

The Digital Trade Union in China: A New Form of Workers' Organization Targeting the New Forms of Work

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I. The scale of platform labor and labor security issues in China

With the popularization of the Internet, the platform economy has become an important new economic form in China, and platform labor has accordingly become an important new employment form with the rapid growth of the population of platform flexible workers such as food delivery riders, couriers, and app-based drivers, a form of labor relying on the Internet for employment that has been called a new employment form in China.

According to the International Labor Organization report, the number of practitioners providing services on platforms has been increasing, growing from 50 million in 2015 to 75 million in 2018, and the proportion of China's employed population has risen from 6.5% in 2015 to 9.7% in 2018, according to the report. Compared with other countries, platform practitioners in the United Kingdom only account for about 4% of the employed population; the United States has not exceeded 1%.¹ As shown in Table 1, the scale of practitioners on digital labor platforms in China is the largest in terms of both the absolute number and the proportion of the employed population. In addition, according to data from the National Information Center's Sharing Economy Research Center, in 2019, the number of sharing economy service providers in China reached 78 million, and the number of platform enterprise workers was 6.23 million.² In the first half of 2020, the number of riders who received income through Meituan alone amounted to 2.952 million, a year-on-year increase of 16.4%.³

The working hours of digital labor platform workers are more flexible and the time of going to work and resting can be decided by the individual, and this work flexibility makes it difficult for platform workers to be protected by the existing labor laws. The Ministry of Human Resources and Social Security's Response to Proposal No. 3391 of the Third Session of the 13th National Committee of the Chinese People's Political Consultative Conference (CPPCC) pointed out that: “Most of the workers in the new employment pattern independently take orders to undertake work tasks through the platforms, with a low threshold of entry and

1. ILO, “China's Digital Labor Platform and Workers' Rights Protection.” Working paper 11. <https://www.ilo.org/static/chinese/intserv/working-papers/wp011/index.html#ID0ECC>. [in Chinese]

2. Sharing Economy Research Center of the State Information Center, “China Sharing Economy Development Report.” 2020. <http://www.sic.gov.cn/News/568/10429.htm>. [in Chinese]

3. Meituan Research Institute, “Rider Industry: Employment Report of Riders in the First Half of 2020.” https://www.sohu.com/a/434818363_120505321. [in Chinese]

Table 1. Share of digital labor platform workers in employment by country⁴

Country	Percentage (%)	Indicator or qualifier
Denmark	1.0	Platform workers earning money at least once over the previous 12 months, 2017
Finland	0.3	Population aged 15–74 who had earned more than 25% of their income from work-related and non-work-related platform activities during the previous 12 months, 2017
Germany	1.8	Population aged 15 and older registered as platform workers in January 2017
Sweden	2.5	Working-age population who performed platform work, 2017
UK	4.0	People performing tasks online, providing transport or delivering food or other goods at least once over the previous 12 months, 2017
USA	0.4-0.6	Number of workers on the platform, 2016
China	9.7	Personnel engaged in providing services, 2019

Source: ILO, “China’s Digital Labor Platform and Workers’ Rights Protection.” Working paper 11. https://www.ilo.org/static/chinese/intserv/working-papers/wp011/index.html#ID0ECC_ [in Chinese]

exit, relatively free working hours, and a direct share of the labor income from the fees paid by the consumers, and that their relationship with the platforms is different from that with traditional ‘enterprise and employee’ model, resulting in a situation where workers in new employment patterns find it difficult to enter the scope of protection under the existing labor laws and regulations.”⁵

Prominent issues of labor rights and interests for platform workers are long working hours and the lack of the right to participate in labor pricing. A survey of food delivery riders shows that only 13% of riders work less than 8 hours a day; 49.5% work more than 10 hours; and 30% work more than 10 hours a day in a week. There is a significant difference between the daily working hours of full-time and part-time riders, with only 8.8% of full-time riders working less than 8 hours, compared to 36.6% of part-time riders; full-time riders work 0.85 times more hours per week than part-time riders.⁶

