, the average of college-graduate workers is only NT\$ 30,000 (USD 1,000).<sup>1</sup> From the income standpoint, no matter working full-time or part-time, choosing to be the platform worker may be a reasonable choice.

To further reveal the controversy and provide a better solution for delivery platform workers' rights and benefits, this article will first introduce the basic legal framework of Taiwan's employment law, the MOL guidance, and the Taipei City ordinance in Chapter 2 and Chapter 3. The platform's responses to those rules above and how it reacts to specific regulations will be introduced in Chapter 4.

## II. The differences between an employee and an independent contractor in Taiwan: Eligibility of employment-based labor rights and social security benefits

Taiwan has a whole set of labor statutes that provide protective rights and social security benefits to employees. The Labor Standards Act mandates the floor of labor conditions as protective rights, included but not limited to, e.g., discharge protection, working hour limits, basic wage, severance payment, retirement payment, and worker compensation. The social security benefits that an employee may enjoy are mainly provided by the Labor Insurance Act, which established a government-operated labor insurance policy that provides, including but not limited to, accident payment, maternity payment, worker compensation, pensions... etc.

These major protective labor laws and policies have one in common: they are both operated on the employment-based presumption, generally speaking. A worker needs to be employed as an employee to trigger



Prepared by the author.

Figure 1. Major employment-based labor rights and social security benefits

1. Replacing life by salary! Job Bank statistics: Delivery agent salary range from NT\$ 20,000 to NT\$ 180,000, The Storm Media, <https://www.storm.mg/article/1834982> (last checked Feb. 14, 2020).

the employer's legal obligation to maintain basic labor conditions and sign the labor into the labor insurance policy. If the worker is an independent contractor, the worker is not considered employed and the rights and benefits<sup>2</sup> mentioned above are not active options for the worker. The "employment-based" rights and benefits reflect the ideology that employers are obligated to a person who works under their instruction and control for their business interests. To be more specific, the traditional employee and non-employee dichotomy was a tool to determine whether the employer is responsible for the cost of these employment-based labor rights and benefits.

Since the cost differences between hiring an employee and an independent contractor can be huge, it creates an illegal incentive to misclassify workers to reduce business expenses. That is why a red flag is pinpointed when the platform claims its delivery agents are all independent contractors. The platform company puts itself in the center of the debate on whether the gig economy business model is actually sugarcoating its intentional misclassification by the digital application. To further address this controversy, the Ministry of Labor and the Taipei City have both responded with guidance and ordinance, respectively.

### **III. The Ministry of Labor Guidance and Taipei City Ordinance**

#### **A. MOL Guidance on determination of labor contract**

Right after the deadly accident on food delivery agents in October 2019, the newspaper revealed that the deceased workers were not eligible for worker's compensation under the labor insurance act. Labor insurance is a mandatory social insurance policy, and employers must sign up all the employees they hired, although with limited exceptions, through labor contracts. The two deceased delivery agents, however, according to the platform, signed into an independent contractor agreement with the platform, resulting in their ineligibility for worker's compensation. The fact that workers deceased while working hard on the delivery assignment does not eligible for worker's compensation shocked the general public. It pushed the issue of gig economy worker misclassification to the top of public focus.

In the meantime, the MOL swiftly issued the "Guidance on Determination of Labor Contract." This guidance included previous court decisions and administrative interpretations on determining the legal status of workers. It also provided the "Checklist for Subordination under the Labor Contract as the reference for the employer and workers."<sup>3</sup> The guidance emphasizes that the worker's actual legal status shall be determined under consideration for all circumstances, and the type of the contract signed by parties is not a decisive factor. It includes lots of landmark court precedents regarding this issue and turns the rationales into indicators. (Please refer to Chart 1 below). This guidance shows an exact position that the MOL sticks with the employee-nonemployee dichotomy, and what of the essence in the classification is the worker's level of subordination in the actual working background. The checklist serves as an indicator to assist the employer and the worker in pinpointing their subordination level among the aggregated court decisions on related cases. Fulfilling more than 50% of the checklist indicators does not promise the status as a labor contract, but the chances are high since the court is likely to defer to their own precedents in future lawsuits.

