

## The human right to work in the context of the gig economy: International legal regulation

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### Abstract

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Significant changes in labour relations caused by the development of the digital economy have led to the emergence of new forms of employment, in particular the gig economy. However, such forms of employment create numerous problems regarding the social protection of employees and the need for international legal regulation in this area. The purpose of this study was to analyse the problems and challenges of the gig economy in the context of international legal regulation of employee protection and develop proposals for adapting existing international norms. The research methodology was based on a comparative legal analysis of international norms and regional approaches to regulating labour relations in the gig economy sector, assessing law enforcement practices in different jurisdictions, and modelling possible options for unifying legal regulation at the international level. The study showed that differences in approaches to labour laws in different countries lead to a significant legal imbalance, which makes it difficult to ensure equal rights for employees of digital platforms. It was concluded that the concept of an independent performer is widely used

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to apply to employees of digital platforms by the platforms themselves in order to avoid obligations arising in labour relations. Non-recognition by labour relations of the employment of employees on digital platforms creates both problems of protecting the rights of such employees, and guarantees a certain freedom of activity. Various rule-making approaches, the practice of applying current legislation and methods for determining actual labour relations were identified, in particular, through an assessment of the level of control, dependence and form of labour organisation. As a result, the need to introduce unified international norms that would cover the issues of defining modern types of employment, including issues related to such activities, was identified. These recommendations can be used to develop concepts, policies, national and international legal acts aimed at protecting labour rights in the digital era, and to ensure state economic interests related to labour activity

**Keywords:** the right to work; regulation of labour relations; labour migration; digital era; harmonisation of legislation; international law

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## Introduction

The global economy is under the influence of digital transformation, which creates and strengthens the conditions for the emergence of the gig economy, which becomes a new dimension of employment. The successful development of this area encourages a rethinking of conventional approaches to regulating labour relations, since gig workers are outside the standard labour framework. The lack of unified international legal norms complicates the situation with social protection of this category of employees. In the context of the rapid digitalisation of the labour market, it is necessary to reconsider the classic definition of the term “labour migrant”, which usually applies only to those who physically move to another country for work. New forms of employment are emerging, such as cross-border remote work, which does not require the physical presence of an employee in another country, but still creates problems with legal regulation and protection of labour rights. Increasing the role of gig workers employed on digital platforms requires adapting legislative approaches.

Digitalisation opens up both new opportunities for the development of labour rights, especially in the field of platform employment, and

new challenges. In particular, J. Hsieh *et al.* (2024) stressed that the digital age creates conditions for a review of labour laws to better protect platform workers, who are often in unstable forms of employment and face an asymmetry of rights in relations with employers. Special attention was paid to the prospects for further development of the sphere of labour in the study by V.G. Panchenko *et al.* (2024). The study analysed the impact of the gig economy and the collaborative economy on the digital transformation of the international labour market, and also examines the issues of social protection of employees in this area.

The analysis of the challenges faced by employees of digital platforms in Ukraine regarding the implementation of collective labour rights, and the possibilities of adapting national legislation to the norms of the European Union, is set out in the paper by I. Alekseenko (2024). The researcher considered the issues of determining the collective rights of employees of digital labour platforms of the gig economy, considering the fact that Ukraine belongs to the countries with the fastest growth rates of the gig economy, which, according to the researcher, emphasises the problem of legal regulation of the entire complex of

relations. This necessitates a comprehensive study of the topic to modernise national legislation.

At the international level, there is a tendency to increase labour mobility, accompanied by the need to adapt international and national legislation to the new realities of the digital age. Research by the European Commission (2023; 2024) showed the significant impact of digital transformation on the rights of migrant workers in the EU, in particular, migrants performing routine tasks become more vulnerable to automation and need social guarantees. In addition, the growth of remote work raises questions of legal regulation of cross-border labour relations and the application of legislation on social security and working conditions for migrants.

N. Countouris (2019) analysed the evolution of the concept of “employee” in the case law of the EU Court of Justice and its application to new forms of work. The researcher suggests that the autonomous interpretation of this concept in EU law is broad enough to cover many gig workers if national courts correctly apply the criteria of dependency and subordination. Some studies focused more deeply on the study of collective action in the gig economy. Thus, H. Johnston (2019) explored how specific spatial and technological characteristics of platform work affect employee organisation strategies. In particular, he noted: “algorithmic control, geographical dispersion or, conversely, concentration of employees in certain places, dependence on digital tools”. The paper analysed various forms of resistance and solidarity, from conventional trade union practices to new digital networks and protests, as workers use both physical and digital space to coordinate their actions.

The question of recognising platform work as a conventional labour or civil relationship is open. The issue was covered in the paper by M. Shumylo (2022). The study examined the judicial practice and legal nature of relations between employees and digital platforms, analysing whether they

should be considered labour or civil, and what consequences this has for the social protection of employees. Contemporary legal research pays considerable attention to the challenges that arise in connection with the digitalisation of labour relations. J. Carby-Hall and L. Mella Méndez (2020) examined how digitalisation is transforming labour relations, creating new forms of employment that do not always comply with conventional labour law norms. The researchers emphasised the need to adapt legal norms to ensure social guarantees for employees in the new conditions of the digital economy. L.M. Méndez and A. Villalba Sánchez (2020) also investigated the digitalisation of the labour market and noted that the latest technologies, such as artificial intelligence and automation, are changing the nature of work processes and strengthening the role of the gig economy. This raises the need to adapt labour law and develop new mechanisms to protect the rights of employees employed on digital platforms.

