

# **General Report of the Fourth Study Commission of the International Association of Judges – 2024**

## **Digital Revolution Impact on the Labor Market: Platform or Gig Economy and Artificial Intelligence**

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In 2024, the Fourth Study Commission of the International Association of Judges sent out a questionnaire on the topic of “Digital Revolution Impact on the Labor Market: Platform or Gig Economy and Artificial Intelligence.” The questionnaire asked each country about the presence of the platform economy, the legal status of platform workers, the impact of artificial intelligence (AI) on the labor market, laws and judicial decisions about artificial intelligence, and challenges posed by AI for employers and employees. We received responses from 31 countries by September 9, 2023: Angola, Armenia, Australia, Austria, Brazil, Canada, Denmark, Estonia, Finland, France, Georgia, Greece, Hungary, Italy, Kazakhstan, Liberia, Mali, Mexico, Morocco, Panama, Paraguay, Philippines, Portugal, Romania, Serbia, Slovenia, Spain, Sweden, Taiwan, the United Kingdom, and the United States. The following is a general report summarizing those responses.

### **I. Presence of the Platform or Gig Economy**

The questionnaire defined the gig economy as short-term contracts or freelance work in contrast to permanent jobs, including ride sharing, delivery services, and remote work via the Internet.

With limited exceptions, such as Armenia, almost all the countries that responded said that the platform economy is prevalent in their country. Some countries, such as Liberia, said that it is minimal and primarily limited to urban areas. Others, such as Denmark, noted that only a small proportion of their population uses platform work, primarily as a supplemental source of income. However, most countries characterized the platform economy as a significant and growing presence.

In most countries, such as Angola, Australia, Georgia, Mali, Panama, Paraguay, and Philippines, among others, the bulk of platform jobs stem from ride share services, delivery, and personal services offered via online platforms. Some countries, such as the Philippines, also offer a vast variety of platform services

internationally, such as content writing, virtual assistance, graphic design, and software development.

Multinational companies like Uber form part of the platform economy landscape in most countries, although several countries also note the emergence of domestic platforms. For example, in Denmark, Danish-owned startups like Hilfr (home cleaning service) and Chhabber (platform for waiting and kitchen freelancers) followed the arrival of foreign-owned platforms. Similarly, in Brazil, some of the largest platforms operating in the country, such as iFood (food delivery) and 99 (rideshare service), were founded in Brazil but now form part of international conglomerates.

The general trend noted by several countries, including Angola, Mali, and Paraguay, is that the platform economy offers flexibility and autonomy to workers at the expense of traditional security and labor protections. Apart from this tradeoff that is faced by participants, the platform economy also imposes pressures on the wages and working conditions of traditional employees as companies may choose to hire independent workers, rather than employees, to reduce costs. At the same time, some countries, such as Morocco, noted that the platform economy has allowed marginalized groups such as women and youth greater access to the labor market, albeit without the social benefits afforded to traditional employees. Portugal and Romania also noted the significant presence of immigrant workers in the platform economy.

Several countries discuss challenges in measuring the prevalence of the platform economy. For one, there is no universally agreed upon definition of what constitutes the platform or gig economy. Although several countries, such as Australia and the United Kingdom, are converging on a definition that revolves around the provision of short-term labor services through digital platforms, other countries treat all informal economy jobs or “precarious” jobs as part of the gig economy. Other issues that make it difficult to measure the size of the platform economy include the informality of workers’ relationship with the platform, the use of multiple platforms by individual workers, platforms’ reliance on proprietary data, and the general lack of transparency that characterizes the operation of private platforms.

Despite these challenges, several countries are developing frameworks or using existing methodologies to collect information about the platform economy. For example, the Australian Bureau of Statistics is working to expand its statistics on new and emerging forms of employment, including digital platform workers. In the

United States, the Bureau of Labor Statistics periodically publishes the Contingent Worker Supplement (CWS), which seeks to measure workers in alternative employment arrangements. Although the data remains imperfect, the platform or gig economy is an ever-increasing presence in most countries.

## **II. Legal Status of Platform or Gig Workers**

Most countries are still grappling with the classification of platform workers, which in turn impacts the labor protections that such workers are entitled to by law. Specifically, the issue facing most countries is whether to classify platform workers as employees as opposed to contractors or self-employed workers. In many countries, such as France, Georgia, Hungary, Kazakhstan, Paraguay, and Slovenia, platform workers are generally not considered employees. Some countries, such as Italy and Brazil, have put in place or are contemplating new classifications under which workers are considered self-employed yet are entitled to some of the protections that apply to traditional employees. While there are emerging legislative efforts and judicial decisions addressing this classification issue, in most countries, the legal status of platform workers remains uncertain.