In the classic labor contract relationship, the employee is likely to be recognized with three kinds of

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2. With regard to the labor insurance and the payments, the Labor Insurance Act requires employers with more than 5 employees to sign in their laborers into the labor insurance policy. For those employers with less than 5 employees, they are not obligated to sign their workers into the policy. It will be the workers own discretions on whether to participate in the social insurance policy. It should be noticed that, however, the issues mentioned in this article applied the old "Labor Insurance Act," which was the governing law when this article was submitted. It is no longer the outstanding law after May 2021, when the Taiwan legislative branch enacted the "Act for Protecting Worker of Occupational Accidents." The new law mandates a different worker compensation insurance with broader coverage.

3. Taiwan Ministry of Labor website announcement: <https://www.mol.gov.tw/announcement/2099/42678/>; the Guidance and the Checklist can be found here (last checked Feb 5, 2020).

Chart 1. Checklist for subordination under the labor contract

Items	Characters of Subordination	Yes or No
a.	The INDIVIDUAL SUBORDINATION can be revealed if <sup>4</sup>	
(a)	The work time is under the instruction or control of the company.	
	1. The worker has no discretion regards to work time and rest time.	
	2. The worker will face disadvantageous treatment if absent without prior notice.	
(b)	The way to perform the duty is under the instruction or control of the company.	
	1. The worker will face disadvantageous treatment if they disobey the instructed way of performing the duty.	
(c)	The place to perform the duty is under the instruction or control of the company.	
	1. The worker has no discretion over the place, route, and area of performing the duty.	
(d)	The worker cannot reject job assignments from the company.	
	1. Rejection of job assignments will face disadvantageous treatment.	
(e)	The worker is under performance evaluation from the company regards to the quality of the work.	
	1. The worker is obligated to be evaluated by the company.	
(f)	The worker must perform the duty personally. An agent cannot be used without the employer's prior consent.	
	1. The worker is required to perform job duty personally.	
b.	The ECONOMY SUBORDINATION can be revealed if <sup>5</sup>	
(a)	The necessary equipment, tools, materials, and machines to perform job duty is not prepared, managed, and maintained by the worker.	
	1. The worker must use the equipment provided or instructed by the company to perform the job duty.	
c.	The ORGANIZATIONAL SUBORDINATION can be revealed if <sup>6</sup>	
(a)	The worker is included in the company's inner structure and performs the job duty as a team.	
	1. The worker is required by the company to have a routine work schedule, shift, and on-call assignment.	

Source: Abstract from "DOL Guidance on Determination of Labor Contract 2019."<sup>7</sup>

subordinations: individual subordination, economy subordination, and organizational subordination. The guidance applies these categories of subordination to lay out its checklist below. It hopes to shed light on ambiguous employment relationships that may cause difficulties in determining the labor status.

## B. Taipei City Governance and Self-Regulatory Ordinance on delivery platform business<sup>8</sup>

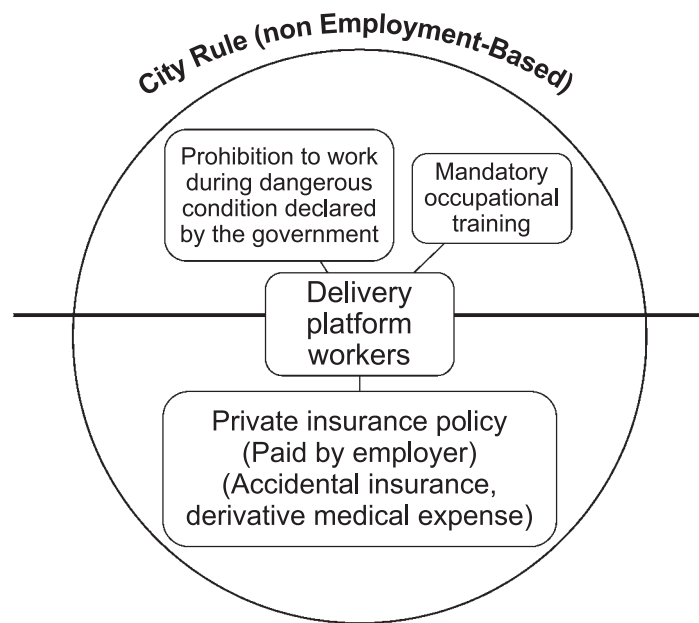
Taipei City legislation recognizes the urgent need to protect gig workers and also acknowledges that a straightforward test to distinguish legal labor status does not exist yet. To avoid labor rights protection

4. Due to the word limits, this report only lists part of the individual subordination as an example.

5. Due to the word limits, this report only lists part of the economy subordination as an example.

6. Due to the word limits, this report only lists part of the organizational subordination as an example.

7. Taiwan Ministry of Labor website announcement: <https://www.mol.gov.tw/announcement/2099/42678/> (last checked Feb 5, 2020).



