Fourth Study Commission
Public and Social Law

Questionnaire
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COUNTRY: ITALY

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.

Technological innovation and the increasing digitalization of industry since the 21st century — particularly the evolution of global communication via the internet — provide fertile ground for the development of so-called digital platforms. These platforms enable the acquisition of on-demand labor, the creation of new labor markets and, more generally, the acceleration of the conclusion of contracts for the exchange of goods or services. At the same time, the economic crisis that has affected continental Europe, migratory flows, and geopolitical conflicts are causing deep disruptions in the overall structure of our country. Many workers, even specialized workers, have precarious jobs and sustain themselves mainly or residually through so-called "gigs," which mostly involve mechanical and repetitive tasks and are often offered through platforms and apps.

According to data provided by the Italian National Institute of Statistics (ISTAT), there are approximately 3 million precarious workers in Italy in 2024, a slight decrease compared to 2023. Private sector hiring trends are as follows: -10.8% in apprenticeship hires; -8.2% in temporary agency contracts; -5.1% in permanent contracts; -1.5% in fixed-term contracts; +17.8% in seasonal work; +10.2% in intermittent work. In a study published on February 21, 2024, dedicated to Digital Platform Employment, ISTAT provided some important data regarding the use of platforms. In Italy, 565,000 people aged 15 to 64 declared that they had worked at least one hour through a digital platform in the 12 months prior to the interview conducted in 2022, a number equivalent to 1.5% of the resident population (compared to the European average of 3%). Of these, 47.9% worked on the platform in the last four weeks, earning less than a quarter of their income; 78.2% spent less than 20 hours on the platform over the four weeks.

Platform work is more prevalent among those aged 30-44 (2.0%), among men compared to women (1.8% versus 1.3%), and among people with a higher level of education (university degree and beyond 2.6%). Of those who worked through a digital platform in the 12 months prior to the interview, almost 16% (89,000) also worked through a platform in the four weeks preceding the

interview. For more detailed data on employment in digital platform, see: https://www.istat.it/it/files//2024/02/StatisticaReport_Lavoratori-digitali_-21-02.pdf.

The so-called gig economy and the digitalization of manufacturing have made it possible to purchase goods or services at an apparently lower cost, with labor itself being available at a lower price (especially in the piecework system). According to scholars, this results in the creation of an army of underemployed individuals alongside a consistently present group of stable unemployed individuals (G. Santoro Passarelli, *Diritto dei Lavori*, Turin, 2022, p. 61), who are often excluded from the benefits of the welfare state.

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.

The characterization of the employment relationship, including the distribution of protections, has been significantly affected by the depersonalization of the employer and the extensive use of so-called platforms. This has fundamentally altered the relationship between employer and employee, changing the power dynamics within the employment contract and creating new imbalances of power.

Although the issue has been the subject of extensive doctrinal and political discussions, it is now widely accepted that the technical-functional subordination under Article 2094 of the Italian Civil Code represents the only contractual framework regulated by the legislature capable of providing adequate contractual protection to the worker. In the labor reform enacted with the so-called Jobs Act, it was clarified that workers performing tasks through digital platforms, if hetero-organized, must be subject to the regulations governing subordinate employment relationships (Art. 2, paragraph 1, Legislative Decree 81/2015 defines client-organized collaborations as follows: "As of January 1, 2016, the regulations governing subordinate employment relationships shall also apply to collaboration relationships that result in the provision of exclusively personal, continuous work, the methods of execution of which are organized by the client, including with reference to the time and place of work"). The subsequent *Decreto Dignità* (Decree-Law of July 12, 2018, no. 87, converted into Law of August 9, 2018, no. 96) also introduced important changes concerning platform work for the purpose of recognizing the subordinate relationship. Of significant importance is Law no. 148 of November 2, 2019, which converted, with amendments, Decree-Law no. 101 of September 3, 2019. The law reinforced the protections already provided by the so-called Jobs Act by removing the phrase "including with reference to the time and place of work" concerning the hetero-organization by the employer, thus resolving the debate on whether directives on the time and place of work execution were sufficient for qualifying the work as subordinate (see, for example, the Foodora case). It also provided a precise definition of digital platforms: according to Art. 47 bis, paragraph 2, Law 148/2019, digital platforms are "the software and procedures used by the client that, regardless of their location, are instrumental in the delivery of goods, setting compensation and determining the methods of performance." Individual contracts concluded through digital platforms must be proven in writing, and the worker must receive all relevant information to protect their rights and safety. Additional protections are provided regarding supplemental pay for night work and mandatory insurance coverage, especially for couriers using motorcycles or scooters.

