NEWEFIN Project

New Employment Forms and Challenges to Industrial Relations: The Spanish Case

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New employment forms or new forms of traditional employment?

- Digital platforms.
- Temporary and part-time employment.
- Subcontracting: fighting against precarious and low-paid work.
I. DIGITAL PLATFORMS
Spain is the second country in Europe with the highest number of platforms workers. In particular, more than two millions of workers in Spain obtain from digital platforms a significant amount of their incomes (25%) and digital platforms are the main job for around 700,000 workers in Spain.
Introduction – background

Digital platforms by sectors in Spain

- Transport: 41%
- Online Services: 43.60%
- Offline Services: 10.20%
- Transport/Offline services: 2.60%
- Offline/online Services: 2.60%
Introduction – background

The origin of digital platforms

From other countries: 72%
From Spain: 28%
Legal framework

- The Spanish labour law based on a binary model:
  - 15,505,871 employees.
  - 2,006,785 self-contractors.
  - 9,874 TRADES.
## Legal framework

<table>
<thead>
<tr>
<th>Year</th>
<th>Self-employed</th>
<th>Self employed without employees</th>
<th>TRADE</th>
<th>% in relation to total self employed without employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>2,006,785</td>
<td>1,559,636</td>
<td>9,874</td>
<td>0.6</td>
</tr>
<tr>
<td>2017</td>
<td>1,973,028</td>
<td>1,539,803</td>
<td>10,530</td>
<td>0.7</td>
</tr>
<tr>
<td>2016</td>
<td>1,984,268</td>
<td>1,549,871</td>
<td>10,250</td>
<td>0.7</td>
</tr>
<tr>
<td>2015</td>
<td>1,977,277</td>
<td>1,555,602</td>
<td>9,725</td>
<td>0.6</td>
</tr>
<tr>
<td>2014</td>
<td>1,945,572</td>
<td>1,531,305</td>
<td>8,274</td>
<td>0.5</td>
</tr>
<tr>
<td>2013</td>
<td>1,920,387</td>
<td>1,509,869</td>
<td>7,153</td>
<td>0.5</td>
</tr>
<tr>
<td>2012</td>
<td>1,945,371</td>
<td>1,537,022</td>
<td>6,263</td>
<td>0.4</td>
</tr>
<tr>
<td>2011</td>
<td>1,978,131</td>
<td>1,575,297</td>
<td>4,935</td>
<td>0.3</td>
</tr>
<tr>
<td>2010</td>
<td>2,011,986</td>
<td>1,605,629</td>
<td>3,729</td>
<td>0.2</td>
</tr>
<tr>
<td>2009</td>
<td>2,076,600</td>
<td>1,666,113</td>
<td>2,461</td>
<td>0.1</td>
</tr>
<tr>
<td>2008</td>
<td>2,221,166</td>
<td>1,772,700</td>
<td>1,136</td>
<td>0.1</td>
</tr>
</tbody>
</table>

Legal framework

- So far there are some judgments that have been pronounced on the work of the collaborators of these professional platforms in 2018.

- The first one concluded that Deliveroo’s riders should be considered such as employees (the Spanish court in Valencia, June 2018).

- However, the second one took the opposite view regarding the situation of Glovo’s riders (the Spanish court in Madrid, September 2018).
Legal framework

- In addition, since the end of 2017 there have been actions by the Labor Inspectorate (specifically, Valencia and Madrid) who have concluded that Deliveroo riders are employed workers.

- The Labour Inspectorate has prepared an strategic plan (2018-2020) what includes specific measures for digital platforms: i) To draft a procedure for digital platforms; ii) To provide training for Inspectors on digital platforms; iii) To implement pilot programmes in different Autonomous Communities.
Legal framework

- The platform unilaterally determines, as has been proven, the way of working, the days, zones, and schedules and sets the prices.
- Deliveroo does not offer, therefore, any possibility for the service provider to choose their clients or to charge them directly, and establish their own prices for the service they perform.
- The company imposes style rules, such as removing helmets and backpacks when entering restaurants or going to a home, and gives advice on the way to address a client.
Legal framework

- The company knows at all times where each rider is, the time that each delivery takes and notifies the rider and sends them instructions on the matter, especially in case of delay, controlling at all times through geolocation where each rider happens to be.

