

Platform Workers Conventionⁱ

Preamble

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its [...] Session on [...], and

[...]

adopts this [...] day of [...] of the year two thousand and twenty[...] the following Convention, which may be cited as the Platform Workers Convention, [...]:

Article 1

For the purpose of this Convention:

- a) the term **digital labour platform** means any natural or legal person providing a commercial service which meets all the following requirements:
 - i. it is provided, at least in part, at a distance through electronic means, including a website or a mobile application;
 - ii. it involves the organisation or supply of work or services performed by individuals irrespective of whether that work is performed online or in a certain location;
- b) the term **platform work** means any work or service organised or supplied predominantly through electronic means by a digital labour platform and performed by an individual, irrespective of whether a contractual relationship exists between the individual and the recipient of the service;
- c) the term **platform worker** means any individual who, irrespective of employment status, provides platform work in a predominantly personal capacity unless this individual is genuinely operating a business undertaking on theirⁱⁱ own account;ⁱⁱⁱ
- d) the term **automated or semi-automated monitoring system** means any system used to monitor, supervise or evaluate the work performance of individuals through electronic means, irrespective of whether a natural person is involved in the operation of the system and of who owns, provides, operates, maintains, develops or continues to develop the system;
- e) the term **automated or semi-automated decision-making** means any system used to take or support decisions that significantly affect those individuals' working conditions, in particular their access to work assignments, their earnings, their occupational safety and health, their working time, their promotion and their contractual status, including the restriction, suspension or termination of their account, irrespective of whether a natural person is involved in the operation of the system and of who owns, provides, operates, maintains, develops or continues to develop the system.
- f) The term **algorithmic management system** means the terms at letter d) and e), jointly or separately;^{iv}
- g) The term **personal data** means any information relating to an identified or identifiable natural person;

- h) The term **identifiable natural person** means a natural person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to their^v physical, physiological, genetic, mental, economic, cultural or social identity or trade union membership;
- i) The terms **process** or **processing** refer to, or mean, any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated or semi-automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction as well as drawing inferences on personal data or on sets of personal data;^{vi}
- j) The term **quota** means a work performance standard under which a platform worker, including through algorithmic management systems, is recommended, assigned or required to perform at a specified productivity speed, or perform a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period and under which a digital labour platform may take, including through algorithmic management systems, any decision that significantly affect a platform worker's working conditions as referred to in letter (e) of this Article if they^{vii} fail to complete the work performance standard.^{viii}
- k) The term **discrimination** includes:
 - (a) any distinction, exclusion or preference made on the basis of race, colour, sex, sexual orientation, gender identity, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
 - (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of platform workers and those representative of digital labour platforms, and with other appropriate bodies.^{ix}

Article 2^x

1. Each Member shall take measures to ensure the effective promotion and protection of the human rights of all platform workers, as set out in this Convention.
2. Each Member shall, in relation to platform workers, take the measures set out in this Convention to respect, promote and realize the fundamental principles and rights at work, namely:
 - (a) freedom of association and the effective recognition of the right to collective bargaining;
 - (b) the elimination of all forms of forced or compulsory labour;
 - (c) the effective abolition of child labour;
 - (d) the elimination of discrimination in respect of employment and occupation;

(e) a safe and healthy working environment; and

any such principle or right later identified as a fundamental principle and right at work by the International Labour Organization.

3. In taking measures to ensure that platform workers and digital labour platforms enjoy freedom of association and the effective recognition of the right to collective bargaining, Members shall protect the right of platform workers and digital labour platforms to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing.

Article 3^{xi}

1. Each Member shall set a minimum age for platform workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182),^{xii} and not lower than that established by national laws and regulations for workers generally.

2. Each Member shall take measures to ensure that work performed by platform workers who are under the age of 18 and above the minimum age of employment or occupation does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training.

Article 4^{xiii}

1. Each Member shall take measures to ensure that platform workers enjoy effective protection against all forms of discrimination, abuse, harassment and violence.

2. Each Member shall take measures to ensure that platform workers enjoy a safe and healthy working environment, irrespective of whether that work is performed online or in a certain location, taking into account the special characteristics of platform work.

3. Each Member shall take measures to ensure that digital labour platforms provide that platform workers who habitually work outdoors have adequate access to suitable bathroom facilities.