### ***A. Legislative Efforts***

In April 2024, the European Parliament voted for new rules to improve the working conditions of platform workers by ensuring that people performing platform work have their employment status classified correctly. Specifically, the directive obliges European Union (EU) countries to establish a rebuttable legal presumption of employment at the national level. This places the burden of proof on platforms to prove that a given contractual relationship is not an employment relationship.

While this directive will be implemented by EU countries in the near future, some EU countries already have legal frameworks in place to combat the issue of misclassification. For example, Spain's "Riders' Law" already uses a rebuttable presumption of employment for platform workers. However, in other cases, the national law may be in conflict with the EU's directive. Greece's Law 4808/2021, for instance, has a contrary presumption, under which the contract between a digital platform and service provider is presumed not to be for a "dependent worker," as long as the terms and conditions are the result of the worker's unilateral selection regarding the project and working time.

In Portugal, growing political and social discussion on the vulnerability of platform workers resulted in legislative changes to improve the working conditions

of platform workers, including the classification of workers as employees. Following these legislative efforts, the Public Prosecutor's Office filed around a thousand special actions for recognition of the existence of employment contracts across the country.

Several countries outside of Europe have also started putting legal frameworks in place to improve the working conditions of platform workers. As of 2021, the Canadian Labour Code includes prohibitions on misclassification of platform workers. Similarly, the Australian Parliament has enacted legislation to address the unrestrained use of non-standard, contingent, insecure employment models by employers. In Brazil, several bills aimed at regulating platform work are currently in progress. One bill currently under debate in the Brazilian National Congress classifies platform workers as self-employed but guarantees various rights typically associated with employees, such as an eight-hour workday, minimum hourly wage, minimum monthly remuneration, and other benefits, including social security protections.

Additionally, in some countries, methods like collective bargaining, which have typically been used in the context of the traditional employee/employer relationship, are being expanded to cover the platform economy. For instance, in Austria and Denmark, labor market legislation is structured to accommodate the flexible rules of the collective bargaining system. In Austria, a number of collective agreements have been added, such as a collective agreement for bicycle couriers and one for drivers in passenger transport. Similarly, in Denmark, there are early signs of platforms utilizing these models to agree on norms to regulate employment relations.

### ***B. Jurisprudential Divergence***

A few countries referenced cases with important implications for the status of platform workers. In both France and the United Kingdom, the highest court in the country has classified Uber drivers as employees. Similarly, the Italian Supreme Court has held that riders for Foodora, a food delivery service, are entitled to some employee-type protections under Italian law. In contrast, in Sweden, an administrative court of appeal has recently found that workers for Bolt, a ride-hailing and delivery service, are not employees, although none of the Swedish Supreme Courts have weighed in on the issue yet. In the United States, a California ballot initiative classified platform workers as independent contractors, although that initiative is being challenged in the courts.

Some countries describe internal jurisprudential divergence regarding platform workers' legal status. In Brazil, the issue is simultaneously being considered by the Superior Labor Court, the highest court in Brazil's labor justice system, and by the Supreme Federal Court, Brazil's constitutional court. The question in front of the labor court is whether workers fall under the legal definition of employee, while the question in front of the constitutional court is whether judicial recognition of the employment relationship for platform workers violates constitutional principles of free enterprise, freedom of work, and free competition. That the courts' views will diverge is foreshadowed by provisional Supreme Court decisions overturning Labor Court rulings that have recognized the employment relationship.

As a general matter, courts in several countries, including Austria, Finland, Panama, Mali, and Serbia, take a case-by-case approach to the classification of platform workers. For example, in Austria, whether someone is categorized as a "genuine employee" is determined by the actual circumstances of the relationship, regardless of any written agreements to the contrary. In Finland, a similar approach is followed, and the existence of an employment relationship is evaluated on the basis of various facts, including work conditions, the parties' intention regarding the nature of the legal relationship, and other factors affecting the actual position of the parties in the legal relationship. In Panama, courts also consider various factors in determining the nature of the service provided, but notably, place the burden of proof on the employer.

### **III. AI and the Labor Market**

As in the context of the platform economy, there is scant official data on the impact of AI on the labor market. Research from private entities such as Google indicates, however, that AI is increasingly being adopted in most countries. Although the impact on labor markets is not yet quantifiable, many countries have similar predictions as to the potential impacts of AI on their respective labor markets.

