

# THE GIG ECONOMY LABOR RIGHTS MOVEMENT: TOWARDS A GLOBAL STATUS? OR THE END OF A BUSINESS MODEL?

- In about 15 years, **Europe will count more self-employed workers than employees**, a change that is already noticeable as the traditional employment relationship, inherited from the industrial revolution, is increasingly being contested.
- New employment terms and economic activities are constantly arising, challenging our legal reasoning while **the setting of new regulations is “work in progress”** in most countries.
- The solution shall be **negotiated between platforms and gig-workers** and a global **brand-new status** may be created in the future.

## OVERVIEW OF APPLICABLE REGULATIONS IN SEVERAL REGIONS OF THE WORLD

**In the United States, Great Britain and Spain**, a series of court rulings have stated that **gig-workers were to be considered employees**, with every rights and entitlements attached to this status (wage floors, healthcare, insurance policies, benefits etc). The main argument was that the worker’s remuneration was fixed by the platform by means of unilateral pricing of the fare.

It put platforms business model at risk, as they were also facing challenges in other areas such as direct and indirect taxation, the right of establishment, or sectorial regulation (e.g. the legal status of taxis).

Nevertheless, **most platforms have maintained the self-employed status of the gig-workers.**

**In California**, law AB5 (Assembly Bill 5), enacted on January 1<sup>st</sup>, 2020, implemented a standard for determining whether gig workers are properly classified as independent contractors. Since then, **gig-workers are presumed employees unless three criteria are simultaneously met:**

1/ the worker must be free from the **control and direction** of the hiring entity in connection with the performance of the work, both under the contract and in fact;

2/ the worker must perform a work that **is outside the usual course of the company;**

3/ the worker must customarily engage in an **independently established trade, occupation, or business of the same nature as that involved in the work performed.**

Some countries, such as **Italy**, has adopted an intermediate status in the form of a “partnership contract”.

Meanwhile, **Japan, Norway and the UK** have already formed unions representing delivery app workers.

In January 2020, the first **International Alliance of App-Based Transport Workers** (IAATW) was organized, hence giving a flavor of the potential global organizations of gig-workers in the coming years.

**In France**, gig-workers were also **reclassified as employees** at several occasions, mainly because their working conditions implied the use of a GPS to track the time effectively spent on delivery or transportation, and the use of a sanctioning power by the platform<sup>1</sup>.

**Yesterday** (March 4<sup>th</sup>, 2020)<sup>2</sup>, **the French High Court has ruled that a UBER driver had to be reclassified as an employee**, based on the fact that:

- the UBER driver cannot develop his own clientele;
- he does not set up the price of the service;
- he does not define the conditions for carrying out the service.

This decision has been translated into English and Spanish and is available on the French High Court’s website, which clearly shows that the French judges want to give a significant impact to their decision.

([https://www.courdecassation.fr/IMG/20200304\\_arret\\_uber\\_note\\_%20ENGLISH.pdf](https://www.courdecassation.fr/IMG/20200304_arret_uber_note_%20ENGLISH.pdf))

However, to date, only 0,2% of the current and past UBER drivers have referred a case before the French Tribunals in order to have their relationship reclassified as an employment contract.

Consequently to this reclassification, workers can obtain:

- **Damages for unfair dismissal;**
- **Severance payments;**
- **Damages for concealed work.**

The French legislator has been trying to reach a compromise between the various actor’s interests at stake by maintaining

1. French High Court, November 28th 2018, n°17-20079 – Take Eat Easy;  
Paris Court of Appeal, January 10th 2019, n°18-08357 – UBER;  
Paris Industrial Tribunal, February 4th 2020 – Deliveroo.  
2. French High Court, March 4th 2020, n°19-13316 – UBER.

the business model of the platforms while giving a minimum set of rights to the workers.

Firstly, it was established that as soon as (i) the platform intervenes directly in the contractual relationship by setting terms and conditions for the provision of the service, such as its price, (ii) and the turnover achieved by the worker on the platform is beyond a certain threshold, the platform **has to pay for social contributions** for industrial accident risks and various training actions costs. Also, gig-workers benefit

from a **right to go on strike and unionize**, even if they are not considered as employees.

Then, as per a law enacted on December 2019, platforms are bound by an **obligation of transparency** towards their car drivers and delivery drivers. These gig-workers have a right to choose their schedules and to **disconnect at any time**. The platforms can also set up a **Charter** for the gig-workers.

These provisions are detailed below.

## FOCUS ON NEW FRENCH REGULATIONS: LAW N°2019-1428

As of December 2019, some gig-workers shall benefit from clearer working conditions, a right to disconnect at any time and, if decided by the platform, a charter.

### A / Gig-workers covered

These new provisions apply to **self-employed workers** engaged in the activity of **driving a chauffeured transport vehicle** or **couriers delivering goods by means of a two-wheeled or three-wheeled vehicle, whether motorized or not**.

### B / Transparency obligation towards the gig workers and the users

Platforms must communicate the **distance covered by the transport service offered** and **the minimum guaranteed price**.

They must also publish on their website, in a fair, clear and transparent manner, **indicators** related to the duration of activity and income earned from workers' activities related to the platform during the previous calendar year.

### C / Rights granted to gig workers

Platforms must grant their workers with:

- the possibility to **choose their time slots of activity**;
- the possibility to **choose their periods of activity and inactivity**;
- the **possibility to log off at any time** during their time slots of activity.

Workers may also **refuse any proposal** for the provision of transport services, without being subject to any penalty.

### D / Optional charter

Platforms have the opportunity to set up a **charter** determining the **terms and conditions of its responsibility towards gig-workers** and defining their **rights and obligations**, as follow:

**1 / Operating conditions on the platform:** Conditions for the exercise of the workers' professional activity, in particular the conditions under which they are put in contact with the platform's users and the rules which may be implemented to regulate the number of simultaneous connections of gig-workers in case of a low demand for services by users.

**2 / Pricing conditions:** Terms and conditions to enable gig-workers to get a decent price for their services.

**3 / Career progression:** Ways of developing professional skills and securing career paths.

**4 / Working conditions:** Measures in order to improve working conditions and preventing occupational risks.

**5 / Communications medium:** Modalities for sharing information and dialogue between the platform and gig-workers, including on any change in the conditions under which gig-workers carry out their activity.

**6 / Service quality control and sanctions:** Quality of service expected, the way in which the platform controls the activity and its performance and the circumstances that may lead to a breach of commercial relationship between the platform and the gig-workers.

**7 / Optional pension plan:** Where relevant, the guarantees of pension plan negotiated by the platform for the gig-workers.

The charter is then sent by the platform to the Administration for compliance check. A decision is taken within 4 months following its receipt. In the absence of a reply, the charter is deemed to have been approved by the Administration.

The charter shall be published on the platform's website and annexed to the contracts or general conditions of use binding the gig-workers covered.

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The aim of these Charters was to mitigate the risks of reclassification as the original version of the law provided that the approval of the charter by the Administration prevented the reclassification of the gig-workers into employees.

The French constitutional court has considered this provision contrary to the French constitution and it was removed from the law.

It is very likely that this will minor the interest for the platform to set up a charter.