Article 5

1. Each Member shall take measures to ensure that platform workers, like workers generally, enjoy decent working conditions and that, if they perform work from their homes or other private spaces, their privacy and the privacy of other persons in those spaces is respected.^{xiv}

2. Each Member shall take measures to ensure that digital labour platforms or any other intermediaries do not charge directly or indirectly, in whole or in part, any fees or costs to platform workers.^{xv}

Article 6

1. Each Member shall take measures towards ensuring at least equal treatment between platform workers and workers generally in relation to normal hours of work, overtime

compensation, periods of daily and weekly rest and paid annual leave in accordance with applicable national laws, regulations or collective agreements, taking into account the special characteristics of platform work.^{xvi}

2. Periods during which platform workers are logged on the website, mobile application or any other software provided by the digital labour platform in order to respond to possible calls or complete possible tasks shall be regarded as hours of work to the extent determined by applicable national laws, regulations or collective agreements, or any other means consistent with national practice.^{xvii}

3. Each Member shall take measures to ensure that platform workers are not required, including through algorithmic management systems, to meet a quota that prevents compliance with periods of daily and weekly rest, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or any applicable national laws, regulations or collective agreements.

4. Each Member shall take measures to ensure that platform workers, including through algorithmic management systems, are not subject to any decision that significantly affect a platform worker's working conditions as referred in Article 1, letter (e) for failure to meet a quota that does not allow a worker to comply with daily and weekly rest, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or any applicable national laws, regulations or collective agreements.^{xviii}

Article 7

1. Each Member shall take measures to ensure that platform workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination, including when remuneration is established by means of algorithmic management systems.^{xix}

2. Minimum wage rates, where they exist, shall be paid for each work or service assignment performed by a platform worker. Tips and other gratuities paid in respect of a platform work assignment shall not be included in determining compliance with the applicable minimum wage for that assignment.^{xx}

3. Each Member shall take measures to ensure that platform workers are paid directly in cash at regular intervals at least once a month and on time for all completed work, that no such payment is unduly withheld or denied, and that their remuneration complies with the applicable minimum wage after deducting any cost necessary to render their work.^{xxi} Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned.

4. Each Member shall take measures to ensure that any work or service executed by a platform worker that has been rejected by the digital labour platform or any other party cannot be retained by them.

5. Each Member shall take measures towards ensuring at least equal treatment between platform workers and workers generally in relation to protection in case of termination of their platform work agreement or relationship at the initiative of a digital labour platform, including with regard to justification of termination, procedures prior to or at the time of

termination, procedures of appeal against termination, periods of notice, severance allowances or other income protections, consultation of workers representatives, notifications to the competent authorities in accordance with applicable national laws, regulations or collective agreements, taking into account the special characteristics of platform work.^{xxii} Such measures shall encompass any deactivation of the platform worker's account at the initiative of a digital labour platform and any termination decided, recommended, made or implemented through algorithmic management systems.

6. Each Member shall take measures towards ensuring at least equal treatment between platform workers and workers generally in relation to disciplinary action as well as disciplinary and grievance procedures in accordance with applicable national laws, regulations or collective agreements, taking into account the special characteristics of platform work. Such measures shall encompass any suspension or deactivation of the platform worker's account at the initiative of a digital labour platform and any disciplinary action decided, recommended, made or implemented through algorithmic management systems.

Article 8^{xxiii}

1. Each Member shall take measures to ensure that no digital labour platform introduces, operates or deploys any algorithmic management system unless otherwise agreed with platform workers' representatives or, where there are no such representatives, with the most representative organizations of workers identified in accordance with applicable national laws, regulations or collective agreements, or any other means consistent with national practice.

2. Each Member shall take measures to ensure that, where the collective agreement at paragraph 1 of this Article cannot be reached, no digital labour platform introduces, operates or deploys any algorithmic management system unless it is authorised to do so by the competent public institutions identified by applicable national laws, regulations or collective agreements, or any other means consistent with national practice.

3. The competent public institutions shall not authorise any digital labour platform to introduce, operate or deploy any algorithmic management system unless they are satisfied that the digital labour platform requesting such an authorisation meets, and continues to meet, the standards in this Convention.

4. Each Member shall take measures to ensure that the provisions of paragraphs 1, 2 and 3 of this Article also apply when algorithmic management systems are subject to significant revision.