Prepared by the author.

Figure 2. Partial employer responsibility and workers' rights mandated by the City Rule

contingent upon legal uncertainty, the city legislation adopts a regulatory regime that applies a sub-category for platform workers. Different from the traditional dichotomy of employee and non-employee which result in workers face full or zero labor rights and social insurance protections upon the status, the ideology of this city ordinance is to set aside the dispute over the labor status and request partial labor rights and minimum private insurance protections<sup>9</sup> instead. According to the gig worker's special working conditions, Taipei City legislation focused on particular practical rights and protections. Due to the word limits, this article will partly introduce measures regarding compulsory private insurance, dangerous working condition, and occupational training and accident report.

#### (a) Compulsory private insurance

To avoid the independent contractor agent decease during delivery assignment without worker compensation eligibility, Article 4 of the ordinance requires the company to purchase a private accidental insurance policy on the employer's expenses. This approach can bypass the impasse on worker classification and still provide the worker some insurance payments while an accident happens.

This compulsory private insurance purchase by the employer needs to cover accidents and derivative medical expenses. The amount insured for accidental disability or death shall not be less than NT\$ 2 million (approximately to USD 66,666). For accident derivative medical expense insurance, the insured amount shall not be less than NT\$ 30 thousand by proof or NT\$ 1 thousand per day.

8. Taipei City Governance and Self-Regulatory Ordinance on Delivery Platform Business, <http://www.tcc.gov.tw/Upload/act/870/%E4%B8%89%E8%AE%80%E9%80%9A%E9%81%8E%E6%A2%9D%E6%96%87.pdf> (last checked Jan.30, 2020).

9. General introduction of the draft of Taipei City Governance and Self-Regulatory Ordinance on Delivery Platform Business, <https://www-ws.gov.taipei/Download.ashx?u=LzAwMS9VcGxvYWQvMzA3L3JlbGZpbGUvMTAxNzMvODEwMDk5My85OWFkMTdlZS1kOTA2LTQ0NWEtODQxOC0xMDFiM2Y5ZGMxNWUucGRm&n=44CM6le65YyX5biC5aSW6YCB5bmz5Y%2Bw5qWt6lCF566h55CG6leq5rK75qKd5L6L44CN5Yi25a6a6l2J5qGI57i96Kqq5piO5pqo5qKd5paH5bCN54Wn6KGolnBkZg%3D%3D&icon=..pdf> (last checked Feb. 2020).

### **(b) Prohibition to work under dangerous condition**

Most of the food delivery agents in Taipei City use motorcycles as their delivery vehicles. This transportation approach is notorious for its lack of protection in transportation accidents, especially while riding under dangerous conditions. Article 5 of the ordinance thus prohibits the platform from continuing its service when the local government declares a “day-off because of natural disaster,” e.g., Typhons. This measure tries to lower the risk of deadly accidents for the delivery agent in a risky environment.

### **(c) Mandatory occupational training and accident report**

Acknowledging the risky nature of outdoor delivery and its high potentiality of encountering accidents on their duty, Article 8 of the ordinance requires the employer to provide at least 3 hours of the pre-duty training program on occupational safety, food sanitation, and transportation safety. This measure intends to raise the awareness of safety for delivery agents before they devote themselves to the business. These measurements used to be part of the on-the-job training for employees, but the ordinance requests the platform provides it to the delivery agent regardless of their labor status.

Moreover, Article 6 of the ordinance also requires the employer to report any accident that causes death or more than one worker hospitalized for treatment. The platform is obligated to report the accident to the Taipei City Division of Labor Inspection within 8 hours, starting from the time when the employer acknowledges or should have known of the accident.

## **IV. The swift responses from the platform business**

Coincidentally, not long after the MOL guidance and the Taipei City ordinance, one of the biggest food delivery platforms in Taiwan—Foodpanda, substantially remodel its related work rules and contract terms.