A similar situation exists with crowdsourcing platforms. For practitioners who work on platforms as their main source of income, the number of hours of paid work, unpaid work and total hours worked per week are 24.56, 11 and 35.56, respectively; and for those who do not work on platforms as their main source of income, the number of hours is 13.2, 7.45 and 20.7, respectively.⁷

A comparable situation exists for app-based drivers and crowdsourcing platform practitioners. A 2018 study showed that app-based drivers spend 46% of their working hours taking orders for service, which means that they spend more than half of their day waiting for orders at the roadside or driving empty on the road. Crowdsourcing practitioners work an average of 15.6 hours per week with pay and 8.26 hours without

4. See note 1 above.

5. Ministry of Human Resources and Social Security, “Proposal No. 3391.” Third Session of the Thirteenth National Committee of the Chinese People’s Political Consultative Conference. http://www.mohrss.gov.cn/xgk2020/fdzdgknr/zhgl/jytabl/tadf/202101/t20210113_407557.html. [in Chinese]

6. Qingjun Wu and Zhen Li, “Labor Control and Work Autonomy in the Sharing Economy—a Mixed Study on the Work of App-based Drivers”, *Sociological Research* 33, 4 (2018): 137–162, 244–245.

7. ILO, “China’s Digital Labor Platform and Workers’ Rights Protection.” Working paper 24. <https://www.ilo.org/static/chinese/intserv/working-papers/wp024/index.html>. [in Chinese]

pay.⁸

In terms of labor compensation, most digital platform practitioners have adopted a bottomless piece-rate pay structure, and their income level is vulnerable to adjustments in platform trading rules, low and high demand seasons, and platform drawdowns, which leads to longer working hours. Although they are able to earn a higher income, their income lacks stability and predictability. According to the survey data of the All-China Federation, 56.95% of platform workers considered unstable income to be their biggest concern in 2017.⁹

II. Institutional safeguards for digital trade union construction

Whether platform workers can be included in the scope of collective labor law is a key topic of labor protection in many countries around the world. Taking European countries as an example, the specific situation is divided into two categories: the first is the group of platform workers who have already obtained the right of collective bargaining in legislation, including riders with employee status in Spain, riders with quasi-subordinate worker status in Italy, and platform workers with judicially recognized worker status in the UK. A more special case is that of France, where the *El Khomri Law* for the first time puts self-employed workers on the same level as employees in collective bargaining matters.¹⁰

The second category of platform workers with the status of self-employed are not entitled to collective bargaining. In the framework of the EU labor laws, collective bargaining is the exclusive right of employees. Based on the protection of free competition under Article 101 of the Treaty on the Functioning of the European Union (TFEU), collective bargaining for the self-employed is considered a “cartel preventing, restricting, or distorting competition.” In the face of the challenges of platform labor, the European Commission has cautiously explored the extension of collective bargaining to platform labor, stating in its Report on the first phase of the Social Partners’ Consultation that “competition rules should not prevent collective bargaining for individual self-employed workers,” and specifically stating that this initiative is not an attempt “to bring collective bargaining within the scope of the EU competition rules.” This initiative does not bring collective bargaining within the scope of EU competition rules.¹¹ By the second stage of the consultation, the European Commission had made it clear that it would introduce a separate initiative aimed at ensuring that EU competition law did not prevent self-employed workers from needing to bargain collectively, while other aspects of competition law would still apply to self-employed workers and platforms.¹²

Before the rise of platform labor, there was also discussion in China about the scope of collective labor law. China’s Provisions on Collective Agreements stipulate that the subject of collective bargaining is “employees,” but some scholars argue that the concept of “employee” has the stigma of the times, and that

8. Chenggang Zhang, “Sharing Economy Platform Workers’ Employment and Labor Relations Status Quo—A Survey Study Based on Multiple Platforms in Beijing.” *Journal of China Institute of Labor Relations* 32, 3 (2018): 61–70.