Article 9^{xxiv}

1. Without prejudice to Article 8, each Member shall require digital labour platforms to inform platform workers of:

(a) as regards automated monitoring systems:

(i) the fact that such systems are in use or are in the process of being introduced or significantly revised;

(ii) the categories of actions monitored, supervised or evaluated by such systems, including evaluation by the recipient of the service;

(iii) the main parameters that such systems take into account and the relative importance of those main parameters in the monitoring, supervision or evaluation of platform workers, including the way in which the platform workers' personal data or behaviour influence these activities and the role of any human decision-maker in the decision-making process;

(iv) whenever such systems are significantly revised, the reasons, nature and extent of these revisions and their expected consequences on working conditions as referred in Article 1, letter (e).

(b) as regards automated or semi-automated decision-making systems:

(i) the fact that such systems are in use or are in the process of being introduced or significantly revised;

(ii) the categories of decisions that are taken or supported by such systems;

(iii) the main parameters that such systems take into account and the relative importance of those main parameters in the automated or semi-automated decision-making, including the way in which the platform worker's personal data or behaviour influence the decisions and the role of any human decision-maker in the decision-making process;

(iv) the grounds for decisions to restrict, suspend or terminate the platform worker's account, to otherwise discipline or penalise them, to refuse the remuneration for work performed by the platform worker, on the platform worker's contractual status or any decision with similar effects;

(v) whenever such systems are significantly revised, the reasons, nature and extent of these revisions and their expected consequences on working conditions as referred in Article 1, letter (e).

2. Without prejudice to Article 8, each Member shall require digital labour platforms to provide the information referred to in paragraph 1 of this Article in the form of a document which may be in electronic format at the latest on the first working day, as well as at any subsequent time upon the platform workers' request. In the case of a significant revision of algorithmic-management systems, the information referred to in paragraph 1 of this Article shall be provided in the form of a document which may be in electronic format at the latest on the first working day on which the revisions are implemented. The information shall be presented in a concise, transparent, intelligible and easily accessible form, using clear and plain language.

3. Without prejudice to Article 8, each Member shall require digital labour platforms to make the information referred to in paragraph 1 of this Article available to platform workers' representatives and competent public institutions upon their request.

4. Without prejudice to Article 8, each Member shall ensure that algorithmic management systems do not process and are not used to process any personal data concerning platform workers that are not intrinsically connected to and strictly necessary for the performance of the contract between the platform worker and the digital labour platform or for compliance with legal obligations. In particular, they shall not:

- (a) process any personal data on the emotional or psychological state of the platform worker;
- (b) process any personal data relating to the health of the platform worker;^{xxv}
- (c) process any personal data in relation to private conversations, including exchanges with platform workers' representatives;
- (d) process any personal data in relation to the exercise of rights of platform workers or their representatives or the intention to exercise such rights, until when those rights are exercised or that intention manifested expressly and willingly;
- (e) collect any personal data while the platform worker is not offering or performing platform work;
- (f) process any personal data revealing racial or ethnic origin, migration status, political opinions, religious or philosophical beliefs, disability or state of health, including chronic disease or HIV status, or trade union membership and the processing of genetic data, biometric data for the purpose of uniquely identifying a person, or data concerning a person's sex life or sexual orientation;
- (g) make use of mandatory biometric identification;
- (h) make use of disproportionate surveillance of work performance. Surveillance is disproportionate when it is not:
 - (i) strictly necessary to the performance of the agreement or relationship between the digital labour platform and the platform worker;
 - (ii) the least possible intrusive.^{xxvi}

Article 10

1. Without prejudice to Article 8, each Member shall ensure that digital labour platforms provide for human oversight of all decisions affecting working conditions or ensure that such oversight is provided.
2. Without prejudice to Article 8, each Member shall ensure that digital labour platforms, together with workers' representatives, oversee and carry out, regularly and at least annually, and when substantial changes are introduced, an assessment of the impact of individual decisions taken or supported by algorithmic management systems on working conditions as referred in Article 1, letter (e) and fundamental principles and rights at work. Where there are no internal workers' representatives, this assessment will be carried out together with the most representative organizations of workers identified in accordance with applicable national laws, regulations or collective agreements, or any other means consistent with national practice.
3. Without prejudice to Article 8, each Member shall ensure that digital labour platforms shall:
 - (a) avoid the risks^{xxvii} of algorithmic management systems to the safety and health of platform workers, including as regards possible risks of work-related accidents, psychosocial and ergonomic risks or ensure that such risks are avoided;

(b) assess whether the safeguards of those systems are appropriate for the risks identified in view of the specific characteristics of the work environment or ensure that such safeguards are assessed;

(c) introduce appropriate preventive, corrective and protective measures or ensure that such measures are introduced.