While the platform application’s substantial control over the worker can be observed through App rating and monitoring, Foodpanda seems to reconstruct its application to emphasize delivery agents’ autonomy by lifting several restrictions. It can be interpreted as the symbolic efforts to disconnect from individual subordination. (Please refer to Chart 1, a. (a) (1), a. (a) (2)). For example, according to the new “Rule of Conduct for Contract Delivery Partner,” absent from the scheduled shift will no longer face assignment suspension. Moreover, the application creates a new function to pre-declare detailed delivery address information to the agent and enable them to decide to take or reject the assignment freely. The right to reject assignment was considered one of the key factors to distinguish employees and independent contractors. (Please refer to Chart 1, a. (d) (1)).

To further emphasize the delivery agent autonomous on performing duty, the new rule also allows agents to sub-contract the assignment or work for other food delivery platforms simultaneously. (Please refer to Chart 1, a. (f) (1)). Moreover, the performance evaluation system regulating work behaviors or outfits is also lifted to lower the level of control that will be considered as the existence of subordination. (Please refer to Chart 1, a. (e) (1)).

The new “advertisement agreement” is another attempt to disproof economy subordination. The agents used to require the agent to wear a Foodpanda outfit and use a Foodpanda delivery box. In response, the platform will match them with a rate of NT\$ 70 per assignment. This requirement had been lifted, and the rate per task has dropped to NT\$ 60. The NT\$ 10 difference is now contingent upon the voluntary advertisement. If the agent is willing to wear the Foodpanda outfit and carry its brand box as a moving advertisement board, the extra premium will be granted. Wearing company uniform and using Foodpanda equipment is no longer an obligation but a free choice for extra income (Please refer to Chart 1, b. (a) (1)).

Simultaneously, the amendment of the “contractor agreement” clearly states that the agent is not under the company’s instruction and control. Foodpanda will only have a reasonable mandate over the agent, and will

not implement a full set of conduct rules.

Foodpanda's efforts above show its intention to keep its delivery agents as independent contractors with autonomy, not employees with strong employer subordination.

## V. Conclusion

While the legislative debates over the gig economy platform's proper solution are still unsolved, the expansion of the new economy does not slow down and will not be held back. The academia must keep up with the changes and discuss the possible strategy and adjustments. In the meantime, the administrative policy and the local legislation can also initiate proactive measures to handle the dispute preliminarily.

The central MOL and the Taipei City apply different regulatory models on this matter. The MOL holds its ground for the employee-independent contractor dichotomy. Its attempts to clear the misunderstanding of labor status by reemphasizing the differences between the employee and the independent contractor in the guidance to prevent the abusive use of independent contractor status. The indicators in the guidance also represent the current court precedents and rationales on the matter. To some extent, it predicts the possible result if related cases go to the court for adjudication, and provides legal instructions for both the employer and labor.

The Taipei City ordinance seems to go further on this matter by setting aside the legal status controversy and focusing on the platform worker's need. It recognizes that having a safe working environment, proper skill to perform the work, and some sort of insurance coverages on worker compensation are universal needs as a working human being, not just for employed employees. Therefore, the city legislation requires the platform to provide these training and safety preconditions with partial private insurance coverage to their delivery agents, no matter their actual labor status. It can be seen as a temporary solution for now, and it may be the new law if the central legislation adopts this model in the future.

It is still too early to tell which model will be the best regulatory regime for the gig economy platform, and the platform will continue to change its contract terms and policies per its business necessity. More discussions and debates need to be triggered until we can strike a proper balance between labor rights protection and the new economic development. The MOL guidance and Taipei City ordinance can be seen as experimental approaches to this dilemma, and hopefully, more ideas for this contemporary challenge can be inspired.



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## The 4th JILPT Tokyo Comparative Labor Policy Seminar 2020

### Organizer

The Japan Institute for Labour Policy and Training (JILPT)

### Date

November 9, 2020

### Venue

The 4th Seminar was held online.