9. Yufu Li, *The Eighth Survey on the Status of Chinese Workers*, edited by Yufu Li, November 2017. Beijing: China Workers Publishing House. [in Chinese]

10. Isabella Daugareilh, “The Legal Status of Platform Workers In France.” *Comparative Labor Law and Policy Journal* 41, 2 (2020): 104–120.

11. European Commission, “First Phase Consultation of Social Partners Under Article 154 TFEU on Possible Action Addressing the Challenges Related to Working Conditions in Platform Work.” <https://ec.europa.eu/social/main.jsp?langId=en&catId=522&furtherNews=yes&newsId=9932>.

12. European Commission, “Staff Working Document Accompanying the Consultation on Working Conditions in Platform Work.” 2021. <https://ec.europa.eu/social/main.jsp?langId=en&catId=522&furtherNews=yes&newsId=10025>.

after the full implementation of the labor contract system, it should be equated with the workers under the employment relationship, and thus the self-employed do not have the right to collective bargaining.¹³ With the large-scale development of platform labor and various forms of flexible employment, the need for such workers to be protected by collective labor law has become increasingly urgent.

The Opinions on Supporting Multi-Channel Flexible Employment issued by China's State Council on July 31, 2020, proposes to clarify the responsibilities of Internet platform enterprises in the protection of workers' rights and interests, to guide Internet platform enterprises and affiliated enterprises to negotiate with workers to determine labor compensation, rest and vacation, and occupational safety and security, and to guide industrial (sectoral and local) trade unions to negotiate with industry associations or representatives of platform enterprises to formulate industry norms such as industry labor quota standards, working hour standards, incomes and punishments, and other industry norms.¹⁴

On July 12, 2021, the All-China Federation of Trade Unions (ACFTU) issued the Opinions on Effectively Safeguarding the Labor Security Rights and Interests of Workers in New Employment Patterns, which proposed to "focus on promoting the universal establishment of trade union organizations in key industries, especially top platform enterprises and their affiliated enterprises, in accordance with the law, and actively exploring ways to establish trade union organizations that accommodate the different occupational characteristics of app-based drivers, couriers, and food delivery riders, and expanding the coverage of trade union organizations in various ways, such as through individual, joint, industrial, and regional trade union organizations, in order to maximize the number of workers in new forms of employment who can be attracted to join the union."

With regard to safeguarding the labor rights and interests of platform workers, this policy proposed that "industrial trade unions should play a role in actively negotiating with industry associations, top platform enterprises or enterprise representative organizations on the industry's piece-rate unit price, order distribution, commission rate, labor quotas, remuneration payment methods, rules for entering and exiting platforms, working hours, rest and vacation, labor protection, and the system of rewards and punishments, in order to safeguard the labor and economic rights and interests of workers in new forms of employment. Supervise platform enterprises to strictly comply with laws and regulations in formulating rules and regulations, algorithms, and other major matters, and to listen to the opinions and demands of workers through democratic management forms such as staff congresses and labor-management forums to safeguard the democratic and political rights of workers. Supervise platform enterprises to fulfill their social responsibilities, and promote decent work, comfortable work, and all-round development for workers in new employment patterns. Strengthen labor law supervision by labor unions and cooperate with the government and its relevant departments in monitoring and enforcing the law."¹⁵

The Guiding Opinions on Safeguarding the Labor Security Rights and Interests of Workers in New Employment Patterns, jointly issued by the Ministry of Human Resources and Social Security and seven other departments on July 16, 2021, stipulates the workers in new employment patterns should be actively recruited to join trade unions. Supervise enterprises to fulfill their employment responsibilities and safeguard the rights and interests of workers. Trade unions should actively carry out consultations with industry associations, top platform enterprises or enterprises representative organizations, achieve industry collective

13. Gan Li, "The Identity Positioning of App-based Drivers in Collective Labor Law." *Journal of China Institute of Labor Relations* 1, 1 (2017): 45.