4. Without prejudice to Articles 6 and 8, each Member shall ensure that digital labour platforms do not use algorithmic management systems in any manner that puts undue pressure on platform workers or otherwise puts at risk the physical and mental health of platform workers, including through piece-rate remuneration and quotas.

5. Without prejudice to Article 8, each Member shall ensure that digital labour platforms:

(a) avoid the risks of algorithmic management systems to the human dignity of platform workers or ensure that such risks are avoided, in particular as regards:

(i) possible risks of discrimination; and

(ii) possible risks of replicating gender, racial and other social biases in the selection and treatment of different groups

resulting from decisions taken by those systems;

(b) assess whether the safeguards of those systems are appropriate for the risks identified pursuant to letter (a) or ensure that such safeguards are assessed;

(c) introduce appropriate preventive, corrective and protective measures or that such measures are introduced.

6. The impact assessment referred to in paragraph 2 of this Article shall include the matters referred to in paragraphs 3, 4 and 5 of this Article and shall be submitted to the competent public institutions, and to the most representative organizations of employers and workers and, where they exist, with organizations representative of platform workers and those representative of digital labour platforms.

7. Without prejudice to Article 8, each Member shall ensure that if the impact assessment referred to in paragraph 2 of this Article finds risks to health and safety or fundamental principles and rights at work that cannot be avoided^{xxviii} as referred to in paragraph 3, 4 and 5 of this Article, the digital labour platform shall immediately cease the use of the algorithmic management system.

8. Without prejudice to Article 8, each Member shall ensure that:

(a) digital labour platforms provide for sufficient human resources for effective oversight of the impact of individual decisions taken or supported by algorithmic management systems or ensure that such human resources are provided;

(b) the individuals charged by the digital labour platform with the function of carrying out the assessment referred to in this Article and of overseeing or reviewing decision-making taken or supported by algorithmic management systems shall have the necessary funding, resources, competence, training and authority to exercise that function, including the possibility of amending and reverting those decisions; and

(c) these individuals enjoy protection from dismissal, disciplinary measures or other adverse treatment for overriding automated or semi-automated decisions or suggestions for decisions.

Article 11

1. Without prejudice to Article 8, each Member shall ensure that platform workers and their representatives have the right to obtain an explanation from the digital labour platform for any decision taken or supported by an automated or semi-automated decision-making system that significantly affects the platform worker's working conditions, as referred to in Article 1, letter (e), and fundamental principles and rights at work. The explanation shall be presented in a transparent and intelligible manner, using clear and plain language in due time and at the latest on the first day of application of the decision. In particular, Members shall ensure that digital labour platforms provide platform workers and their representatives with access to a contact person designated by the digital labour platform to discuss and to clarify the facts, circumstances and reasons having led to the decision. Each Member shall require that digital labour platforms ensure that such contact persons have the necessary funding, resources, competence, training and authority to exercise that function.

2. Without prejudice to Article 8, each Member shall ensure that digital labour platforms provide the platform worker and their representatives in due time and at the latest on the first day of application with a written statement of the reasons for any decision taken or supported by an automated or semi-automated decision-making system to restrict access to work assignments, or to restrict, suspend or terminate the platform worker's account, any decision to refuse the remuneration for work performed by the platform worker, any decision on the platform worker's contractual status, any decision producing an effect on the terms agreed between the digital labour platform and the platform worker, or any decision with similar effects, including effects on platform workers' ability to earn income via the platform. Those decisions shall be taken in accordance with applicable national laws, regulations or collective agreements.

3. Without prejudice to Article 8, each Member shall ensure that where platform workers or their representatives are not satisfied with the explanation or the written statement of reasons obtained or consider that the decision referred to in paragraph 1 of this Article infringes their rights:

(a) they shall have the right to request the digital labour platform to review that decision; and

(b) the digital labour platform shall respond to such request by providing the platform worker and their representatives with a precise and substantiated reply without undue delay and in any event within one week of receipt of the request.