### Seminar Theme

*The Changing World of Work in Digital Age—New Forms of Work and the Role of Labor Policy*

### Program

#### Opening Ceremony and Keynote Lectures

**Welcome and Opening Remarks:** Yoshio HIGUCHI, President, JILPT

**Keynote Lectures:**

Stijn BROECKE, Senior Economist and Lead of the Future of Work Initiative, OECD

Giuseppe CASALE, Secretary-General, International Society for Labour and Social Security Law (ISLSSL)

Takashi ARAKI, Professor, The University of Tokyo Graduate Schools for Law and Politics

#### Session 1: Digitalization and its Impact on Employment and Labor

Chair: Koji TAKAHASHI, Senior Researcher, JILPT

**Presentation 1 (Australia)** “Technology, Jobs and the Future of Work in Australia,” Alison PENNINGTON, Senior Economist, Centre for Future Work, Australia Institute

**Presentation 2 (India)** “Counterproductive Work Behavior by Drivers of Platform Based Cab Aggregators in India: A Human Rights Perspective,” Surya Prakash PATI, Associate Professor, Indian Institute of Management Kozhikode

**Presentation 3 (Japan)** “Working Conditions of Crowdworkers: How Working Conditions of Crowdworkers Vary by Job Content,” Itaru NISHIMURA, Vice Senior Researcher, JILPT

**Presentation 4 (Korea)** “Artificial Intelligence-Based Hiring: An Exploratory Study of Hiring Market Reactions,” Jaewan YANG, Associate Professor, College of Business, Hankuk University of Foreign Studies

**Presentation 5 (Philippines)** “Digital Platform Labor in the Philippines: Emerging Configurations and Policy Implications,” Cheryl Ruth R. SORIANO, Professor, Department of Communication, De La Salle University Manila

**Presentation 6 (Singapore)** “Marginalization of Graduate Freelancers in the Gig Economy,”

Reuben NG, Ph.D., Head, Data Innovation Group, Lee Kuan Yew School of Public Policy, and Lloyd’s Register Foundation Institute for the Public Understanding of Risk, National University of Singapore

**Chair’s Comments****Session 2: Labor Law Policy for Digitalization**

Chair: Chikako KANKI, Associate Professor, The University of Tokyo Graduate Schools for Law and Politics

**Presentation 7 (China)** “The Digitalization of China’s Employment Law?,” Tian YAN, Assistant Professor, Law School of the Peking University

**Presentation 8 (China)** “The Internet Platform Labor in China: The Rise, Controversy and Policy Trends,” Tianyu WANG, Associate Professor, Associate Director of Social Law Department, Chinese Academy of Social Sciences

**Presentation 9 (Indonesia)** “Recent Development of Legal Framework of Labor Law in Indonesia,” Ike FARIDA, S.H., LL.M, Doctor of Law, Founder and Managing Partner at Farida Law Office

**Presentation 10 (Korea)** “Better Opportunity or Extended Sweatshop?—Labor Law and Policy in the Age of Digitalization in Korea—,” Sukhwan CHOI, Assistant Professor, School of Law, Seoul National University

**Presentation 11 (Taiwan)** “The Contemporary Challenge and Government Responses on Delivery Platform Worker Rights and Benefits in Taiwan: The ‘MOL Guidance 2019’ and the ‘Taipei City Ordinance 2019’,” Bo-Shone FU, Assistant Professor, National Taipei University Law School

**Chair’s Comments****Concluding Session**

Moderator: Hideyuki MORITO, Professor, Keio University Law School

Panelists:

Stijn BROECKE, Senior Economist and Lead of the Future of Work Initiative, OECD

Giuseppe CASALE, Secretary-General, International Society for Labour and Social Security Law (ISLSSL)

Takashi ARAKI, Professor, The University of Tokyo Graduate Schools for Law and Politics

## What's on the Next Issue

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#### ●Trends

[Key topics]

▷ Proposed Employment Policy for a Post-Coronavirus Future: The MHLW Study Group

▷ Toward a Reiwa Society Where All Women and Girls Can Thrive and Achieve Their Full Potential: The Fifth Basic Plan for Gender Equality

[Columns]

▷ Work from Home and Work-life Balance under Covid-19: Latest Changes and Challenges in Japan

▷ Accommodation and Food Services Workers amid the COVID-19 Crisis in Japan

#### ●Judgments and Orders

▷ Judgment Declaring Fixed Overtime Pay Illegal and Upholding a Worker's Claim for a Solatium for Excessive Off-Hours Work Despite No Resulting Health Damage: The Karino Japan Case Nagasaki District Court, Omura Branch (Sept. 26, 2019)

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