- In fact, the true means of production are the technological ones.
Position and role of the social partners on new forms of employment

According to one of the most representative Union in Spain (CCOO), the regulation of TRADE not give an adequate answer to needs of this specific collective nor to the needs of employers.
Position and role of the social partners on new forms of employment

<table>
<thead>
<tr>
<th>Trade Unions</th>
<th>Type of measures</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>To provide services (information, etc.)</td>
</tr>
<tr>
<td></td>
<td>To create specific trade union structures into the platforms</td>
</tr>
<tr>
<td></td>
<td>To promote administrative and judicial actions against the platforms</td>
</tr>
<tr>
<td>UGT</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>X</td>
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<tr>
<td></td>
<td>X</td>
</tr>
<tr>
<td>CCOO</td>
<td>X</td>
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<td></td>
<td>X</td>
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<td></td>
<td>X</td>
</tr>
</tbody>
</table>
Position and role of the social partners on new forms of employment

- In July 2018 it was entered into force the Agreement negotiated between Deliveroo and TRADES (riders).
- It has been created a new professional association very connected with the Digital Economy. It has been called “Asociación Española de la Economía Digital” (BOE nº 96, 21 April 2010). More than 500 companies are members of the association such as El Corte Inglés, Campofrío, Telepizza, Google, Venca, Telefónica, Buyvip, Vodafone, Coca Cola, Nokia, Cepsa, Repsol and Seat.
II. TEMPORARY AND PART-TIME EMPLOYMENT
Evolution of part-time work

Part Time employment rate (private sector)  %Involuntary part time

![Graph showing the evolution of part-time work from 2007 to 2017](chart.png)
A historical problem

Temporary work rate

20%
22%
24%
26%
28%
30%
32%
34%
36%


Temporary work rate
Highly correlated with unemployment rate

\[\text{Unemployment rate} \quad \text{Temporary employment rate}\]

...just a round trip
Temporary work has to be funded on:

- A project or service (max 3 years since 2010 reform)
- Production circumstances (max 12 months)
- Provisional contract (substituting another worker while he or she returns)
- Formative contracts (max 2 years)
- Other contracts barely used
Legal reforms (2007-2017)

- Higher payments on contract termination:
  - No payment until 2001 (8 salary days per year worked)
  - From 2011 to 2015 progressively increased to 12 salary days per year worked (2010 reform)

- Maximum duration of some contracts (specific project or service) (Law 35/2010)

- New permanent contract (“entrepreneurship enhancement”) (Law 3/2012)
  - Some tax and social security incentives
  - One year of trial period
  - 12.4% of all new permanent contracts (2012-2017)
  - Automatically revoked if unemployment rate is under 15% (Third quarter of 2018: 14.8%)
Position and role of the social partners on new forms of employment

- Trade Union claim for more intense supervision by Labour Inspection.

Labour ministry estimates (bogus) temporary employees have been converted in permanent workers due to shock plan started last August.
Position and role of the social partners on new forms of employment

- Trade Union claim for more intense supervision by Labour Inspectorate.
- Business organizations push for deregulation and more flexibility both to the individuals & collective bargaining.
To establish the obligation to record the ordinary working-time by the companies.
III. SUBCONTRACTING IN THE CONTEXT OF NEW FORMS OF EMPLOYMENT: FIGHTING AGAINST PRECARIOUS AND LOW-PAID WORK
Subcontracting is a widespread practice in Spain.

- The rate of subcontracting within the transportation and logistics sector is 34.4%, higher than in France (29.1%) and much higher than in United Kingdom (23.7%).

- Subcontracting is a rampant practice in both manufacturing and service industries (“Las Kelly” in the hotels).
One of the main drivers of the usage of fixed-term employment contracts is subcontracting.

The fixed-term contract for a specific task with a limited duration ("contrato de obra o servicio determinado") has a maximum duration of three years.
Subcontracting in the context of new forms of employment: fighting against precarious and low-paid work

The worsening of working conditions has been accelerated in many instances as a result of the 2012 Labour Reform decentralizing collective bargaining.
Legal changes ahead?

- The new Socialist Government intends to introduce a labor reform affecting subcontracting, fixed term contracts, and collective bargaining.
- The reform is supported by trade unions.
i) The company contracting out work or services might be held liable for any employment or labor debt (not only wages).

ii) The fact that the work or service contracted out relates to the core activity of the contracting company will not be a prerequisite for holding it liable.
iii) Where the work or service contracted out relates to the contracting company’s core activity, the employees assigned to such work or service will be entitled to the same basic conditions of employment as those applicable to the contracting company’s own employees.

iv) The proposed legislation strengthens the role of employee representatives by emphasizing their information rights. Of particular importance is the provision establishing a presumption of illegal loan of employees if the companies sharing the same workplace do not fulfill their obligations of information towards the employee representatives. An illegal loan of employees entails a monetary sanction by the Labor Authority.
THANK YOU VERY MUCH FOR YOUR ATTENTION
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