4. Without prejudice to Article 8, each Member shall ensure that where the decision referred to in paragraph 1 of this Article infringes the platform worker's or their representatives' rights, the digital labour platform shall rectify that decision without delay or, where such rectification is not possible, provide adequate compensation, which shall be proportionate to the gravity of the infringement.

5. This Article shall be without prejudice to disciplinary, grievance and dismissal procedures laid down in applicable national laws, regulations or collective agreements and to Article 8.

Article 12^{xxix}

1. Platform work shall be governed by the law of the country where, or from where, the platform worker habitually carries out their work.

2. The application of paragraph 1 of this Article shall not, however, have the result of depriving any platform worker of the protection afforded to them^{xxx} by more favourable provisions laid down in applicable national laws, regulations or collective agreements that cannot be derogated from by agreement under the law of the country where the digital labour platform is established or situated, whichever is more favourable to platform workers.

Article 13^{xxxi}

1. Each Member is responsible for ensuring implementation of its obligations under this Convention concerning digital platforms established or situated in its territory.

2. Concurrently with the obligations under paragraph 1 of this Article, each Member is responsible for ensuring implementation of its obligations under this Convention concerning platform workers who habitually carry out their work in its territory.

3. Each Member shall establish an effective system for the inspection and certification of platform work conditions, in accordance with paragraphs 4 and 5 of this Article, ensuring that the working and living conditions of platform workers who:

- (i) work for a digital labour platform established or situated in its territory; or
- (ii) habitually carry out their work in, or from, its territory

meet, and continue to meet, the standards in this Convention.

4. In establishing an effective system for the inspection and certification of platform work conditions, a Member may, where appropriate, authorize public institutions or other organizations (including those of another Member, if the latter agrees) which it recognizes as competent and independent to carry out inspections or to issue certificates or to do both. In all cases, the Member shall remain fully responsible for the inspection and certification of the working conditions of platform workers who:

- (i) work for a digital labour platform established or situated in its territory; or
- (ii) habitually carry out their work in, or from, its territory.

5. A platform work digital certificate, complemented by a declaration of platform work compliance, shall constitute prima facie evidence that the platform work organised by a digital labour platform has been duly inspected by the Member on whose territory the digital labour platform is established or situated and that the requirements of this Convention relating to working conditions of the platform workers have been met to the extent so certified.

6. Information about the system referred to in paragraph 3 of this Article, including the method used for assessing its effectiveness, shall be included in the Member's reports to the International Labour Office pursuant to article 22 of the Constitution.

Article 14^{xxxii}

1. Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of platform work, to ensure that platform workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity and parental status.

Article 15^{xxxiii}

1. Each Member shall ensure that platform workers, including those whose account has been terminated, have access to appropriate, speedy, inexpensive, fair and efficient procedures and mechanisms for dispute resolution and a right to redress, including adequate compensation, reactivation of account, restoration of personal ratings, in the case of infringements of their rights arising from this Convention.

2. Each Member shall ensure that representatives of platform workers or other legal entities which have, in accordance with the criteria laid down by national law or practice, a legitimate interest in defending the rights of platform workers, may:

(a) engage in any judicial or administrative procedure as well as any procedures and mechanisms for dispute resolution to enforce any of the rights or obligations arising from this Convention; and

(b) act on behalf or in support of a platform worker in the case of an infringement of any right or obligation arising from this Convention, with that worker's approval.

3. Representatives of platform workers shall have the right to act on behalf or in support of several platform workers, with those workers' approval.

Article 16^{xxxiv}

Each Member shall take the necessary measures to ensure that digital labour platforms create the possibility for platform workers to contact and communicate with each other, and to be contacted by representatives of platform workers, through the digital labour platforms' digital infrastructure or similarly effective means, while maintaining confidentiality of these communications. In particular, each Member shall require digital labour platforms to refrain from accessing or monitoring those contacts and communications.

Article 17^{xxxv}

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 18

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification is registered.

Article 19

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention within the first year of each new period of ten years under the terms provided for in this Article.

Article 20

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations that have been communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification that has been communicated, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

Article 21

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and denunciations that have been registered in accordance with the provisions of the preceding Articles.

Article 22

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 23

1. Should the Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides:

- (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 19 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 24

The English, French and Spanish versions of the text of this Convention are equally authoritative.