14. https://www.gov.cn/zhengce/content/2020-07/31/content_5531613.htm. [in Chinese]

15. https://www.gdftu.org.cn/xxgk/ghwj/content/post_650179.html. [in Chinese]

agreements, and promote the formulation of industry labor standards.¹⁶

The Trade Union Law was amended in December 2021, stipulating that “trade unions shall adapt to the development and changes in the form of enterprise organization, the structure of the workforce, labor relations, and employment patterns, and safeguard the rights of workers to join and organize trade unions in accordance with the law.” This clarifies the right of workers in new forms of employment to participate in and organize trade unions, without making labor relations a prerequisite, and includes workers in flexible employment in the collective bargaining mechanism. Accordingly, the coverage of “workers” has been expanded to include flexibly employed workers on platforms, breaking through the limitations of the employment relationship, solving the problem of conflicting norms of collective bargaining on platforms, and confirming the right to collective labor in the field of non-employment relations.¹⁷

III. Parallel countermeasures of “digitization of trade unions themselves” and “trade unions and digital labor platforms”

Although there are institutional guarantees for platform workers to join and organize trade unions, the traditional trade union organization model is difficult to effectively deal with the highly mobile and flexible platform workers, so digital trade unions have gradually become a new form of worker organization in response to changes in working patterns.

The first digitalization option is for trade unions to build their own platforms to digitize and cloud-enable their work. In September 2023, ACFTU released the “Work Program for Accelerating the Digitalization of Trade Unions” with the following three main goals: 1) to build a “nationwide” service terminal; 2) to build an integrated set of “national standards and local characteristics”; and 3) to build a “national standards and local characteristics” system. The four main objectives of the program include: 1) building a “nationwide” service terminal; 2) building a set of “national standard and local characteristics” integrated service contents, including standard services common to the whole country and local characteristic services tailored to local conditions; 3) building a set of “standard unique, unified and shared” trade union digitalization work foundation system, including system design, technical architecture, interface and business standards, analysis and operation, and maintenance standards, data standards and basic codes; 4) and building a “standard unique, unified and shared” trade union digitization work foundation system. It includes system design, technical architecture, interface and business standards, analysis and operation, and maintenance standards, data standards and basic codes; it also builds a “12351” workers’ rights protection hotline platform that is “connected nationwide and converged by the National Federation, centralized in all provinces and hosted at all levels,” including voice services and online services. It has also built a digital office system that is “connected nationwide and operates everywhere” and has established a grand digital media matrix that integrates the “All-China Federation and localities, media and service terminals.”¹⁸

Trade unions around the country have been exploring digitalization. In Anhui, trade unions have launched a series of online universal service activities through the “Wan Trade Union” cloud platform, for example, by accurately locating 6,328 active new employment forms in the summer and giving cool coupons to the users.¹⁹ In Xiamen, Fujian Province, the “Xiamen Trade Union” APP can accept applications for membership

16. https://www.gov.cn/zhengce/zhengceku/2021-07/23/content_5626761.htm. [in Chinese]

17. Xiaohui Ban, “Beyond Labor Relations: the Expansion of Collective Labor Rights and Paths under the Platform Economy.” *Jurisprudence* 8. 2020: 172.

18. https://www.gdftu.org.cn/ztzl/shiba/content/post_1129199.html. [in Chinese]

19. <https://www.workercn.cn/c/2023-08-28/7960340.shtml>. [in Chinese]

through the trade union's WeChat public entrance, and in less than half an hour after the application has been approved, applicant worker can receive a trade union card at a chosen nearby bank branch; applicant worker can also apply for medical mutual aid online to receive a maximum of 30,000 yuan in subsidies for major illnesses; and in the event of a labor dispute, applicant worker can go through the "Smart Mediation and Arbitration" information management system to seek help online.²⁰ Trade unions in Shenzhen, Guangdong Province have basically realized the main trade union business of "one network," trade union services "one key to get," trade union data "one screen overview," forming a "smart trade union" with the integration of online and offline development. It has formed an ecosystem of "intelligent trade unions" that integrates online and offline development and has built the "Shenzhen I Work" online service front desk that provides "one-stop" services to employees and members, bringing together more than 20 service functions.²¹