The key benefit most countries point to is AI's potential for improving productivity and efficiency in certain sectors, especially those where employees tend to be more educated. Several countries point out that the use of AI can lead to better decision-making with the possibility of real-time data analysis. Others contemplate that AI can lead to more free time for workers. The United Kingdom also notes that the productivity gains enabled by AI may improve access to the labor market for

people who have otherwise found it difficult to find and stay in employment, such as disabled people.

The primary risk cited by many countries—including Australia, Austria, Brazil, Denmark, Estonia, France, Italy, Mali, Morocco, Paraguay, Philippines, and Portugal—is worker replacement, especially in jobs involving a low skill level or repetitive tasks. Countries with higher levels of education and urbanization, as well as those with more robust export services sectors, may be less exposed to this risk. Moreover, although worker replacement is a concern for many countries, there are others, such as Greece, Hungary, and Taiwan, for which AI represents a potential solution to a shortage of labor supply.

In the United States, the existential threat presented by AI was an important issue in the 2023 strike by Hollywood screenwriters. Writers demanded—and ultimately secured—several protections from AI. The collective bargaining agreement specified the circumstances in which AI could be used and also made explicit that AI is a tool for writers’ beneficial use, rather than a writer competing with humans.

Further, many countries predict that the advent of AI will lead to the creation of new specialties and jobs. Morocco, for instance, provided a number of examples of new specializations that AI has facilitated: optimization of logistics in the services sector, analysis of consumer preferences in the e-commerce sector, and diagnostic support and medical data management in the healthcare sector. Mali noted the potential for AI to create new jobs in areas such as AI system design, data maintenance and management, data analysis, and AI ethics. Countries also note that AI can support innovation in traditional sectors such as agriculture and tourism, as well as efforts to confront problems such as climate change. Thus, the predicted impact of AI in many countries seems to be a reorientation of work towards more strategic, complex, and value-added work.

Although many countries share this optimistic outlook, several countries express concern that AI can exacerbate existing inequalities by augmenting skills used in high-skill jobs while having adverse impacts on other jobs. This could increase wage polarization and income inequality, which could, in turn, stoke social and political tensions. Apart from worsening inequality within countries, the increasing use of AI might also exacerbate inequality among countries because disparities in AI research and adoption may impact countries’ competitiveness at the international level.

Finally, another way in which AI will impact the labor market is through its increased use in the management of human resources and work processes. Although there are some positive implications of the use of AI in this context—here as well, AI may be able to make better decisions based on large volumes of data—there are several ethical concerns that arise. Specifically, data privacy issues and the potential for biased decisions are cited by several countries.

Given these potential impacts, several countries point to the need to systematically study the effect of AI on their labor markets. To this end, the Slovenian Ministry of Digital Transformation has established a research program to define and evaluate the potential of AI. Similarly, the Australian Senate has established a Select Committee on Adopting AI to inquire into opportunities and impacts for Australia. Such research efforts seem likely to increase in the coming years, as the impact of AI on labor markets around the world continues to grow.

#### **IV. Laws and Judicial Decisions Concerning AI and the Labor Market**

The majority of countries do not yet have specific laws or judicial decisions dealing with AI and the labor market. However, legislative efforts are underway, most notably in the EU, and some judicial precedents relating to AI and the labor market are beginning to emerge.

##### ***A. Legislative Efforts***

In April 2024, the EU’s Artificial Intelligence Act (AI Act) entered into force. The AI Act is designed to ensure that AI developed and used in the EU is trustworthy, with safeguards to protect people’s fundamental rights. The Act’s framework defines four levels of risk for AI systems. Each risk level is associated with specific compliance, risk management, governance and information obligations. Stricter regulations apply to higher risk applications and outright bans apply to AI systems that are considered a clear threat to the fundamental rights of people. The majority of rules of the AI Act will start applying in August 2026. However, prohibitions on AI systems deemed to present an unacceptable risk will already apply after six months.

As with the regulation of the platform economy, some European countries are ahead of the curve. In Greece, Law 4961/2022 sets out a framework for the regulation of emerging technologies such as AI. Under this law, public bodies are obliged to perform algorithmic impact assessments, provide public information on the conditions of the AI system, and maintain a register of AI systems. Private

entities also have to comply with transparency requirements with respect to the use of AI systems in employment decisions. Similarly, Spanish law imposes transparency obligations regarding decision-making involving AI systems. Portugal has also recently clarified that equal opportunity protections in its existing labor legislation also apply in the case of “decision-making based on algorithms or other artificial intelligence systems.”