ⁱ This draft Platform Workers Convention has been prepared by Professor Valerio De Stefano, PhD, Canada Research Chair in Innovation, Law and Society at Osgoode Hall Law School, York University, Toronto, Ontario. The draft Convention was commissioned by the International Trade Union Confederation (ITUC) and the International Lawyers Assisting Workers Network (ILAW). **However, it does not necessarily represent their views or the views of the Workers' group of the ILO.** The draft was finalized at the beginning of 2023. I am very grateful for comments and feedback on previous versions of this draft to Jeremias Adams-Prassl, Antonio Aloisi, Nicola Countouris, Loredana Carta, Paapa Danquah, Luca de Vecchi, Hannah Johnston, Michael Six Silberman, Ruwan Subasinghe, and Jeffrey Vogt. I remain solely responsible for the content of this draft Convention.

ⁱⁱ "Their" is used as a substitute for "his or her".

ⁱⁱⁱ The personal scope of this draft Platform Workers Convention is modelled around the notion of "predominantly personal work". The idea of personal work originates in the academic work of Mark Freedland and Nicola Countouris to go past the loopholes and limitations of existing employment statuses that deprive an increasingly unsustainable number of workers of essential labour and employment rights. See M. Freedland and N. Countouris, *The Legal Construction of Personal Work Relations*, OUP, Oxford, 2011. For a specific application of "personal work" to casual and platform work, see N. Countouris and V. De Stefano, [New trade union strategies for new forms of employment](#), ETUC, Brussels, 2019. For a judicial application of the concept of personal work, see Court of Justice of the European Union, Judgment of 12 January 2023, [J.K. v TP S.A., C-356/21](#), ECLI:EU:C:2023:9 and especially the Opinion of Advocate General Ćapeta delivered on 8 September 2022, ECLI:EU:C:2022:653. Adopting "predominantly personal work" in this draft is not an exorbitant departure from the approach of many International Labour Standards. Most of these Standards are already designed to have universal application or go much beyond the narrow scope of the employment relationship, arguably even when they refer to the "employment relationship" in their text. See a discussion in V. De Stefano, [Not as Simple as it Seems: The ILO and the Personal Scope of International Labour Standards](#), *International Labour Review*, Vol. 160, Issue 3 (September 2021), pp. 387-406.

^{iv} The terms at d) and e) are adapted from the EU Commission's proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work (hereinafter "**The draft Platform Work Directive**"), as amended by the European Parliament according to the "REPORT on the proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work", (COM(2021)0762 – C9 0454/2021 – 2021/0414(COD)) of the European Parliament's Committee on Employment and Social Affairs, Rapporteur Gualmini, hereinafter "**The Report**".

^v "Their" is used as a substitute for "his or her".

^{vi} The terms at g), h), and i) are modelled on Article 4 of the EU GDPR (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

vii “They” is used as a substitute for “he or she”.

viii This term is adapted from the California Assembly Bill No. 701, CHAPTER 197.

ix This term is adapted from Article 1 of the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). On the grounds of sexual orientation and gender identity, see ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), [Giving Globalization a Human Face](#), General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, 2012, p. 344. Here the CEACR also recalls that: “Sexual orientation is referred to in the Private Employment Agencies Recommendation, 1997 (No. 188), Para. 9, and in Recommendation No. 200, Para. 14(e)”. See also ILO CEACR, *Portugal*, C. 111, [Direct Request](#), published in 2022.

x This Article’s provisions are modelled on Article 3 of the ILO Domestic Workers Convention, 2011 (No. 189). This latter Convention is an ideal reference for an instrument of platform work, given its recent adoption and the fact that platform workers face severe risks of exclusion from the application of protective labour and employment regulation. One of the crucial objectives of ILO Convention 189 was remedying the widespread historical exclusion of domestic workers from legal protection.

xi The provisions of paragraphs 1 and 2 of this Article are modelled on the provisions of Article 4 of the ILO Domestic Workers Convention, 2011 (No. 189). See endnote x for an explanation.

xii E.g., content moderation of violent or otherwise unsuitable online content.

xiii The provisions of paragraphs 1 and 2 of this Article are modelled on the provisions of Articles 5 and 13 of the ILO Domestic Workers Convention, 2011 (No. 189), respectively. See endnote x for an explanation.