The second digitalization option is for the trade unions to conduct collective negotiations with the main labor platform enterprises, and to conclude a collective agreement that covers all workers on the line, regardless of region. In July 2023, 175 network-wide employee representatives from seven regions of the Ele.me platform gathered in Shanghai for the first session of the Employee Representative Council (Expanded) of the Ele.me platform (the entire network) and deliberated on the adoption of the collective agreement of the entire network as well as three special collective agreements, which covered the platform's own employees and more than 3 million riders at 11,000 delivery stations across the country. This marks the birth of the first all-network labor council and the first all-network collective agreement in the national food delivery industry.²²

Combing through the practice of collective consultation in the field of new industries over the past few years, the development trend of expanding the scope of consultation, more standardized forms of consultation, and more binding effectiveness of consultation can be clearly seen. The first to emerge was the collective bargaining in some main enterprises of the express delivery industry with employment relations, forming a protective rule in line with the characteristics of the platform employment, and opening a precedent for collective bargaining in the field of the new industry. For example, the collective bargaining of the Jingdong Group is of this form. Subsequently, some top enterprises and representatives of workers in certain regions carried out bargaining activities on relevant labor conditions and signed collective agreements. These consultations in the form of symposium have, on the one hand, broken through the restriction that an employment relationship must exist between the employing parties, and on the other hand, the representatives participating in the symposium include not only employees directly registered on the platform, but also those of franchisees and outsourcers. For example, the negotiation forums for the app-based drivers of DDT (Beijing), the negotiation forums for the riders of Meituan (Beijing), and the negotiation forums between the platform of Ele.me and the food delivery riders all belong to this form. Based on regional negotiation activities, some regions have started to strengthen the effectiveness of negotiation agreements through the introduction of standardized democratic management procedures such as employee councils, for example the first employee congress (joint) meeting of Meituan (Shanghai) held in August 2022, which was promoted by Shanghai trade union. On one hand, the introduction of the procedures provides a relatively standardized institutional tool for collective bargaining in new industries, and on the other hand, it strengthens the legitimacy of the agreement between the parties as well as its binding force.

The digital trade union organization model represented by the Ele.me network-wide collective agreement is that the workers employed on the platform of the entire network form a workers' congress through

20. Ibid.

21. https://www.gdftu.org.cn/ztzl/shiba/gh/content/post_1127221.html. [in Chinese]

22. https://www.sohu.com/a/700786706_465282. [in Chinese]

the election of representatives, and the rules of procedure are formed through the workers' congress; the representatives of the negotiation are elected to carry out the collective negotiation and sign the collective agreement of the entire network, which is then considered and adopted by the workers' congress. This practice makes full use of the institutional framework of "collective consultation, work council and collective agreement" under the current law, which not only ensures the legitimacy of the content of the collective agreement, but also ensures the effectiveness of the collective agreement, and ultimately provides relevant rights and interests protection for all new forms of employment of workers on the platform.

Facing the future development of the digital era, artificial intelligence has been included in the vision of the construction of digital trade unions. On December 22, 2023, ACFTU launched the Applied Artificial Intelligence Initiative and formulated the "National Federation of Trade Unions Widely Applied Artificial Intelligence Initiative" with the following goals: in 2024, it will actively apply the intelligent APP "Workers' Home" to serve hundreds of millions of workers on a trial basis, and initially provide full-dimensional, full-time, and intelligent services to workers; initially realize the intelligent transformation of trade union work online and offline, and significantly improve the total efficiency and capacity of the trade union system. In 2025, it will be widely applied. Normal operation of the intelligent APP "Workers' Home" serving hundreds of millions of workers, basically achieving full-dimensional, full-time, and intelligent service for workers; basically, realizing the overall efficiency and capacity of the trade union system.²³

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23. <https://www.workercn.cn/c/2024-01-04/8101445.shtml>. [in Chinese]