Fourth Study Commission
Public and Social Law

Questionnaire
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DENMARK

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

Dramatic changes in the economy and in labor markets have resulted in dramatic changes in the relationship between employers and employees/independent contractors. At the same time, increased computerization has impacted the marketplace. We will explore the "gig" or "platform" economy — such as short-term contracts or freelance work in contrast to permanent jobs, including ride sharing, delivery services, remote work via the Internet — and the impact on the employment relationship. We will also consider the impact of artificial intelligence on employment.

1. Provide a brief description of the presence of the "gig" or "platform" economy in your country. If possible, base your answer on official public data or academic reports, although we recognize that in some cases data may not be available.

   The Danish platform economy emerged in the mid-2010s with the arrival of foreign-owned labor platforms such as Uber and Upwork, followed by Danish-owned start-ups like Hilfr and Chabber, operating in private services such as cleaning and hotels and restaurants. Yet, the Danish platform economy remains limited with recent surveys indicating that around 1% of Danes having generated an income via a digital labor platform in the last year (Ilsøe et al., 2021). For platform workers, digital platforms are primarily a supplemental source of income (less than €3.330 per year), and requiring multiple job holdings (Ilsøe et al., 2021).

2. How does this development affect the traditional employee/employer relationship? What is the status of platform or gig workers in your country: employees, independent contractors or a third category? Is there any

jurisprudential divergence regarding the status of these workers? Cite relevant examples.

Despite its limited impact on overall employment, Uber sparked intense debate among politicians in *Folketinget*, the Danish Parliament. Research shows that most questions on the platform economy posed to Danish ministers by members of Parliament until year 2017 concerned taxes and taxi market regulations. Questions addressed potential violations of existing taxi regulations, requests for new taxi regulations, and a lack of reporting to Danish Tax Authorities. Only two questions related to labor law (employment status of platform workers). Danish legislators remained committed to non-intervention in Danish labor markets, delegating the regulation of labor issues on platforms to rulemaking intermediary unions and EAs.

In April 2017, a new taxi Act was passed by the Danish Parliament. It affirmed that all taxi drivers must have a license, that the driver's car (the taxi) has a taximeter, and explicitly states that the new regulations also apply to Uber. Consequently, Uber announced that they would suspend their operations in Denmark, finding these requirements incompatible with their business model.

In 2018, Just Eat signed an existing sectoral CA covering their white-collar back-office staff with The National Union of Commercial and Clerical Employees (HK). During the bargaining process, Just Eat joined The Danish Chamber of Commerce (DE, an EA) as a full member, needing advice and guidance on labor law and CAs. A stated motivation for signing the white-collar CA was to offer better working conditions, becoming a more attractive employer, and reducing employee turnover. In 2019, the union 3F approached Just Eat to bargain a CA for its couriers, benchmarking the existing logistics sectoral CA. Before the CA, all couriers were *employed* workers on zero-hour contracts, covered by insurance schemes, and were offered transportation vehicles such as bikes or cars.

3F had three main objectives in negotiating the CA: to lift worker wages, set a minimum floor of hours, and to strike a sectoral CA with DE. Just Eat accepted the invitation, delegating negotiations to DE. A major hurdle in the negotiations was setting wage supplements for overtime work and work during evenings and weekends. The parties agreed on a compromise, keeping overtime supplements from the sectoral logistics agreement, but reducing supplements for inconvenient hours, and introducing a minimum floor of eight weekly working hours. In January 2021, they concluded a two-year sectoral CA for food delivery.

Danish labour market legislation is structured to accommodate the flexible rules of the collective bargaining system and ensure that people who become unemployed are entitled to benefits and employment services.

It remains an open question whether a Nordic model will evolve in the platform economy over time. There are early signs of platform firms utilizing the voluntarist models of labor market regulation to act as regulatory intermediaries with established unions, thus impacting the future regulation of the Nordic platform labor markets (Ilsøe and Söderqvist, 2022).

3. What is the impact of artificial intelligence on the labor market of your country? If possible, base your answer on official public data or academic reports. Outline the positive and negative impacts.

An academic analysis from February 2024 from The University of Copenhagen and Statistics Denmark (https://www.dst.dk/Site/Dst/Udgivelser/nyt/GetAnalyse.aspx?cid=53014) on large language models and the Danish labour market explores the unequal economic impact of large

language models (LLMs) on the Danish Labour Market. The analysis uses the so-called AI Occupational Exposure (AIOE) scores from a study of the American labour market and merges these scores with administrative data from Statistics Denmark. The AIOE scores reflect the relatedness between AI applications and human abilities connected to different occupations. The main conclusions are Main conclusions are:

• Occupations dominated by cognitive routine tasks have the highest potential to change through large language models. Legal Professionals is the occupation with the highest LLM score. The occupation with the lowest score is Painters, building structure cleaners & related trades worker.

• Economic activities influenced by cognitive abilities have higher LLM scores than activities dominated by physical tasks. The activity with the highest LLM score is Higher Education. The activity with the lowest score is Building completion and finishing.

• Employed females altogether have more potential to apply large language models than employed males. However, within Human Health & Social Work activities women have a slightly lower LLM score than males.

• Employees with high personal yearly income generally have more potential to use and take advantage of large language models than employees with lower income.