xiv This paragraph’s provisions are modelled on Article 6 of the ILO Domestic Workers Convention, 2011 (No. 189). See endnote x for an explanation.

xv For a discussion about the fees charged to platform workers by digital labour platforms and other intermediaries and why the principle that no fees should be charged to work applies to any worker, regardless of employment status, see M. Wouters, *International Labour Standards and Platform Work: An Analysis of Digital Labour Platforms Based on the Instruments on Private Employment Agencies, Home Work and Domestic Work*, Kluwer Law International B.V., Alphen aan den Rijn, 2022.

xvi This paragraph’s provisions are modelled on the provisions of Article 10 of the ILO Domestic Workers Convention, 2011 (No. 189). See endnote x for an explanation. In 2019, the tripartite [ILO Centenary Declaration for the Future of Work](#) affirmed that “All workers should enjoy adequate protection in accordance with the Decent Work Agenda, taking into account: [...] maximum limits on working time”. Furthermore, in 2019, the ILO Global Commission on the Future of Work, in its final report, [“Work for a Brighter Future”](#), called for universal coverage of limits on hours of work as part of a Universal Labour Guarantee that would apply to “all workers, regardless of their contractual arrangement or employment status”.

xvii The principle that any time spent logged on the platform’s systems or software should count as paid working time has been established by the Supreme Court of the United Kingdom in [Uber BV v Aslam \[2021\] UKSC 5](#).

xviii Paragraphs 3 and 4 are adapted from the [California Assembly Bill No. 701, CHAPTER 197](#).

xix The provisions of this paragraph are modelled on the provisions of Article 11 of the ILO Domestic Workers Convention, 2011 (No. 189). See endnote x for an explanation. In 2019, the tripartite [ILO Centenary Declaration for the Future of Work](#) affirmed that “All workers should enjoy adequate protection in accordance with the Decent Work Agenda, taking into account: [...] an adequate minimum wage, statutory or negotiated”. Furthermore, in 2019, the ILO Global Commission on the Future of Work, in its final report, [“Work for a Brighter Future”](#), called for universal coverage of an adequate minimum wage as part of an Universal Labour Guarantee that would apply to “all workers, regardless of their contractual arrangement or employment status”. Platform workers are among those workers who are most affected by [wage discrimination channeled through algorithmic management systems](#); see V Dubal, [On Algorithmic Wage Discrimination](#), 2023, available on SSRN.

xx This paragraph’s provisions are modelled on the provisions of Section 9 (2) of the [Ontario Digital Platform Workers’ Rights Act, 2022, S.O. 2022, c. 7, Sched. 1](#).

xxi This paragraph is inspired, without implication, by the [Fairwork](#) Gig Work Principles and Cloudwork (Online Remote Work) Principles. Some wording is drawn from Article 12 of the ILO Domestic Workers Convention, 2011 (No. 189). See endnote x for an explanation.

xxii This paragraph is inspired by the Termination of Employment Convention, 1982 (N. 158).

xxiii This Article, and the following Articles on algorithmic management, are based on the notion of “negotiating the algorithm”, i.e., the idea that the introduction, operation and deployment of algorithmic management systems should be primarily guided and governed by collective agreements, negotiated at the appropriate levels, based on a legislative framework establishing minimum mandatory requirement. When negotiating these collective agreements is impossible public authorities could authorize the introduction, operation or deployment of algorithmic management systems on the condition that those minimum requirements are respected. For a

first presentation of the notion of negotiating the algorithm, see V. De Stefano, “[Negotiating the algorithm: Automation, artificial intelligence, and labor protection](#)”. *Comparative Labor Law & Policy Journal*, 2019, 41(1): 15–46. The idea that some algorithmic management systems should be subject to the duty to bargain collectively has been expressed by the General Counsel of the United States National Labour Relations Board; see [Electronic Monitoring and Algorithmic Management of Employees Interfering with the Exercise of Section 7 Rights](#), Memorandum GC 23-02, October 31, 2022. See also Sections 51-55 (“Technological Change”) of the Canada Labour Code. For a more recent discussion, including examples of collective negotiations and initiatives around algorithmic management systems, see V. De Stefano and S. Taes, [Algorithmic management and collective bargaining](#). *Transfer: European Review of Labour Research*, 2023. This publication explains how the approach of the Platform Work Directive, even after the compromise amendments introduced by the Report, is inadequate to tackle the challenge of algorithmic management in platform work. In particular, we discuss how this EU instrument would make the introduction and use of algorithmic management systems in platform work conditional to mere information and consultation duties. Moreover, it seems to consider algorithmic monitoring and surveillance as a given. This is problematic because these forms of technological supervision would thus be subject, at the EU level, to significantly looser standards than those that several EU Member States have imposed on much less invasive surveillance systems, such as video cameras, in the past; see A. Aloisi and E. Gramano, “[Artificial intelligence is watching you at work: Digital surveillance, employee monitoring, and regulatory issues in the EU context](#)”. *Comparative Labor Law & Policy Journal*, 2019, 41(1): 95–122.