In Italy, there is a recent government-initiated bill of artificial intelligence, which, among other provisions, includes a provision regarding the use of AI in the judiciary. The potential use of AI by the judiciary has also been considered by the Consultative Council of European Judges, which provided an opinion on the topic in December 2023. The opinion highlights the need for a clear legal and ethical framework and lays out general principles for the use of assistive technology by the judiciary. The opinion emphasizes that technology “must not step into the realm of justice,” and that the process of judicial decision-making and the autonomy of judges must be respected above all. The specific principles outlined by the Council pertain to various concerns, including the rule of law, judicial independence and impartiality, accessibility and quality, transparency, and privacy.

Outside of Europe, the Government of Canada tabled Bill C-27 to enact The Artificial Intelligence and Data Act (AIDA) in June 2022. The legislation introduces a new regulatory system as a “digital charter” to guide responsible AI innovation. In the United States, AI legislation has primarily been concentrated at the state level, leading to a patchwork of regulation across states. Legislation pertaining to AI is also under extensive debate in the Brazilian parliament. Some countries, such as Mali and Philippines, are also adapting to the emergence of AI by leveraging existing legal frameworks in areas such as data privacy, consumer protection, and intellectual property.

Apart from legislation, some countries have adopted guidelines and national strategies pertaining to the use of AI. For instance, Serbia has adopted ethical guidelines for state administration bodies and holders of public authority. Similarly, Finland has drawn up guidelines on the use of AI in public administration. In the United States, President Biden’s Executive Order of October 30, 2023, outlines basic principles for the use of AI. Additionally, several countries, such as Romania, Serbia, and Kazakhstan, have formulated national strategies or designated legal entities to capitalize on AI’s innovative potential while managing risks posed by the technology.



## ***B. Judicial Decisions***

Only a handful of countries report judicial decisions regarding AI. In Austria, there is a Supreme Court decision concerning a claim against a company offering debt collection and basic legal advice on contract drafting online via its own AI system. The issue there was whether the company had breached rules designed to ensure that legal advice is given only by registered lawyers. In Brazil, there are some cases concerning AI that have emerged in the context of the platform economy. For example, one decision involved the use of artificial intelligence in managing work on a digital delivery platform. Another claim involved a virtual customer service monitoring platform in which workers performed online micro-tasks of low complexity to help train the technology, potentially making the same workers unnecessary in the future. In the United States, much of the litigation relating to the use of AI has thus far been under pre-existing laws, particularly copyright law.

## **V. Challenges and Concerns**

The increasing use of AI presents challenges for both employers and employees, with the primary concerns being related to employees' fears about job displacement and the ethical use of AI in personnel decision-making.

### ***A. Challenges for Employers***

The main challenge for employers is ensuring that the use of AI in personnel decision-making is ethical, especially with respect to data privacy and the potential for bias. Several countries also note the need for employers to address employees' fears regarding AI, such as job displacement and the use of AI to monitor employees' work. All of these concerns might be mitigated by transparency on the part of employers regarding their planned use of AI.

Some countries highlight concerns for employers related to intellectual property (IP) protections. On one hand, the use of AI may endanger employers' trade secrets and IP-protected materials. On the other hand, employers may also be responsible for ensuring that their employees do not violate IP protections when using AI.

The United States also notes that it may be challenging for employers operating across multiple jurisdictions to comply with AI-related regulations, especially given the dearth of caselaw interpreting the relatively new regulations across states.

## ***B. Concerns for Employees***

The primary concerns for employees revolve around job displacement and the lack of accountability in AI decision-making processes used by employers. Several countries suggest that these concerns can be mitigated if employers are transparent as to their intended use of AI. Portugal, for example, imposes various transparency requirements on employers pertaining to employers' use of AI.

Another frequently cited concern is the potential use of AI and surveillance technology to set targets and monitor employees' performance, which could lead to excessive pressures at work as well as reduced autonomy and control over work.

Finally, employees may also be concerned about negative consequences resulting from the use of AI in the performance of their duties. There are several such examples from the United States, such as the Samsung engineers who accidentally leaked internal source code on ChatGPT or lawyers who cite to nonexistent cases in court. Such issues may be less likely to occur if there is greater transparency and communication between employers and employees regarding the use of AI.

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