Another recent study (March 2022) from the University of Aalborg - based on a unique dataset on the use of artificial intelligence (AI) among employees in Denmark - investigate within-job relationships between AI use and skill requirements. The study shows that the effects of AI are varied and depend on whether AI is used for providing orders to humans or providing information for further human handling and in which occupation it is used. AI may enhance or augment skills through, for example, the increased use of high-performance work practices, or it may increase work pace constraints and reduce employee autonomy. The results imply that the diffusion of AI can increase inequalities in the labour market by augmenting skills used in high-skill jobs, although having relatively more adverse impacts on other jobs.

A report from Deloitte and the University of Copenhagen from May 2024 points to possible positive impacts. The report show that already existing technologies within automation and AI can contribute massively to future economic growth. The uncertainties are considerable, but technologies can as a minimum assist in Denmark maintaining economic growth at the level of recent decades. The greatest future potential for automation is in jobs held by people in low-skilled positions and jobs outside the big cities. We are not worried about mass unemployment for that reason. But the transition – especially if it goes fast – may be dramatic for some groups. In that case, additional measures may be needed, such as more skills upgrading for those affected. Also, automation may fuel the historical trend towards low-skilled jobs becoming fewer and fewer.

4. Do you have any laws regulating and/or relevant judicial decisions about artificial intelligence on the labor market? What are the challenges for employers, such as privacy, transparency, secrecy, plagiarism, and the claim that artificial intelligence will be replacing workers? What are the concerns of employees?

   1. In 2021 The European Commission proposed <u>a directive on improving working conditions in platform work</u>. In March 2024, employment and social affairs ministers from the EU Member States endorsed the agreement reached with the European Parliament in February 2024 on the platform work directive, and the directive was finally passed by The European Paliament in April 2024.

The directive aims to ensure that people performing platform work have their employment status classified correctly and to correct bogus self-employment. The agreed text also introduces the first ever EU rules on algorithmic management and the use of artificial intelligence in the workplace.

The new law introduces a presumption of an employment relationship (as opposed to self-employment) that is triggered when facts indicating control and direction are present, according to national law and collective agreements in place, as well as taking into account the case law of the European Court of Justice.

The directive obliges EU countries to establish a rebuttable legal presumption of employment at national level, aiming to correct the imbalance of power between the platform and the person performing platform work. By establishing an effective presumption, member states will make it easier to correct bogus self-employment.

The burden of proof lies with the platform, meaning that when the platform wants to rebut the presumption, it is up to them to prove that the contractual relationship is not an employment relationship.

The new rules make sure that a person performing platform work cannot be fired or dismissed based on a decision taken by an algorithm or an automated decision-making system. Instead, platforms have to ensure human oversight on important decisions that directly affect the persons performing platform work.

The directive will be implemented into Danish law within two years after the final adoption by the ministers

1 August 2024, the European Artificial Intelligence Act (AI Act) enters into force. The act is directly applicable in all member states. 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 regulation aims to establish a harmonised internal market for AI in the EU, encouraging the uptake of this technology and creating a supportive environment for innovation and investment.

The AI Act introduces a definition of AI, based on a product safety and risk-based approach in the EU, minimal risk, specific transparency risk (like chatbots) and high risk and unacceptable risk. AI systems identified as high-risk will be required to comply with strict requirements, including risk-mitigation systems, high quality of data sets, logging of activity, detailed documentation, clear user information, human oversight, and a high level of robustness, accuracy, and cybersecurity. Regulatory sandboxes will facilitate responsible innovation and the development of compliant AI systems. Such high-risk AI systems include for example AI systems used for recruitment. Unacceptable risk is defined as AI systems considered a clear threat to the fundamental rights of people. Such systems will be banned. This includes AI systems or applications that manipulate human behaviour to circumvent users' free will, such as systems that allow 'social scoring' by governments or companies and some uses of biometric systems, for example emotion recognition systems used at the workplace and some systems for categorising people or real time remote biometric identification for law enforcement purposes in publicly accessible spaces (with narrow exceptions).

Member States have until 2 August 2025 to designate national competent authorities, who will oversee the application of the rules for AI systems and carry out market surveillance activities. Companies not complying with the rules will be fined. Fines could go up to 7% of the global annual turnover for violations of banned AI applications, up to 3% for violations of other obligations and up to 1.5% for supplying incorrect information.

The majority of rules of the AI Act will start applying on 2 August 2026. However, prohibitions of AI systems deemed to present an unacceptable risk will already apply after six months.

2. The challenges and concerns of employers and employees: The Unions in Denmark have pointed to the potential benefits, although it also leads to concerns about the impact on the labor market, including how we ensure that no employees are left behind, and that artificial intelligence does not destroy the working environment. They emphasize the importance of employees being involved when algorithmic systems are introduced in the workplace. At the same time, it is a necessity that the union representatives at the work place are trained so that they are prepared to take on the discussions about artificial intelligence in the workplace.

At a conference in February 2024 with the Danish Prime Minister and the Norwegian Prime Minister participating together with Nordic leaders of the trade union movement and the social democracy parties in the Nordic countries, the topic was also discussed, e.g. the need for ethical guidelines for the use of artificial intelligence is also emphasized by several experts.

The Danish professor Jesper Ryberg from Roskilde University in Denmark is researching the use of artificial intelligence in the legal system, including in the form of some algorithms to try to obtain information that judges must use when, for example, must impose a sentence in a criminal case or to use a risk profile on a criminal, whether this person is dangerous or not.