^{xxiv} Articles 9, 10, and 11 are drawn upon the draft Platform Work Directive as amended by the Report and are adapted to the idea of “negotiating the algorithm” and the ILO framework.

^{xxv} The draft Platform Work Directive, as amended by the Report, provides, in its corresponding provisions, some exceptions that may be taken into account.

^{xxvi} Letters (d) and (h) are, without implication, inspired by and adapted from J. Adams-Prassl, Halefom Abraha, Aislinn Kelly-Lyth, Michael ‘Six’ Silberman, and Sangh Rakshita, ‘Regulating Algorithmic Management: A Blueprint’, *European Labour Law Journal*, 2023.

^{xxvii} In the corresponding provisions of the Platform Work Directive, as amended by the Report, the expression “avoid the risks” read “avoid, or evaluate and combat the risks that cannot be avoided”. This limited risk-based approach, however, does not seem adequate for risks caused by technological tools. For a discussion, see A. Aloisi and V. De Stefano, “[Between Risk Mitigation and Labour Rights Enforcement: Assessing the Transatlantic Race to Govern AI-Driven Decision-Making through a Comparative Lens](#)”, *European Labour Law Journal*, 2023.

^{xxviii} The draft Platform Work Directive, as amended by the Report, allows for the mere mitigation of risks generated by algorithmic management systems. This limited risk-based approach does not seem adequate for risks caused by technological tools. See footnote 22.

^{xxix} This Article is included to address the transnational elements often present in platform work, and particularly online-based platform work. It is inspired by the principles of Article 8 of the Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

^{xxx} “Them” is used as a substitute for “him or her”.

^{xxxi} This Article is included to address the transnational elements often present in platform work, particularly online-based platform work. Its provisions are based on Regulation 5.1.1 of the Maritime Labour Convention, 2006, (MLC, 2006), as amended. The idea to take inspiration from the Maritime Labour Convention to address the transnational elements of platform work has been expressed by the ILO Global Commission on the Future of Work in its final report, “[Work for a Brighter Future](#)” (2019). In particular, the Commission argued: “Digital labour platforms provide new sources of income to many workers in different parts of the world, yet the dispersed nature of the work across international jurisdictions makes it difficult to monitor compliance with applicable labour laws. The work is sometimes poorly paid, often below prevailing minimum wages and no official mechanisms are in place to address unfair treatment. As we expect this form of work to expand in the future, we recommend the development of an international governance system for digital labour platforms that sets and requires platforms (and their clients) to respect certain minimum rights and protections. The Maritime Labour Convention, 2006 (MLC, 2006), which is in effect a global labour code for seafarers, is a source of inspiration in addressing the challenges of workers, employers, platforms and clients operating in different jurisdictions”.

^{xxxii} This Article’s provisions are modelled on the provisions of Article 14 of the ILO Domestic Workers Convention, 2011 (No. 189). See endnote x for an explanation.

^{xxxiii} Articles 15 and 16 are drawn upon the draft Platform Work Directive as amended by the Report and are adapted to the ILO framework. The principles concerning dispute resolutions are drawn upon Paragraph 4 of the ILO Employment Relationship Recommendation, 2006 (No. 198).

^{xxxiv} For a normative discussion on the need to foster “occupational communities”, including by securing private communication among workers, see R. Dukes and Wolfgang Streeck, *Democracy at Work. Contract, Status and Post-Industrial Justice*, Polity Press, Cambridge and Hoboken, 2022.

^{xxxv} The final Articles draw upon the final Articles of the ILO Violence and Harassment Convention, 2019 (No. 190), the last-adopted ILO Convention to date.