In the famous Foodora case, initiated by an appeal from some riders who were denied contract renewal after six months of work, the Turin Tribunal ruled out the existence of a subordinate employment relationship due to the lack of an indispensable requirement: the obligation to perform the work. Without this element, according to the Tribunal, there could be no subjection to the employer's directive power, which is inherent in subordination. The task of making deliveries was merely a natural consequence of the fact that the signed contracts provided for an hourly gross compensation of €5.60, and therefore, the couriers were required to make deliveries during the communicated hours for which they were paid (Turin Tribunal, judgment no. 778, April 11, 2018).

The decision was overturned in subsequent stages of the trial. In judgment no. 1663 of January 24, 2020, the Court of Cassation emphasized that the legislator, aware of the difficulties in typologically unifying the extreme variety of new forms of work, chose to focus on certain factual indicators (the personal nature of the service, its continuity, and the hetero-organization of its execution methods), considering them sufficient to justify the application of the regulations set out for subordinate work, without needing further investigations into whether the employment relationship was subordinate or autonomous. The Supreme Court highlighted the context in which the reform operated with the so-called Jobs Act arose: the reform, aiming to promote employment growth, abolished project-based contracts, stabilized continuous collaboration contracts, and primarily promoted incentives for establishing permanent contracts. Consequently, the regulatory framework that provided certain protections for workers through sanctions and constraints was abolished, and a broader contractual type was reintroduced, which, as such, carries the risk of abuses. In an anti-avoidance perspective, correctly interpreting the new legislative provisions, it is necessary to qualify the relationship as subordinate in all cases of continuous and personal collaborations conducted with the functional involvement of the organization unilaterally set up by the commissioning party. Since January 1, 2016, the regulations governing subordinate employment must apply whenever the collaborator's work is exclusively personal and carried out continuously over time, and the execution methods, including the timing and place of work, are organized by the commissioning party. This was the case for Foodora couriers (later becoming Foodinho S.r.l.), who, as the commissioning party, imposed significant organizational constraints on the time and place of the work's execution (the worker had to commit to delivering food in the designated box within 30 minutes of the call; had to have a bicycle or scooter and a smartphone through which the employer could geolocate them via GPS using a specific app). Thus, the Supreme Court brought the contract concluded by the couriers with Foodora under the framework of a subordinate employment contract. The contract explicitly stated that the riders were to work "in full autonomy, without being subject to any subordination, hierarchical or disciplinary power, or any kind of attendance or schedule constraints towards the commissioning party," while preserving "the necessary general coordination with the commissioning party's activity."

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.

According to official data provided by ISTAT, about a quarter of small and medium-sized enterprises in Italy have at least basic digitalization, characterized by the joint use of the internet, cloud computing, and social media, but without adopting management software or advanced technologies such as artificial intelligence (AI) or data analytics.

In 2023, only 5% of companies with at least 10 employees use at least one of the seven AI technologies identified by ISTAT. The percentage is 5.6% for companies with up to 99 employees and 24% for large enterprises.

Examining the use of AI technologies by economic activity, it is observed that 23.6% of companies active in IT use AI technologies (up from 16.9% in 2021), 13.3% in telecommunications (down from 18.1%), and about 11% in the film, video, and television production, and sound recording activities. Regarding the intensity of AI technology usage measured by the number of technologies adopted, 13.9% of IT companies use at least two AI technologies in combination, compared to 2.8% of companies with 10 or more employees.

Among companies using AI, the most common technologies involve automating workflows through robotic software (40.1%, up from 30.5% in 2022), extracting knowledge and information from text documents (39.3%, up from 37.9%), and converting spoken language into formats readable by computers using voice recognition technologies (31.0%, stable from the previous year). Data analysis through machine learning, deep learning, and neural networks is the most used technology by large enterprises employing AI (51.9%).

The business areas where AI systems are most frequently adopted include production processes, such as predictive maintenance or quality control (39.0%, rising to 52.5% in manufacturing), marketing or sales functions, such as customer assistance or personalized promotional campaigns (33.1%, rising to 41.3% in services), cybersecurity (23.7%, rising to 50.6% in energy), and research and development (R&D) or innovation for analysing data, developing new or significantly improved products/services (21.1%).

In 2023, an analysis was also conducted on the lack of AI technology adoption by companies that have considered using AI technologies but have not yet implemented them, representing only 4.4% of companies (15.3% among large ones). The obstacles to AI usage identified by these companies include lack of skills (55.1%), high costs (49.6%), and unavailability or poor quality of data necessary for AI technologies (45.5%), while 14.3% of companies cite the perceived uselessness of AI technologies.

For more detailed information on digital transition indicators in Italy,
visit: https://www.istat.it/it/files/2023/12/report-imprese_2023.pdf.

A primary, significant consequence of using algorithms in the digital platform market is the depersonalization of contracting parties, particularly the employer. Automated work organization systems associated with algorithmic management, used extensively and pervasively, allow companies to organize work activities and manage large flows of information. This is particularly achieved through complex algorithms that optimize shifts and work processes, coordinating the execution of various tasks.

Artificial intelligence and algorithms are used within the platform system to analyze data with the goal of controlling and managing users' personal information, positioning themselves between users and the activities they perform. This also occurs through the provision of free services or the delivery of “loss-leading” performances, which are financed by selling the data collected through ancillary activities (e.g., Amazon Prime), in what is known as the two-sided market model. On one side of the market are consumers who benefit from access to free or low-cost services; these goods become more attractive, leading to an increase in the number of users. By accessing these services, users, however, provide platforms with a range of personal data, such as location or consumption habits. On the other side of the market are economic entities that provide platform-based services and benefit from positive network externalities.

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?

Legislative Decree No. 104 of 2022 requires that employment contracts include a series of specific pieces of information to be provided at the time of hiring or within seven days of the establishment of the employment relationship. This information must be given to the employee and covers the processing of their personal data, the employer's obligations for publicity and transparency, and a precise description of the execution methods of the employment relationship. More specific content is required to guarantee employee protection when the systems involved in decision-making are fully automated, without any human involvement, including auxiliary functions (see Article 26, paragraph 2, of Decree-Law No. 48 of 2023, converted with modifications by Law No. 85 of 2023). Automated decision-making or monitoring systems are those applications and tools that, through data collection and processing performed via algorithms or artificial intelligence, can generate automated decisions. Two types of automated systems are identified:

a) **Decision-Making Systems**: These are aimed at making decisions that affect the hiring, management, or termination of the employment relationship. Examples include automated hiring

decisions, job assignment via chatbots during interviews, or the use of data analytics to set work schedules or hours.

b) **Monitoring Systems**: These affect surveillance, evaluation, performance, and fulfillment of contractual obligations by employees. Examples include systems for monitoring employee performance, evaluating compliance with contractual duties, or using machine learning to track work activities and productivity.

Such systems might involve, for example, using chatbots in interviews, automatic candidate profiling systems, or data analytics tools to determine work shifts or schedules.

The Cohesion Decree (Legislative Decree No. 60 of May 20, 2024, Article 26) for the first time allows employers to post their job vacancies on the Digital Platform for Social Inclusion (SIISL). It also enables all users, not just recipients of passive policies or subsidies, to access the system to search for job opportunities. Moreover, the SIISL will be able to aggregate job listings from online boards, thus becoming an effective job search engine. According to the new provision, artificial intelligence (AI) will finally be used in the service of matching supply and demand in the job market.

The use of AI is intended for the optimal matching of job offers and applications. In other words, AI will examine all job offers and all resumes that applicants are required to upload upon registering on the SIISL. This represents a significant shift in managing tasks that were previously handled solely by human job centre employees. In the near future, the suitability of a job offer—i.e., the alignment between the job proposal and the applicant's experience and skills, the distance of the job from the applicant's home, and the travel time using public transport, as well as the duration of the economic subsidy—will no longer be assessed by a job centre official but by the automated system, which is the only entity capable of managing the vast data reservoir contained within the SIISL.

The use of AI will undoubtedly have a notable impact on various sectors of the labor market. However, as highlighted by an Italian Public Observatory (*Osservatorio dell'Università Cattolica*), the adoption of new technologies does not necessarily result in increased productivity. For instance, while computers and other digital tools have accelerated certain production phases, they have not prevented the decline in productivity observed in recent decades. The Observatory also notes the prevalent concern of "technological unemployment", driven by fears that machines will replace human labor in various activities. This concern is particularly prevalent regarding mid-level administrative tasks, but less so concerning highly specialized intellectual activities, such as those performed by doctors, judges, or lawyers, which are still considered fundamentally reliant on human cognitive effort. Such fears could lead to resistance among the population towards legislative initiatives aimed at increasing the use of AI (https://osservatoriocpi.unicatt.it/ocpi-pubblicazioni-intelligenza-artificiale-produttivita-e-il-futuro-del-lavoro).

Regarding the use of AI in the judiciary sector, the National Association of Magistrates welcomes a provision in the recent government-initiated bill on artificial intelligence. This provision clarifies that "the interpretation of the law, the evaluation of facts and evidence, and the adoption of any decision are always reserved for the judge," allowing AI systems to be used exclusively for organizing and simplifying judicial work.