The study aimed to identify the pressing issues and challenges of the gig economy in the context of international legal regulation. The objectives of the study were: to analyse the international legal foundations of the right to work; to investigate the impact of digitalisation on labour relations; to explore problems of harmonisation of legislation in the field of digital economy.

### **Materials and Methods**

The study was based on an interdisciplinary approach that combines legal analysis, an economic approach, and elements of sociological research. The methodology was based on a comparative legal analysis, a method of regulatory modelling, and a systematic approach, which provided a comprehensive review of international and national legal acts regulating labour relations in the digital economy. The comparative legal method was used to investigate the regulation of labour relations with gig workers in various countries,

including the European Union, the United States, and the United Kingdom. The study analysed the provisions of Protection of Wages Convention No. 95 (1949), Directive of the European Parliament and of the Council No. 2019/1152 (2019), Judgement of the United Kingdom Supreme Court in Case No. A2/2017/3467 (2021) and the Opinion of the Supreme Court of California in Case “Dynamex Operations West, Inc. v. Superior Court” (2018) on the recognition of the relationship between gig workers and platforms as employment relationships. This method identified differences in the legal status of gig workers in different jurisdictions and assessed their impact on social protection.

The method of regulatory modelling was used to develop recommendations for the unification of legal regulation of labour relations in the gig economy. In particular, the possibility of expanding the existing international labour standards or developing a new convention of the International Labour Organisation (ILO), which would address the specifics of digital platforms, was considered. The source base of the study also included statistical data and analytical reports. Official documents of the European Commission were used, in particular the reports of the European Commission (2023; 2024), which contain up-to-date data on the development of digital employment and its legal regulation. The analysis of these sources helped to formulate arguments about the need for international harmonisation of legal approaches and outline prospects for further changes in this area.

## Results

The gig economy creates new opportunities for employees and employers, providing flexibility in work and the ability to quickly accept jobs without long-term obligations. For example, the Uber or Upwork platforms allow employees to choose projects or opening hours according to

their needs. This promotes access to the labour market for many people, including young people, students, and even retirees. However, the gig economy also has significant drawbacks. Income instability, lack of employment contracts, social guarantees, and access to pension systems are just some of the challenges that platform workers face. According to a study by K. Hara *et al.* (2018), workers on services such as Amazon Mechanical Turk earn incomes that do not meet the US federal minimum wage standards (approximately USD 2 per hour, compared to the federal minimum wage of USD 7.25 per hour). In countries with a high level of material and social deprivation among their citizens (Romania – 19.8%, Bulgaria – 18.0%, Greece – 13.5%, Hungary – 10.4%) (Eurostat, 2024) this leads to an increase in economic and social vulnerability. In addition, there are tax issues. For example, in Ukraine, platform employees are forced to declare their income independently, which makes it difficult for them to participate in social insurance systems.

International law does not yet have time to adapt to the realities of the gig economy. For example, Protection of Wages Convention No. 95 (1949) and Convention on Freedom of Association and Protection of the right to Organise No. 87 (1948) do not consider the specifics of employees on digital platforms. These norms were created for classical labour relations and do not consider the specifics of platform labour, which complicates their application in Ukraine. There is also a lack of clear mechanisms to ensure minimum working conditions and social guarantees for gig workers. For example, Article 1 of Convention No. 95 defines the term “salary” as: “Remuneration for work payable on the basis of an agreement”. This provision makes it difficult to apply to gig workers, whose status is often “independent contractor” rather than “employee”. Convention No. 87, Article 2: “Employees and employers, without any distinction whatsoever,

have the right to establish organisations of their choice without prior permission, including the right to join such organisations with the sole condition of being subject to the statutes of these latter” – that is, guarantees employees the right to create organisations of their own choice and join them without prior permission. Gig employees face difficulties in exercising this right due to their disparity and lack of a clear employer. These conventions were developed in the era of conventional employment, so their application to the gig economy requires interpretation and adaptation.

The EU seeks to identify “platform” workers (workers who are employed on digital platforms that contain offers to perform work or provide services) as persons entitled to social protection and guarantees. Directive of the European Parliament and of the Council No. 2019/1152 (2019) – ensure transparency and predictability of working conditions for all workers in the EU. This includes the right to receive information about essential aspects of the employment relationship, such as pay conditions, working hours, vacation rights, and dismissal procedures. Article 1 of the directive states: “The purpose of this Directive is to improve working conditions by promoting more transparent and predictable employment while ensuring the flexibility of the labour market”, and: “this directive defines the minimum rights applicable to each employee in the Union who has an employment contract or employment relationship as defined in applicable legislation, collective agreements or practices in each member state, considering the case-law of the Court of Justice of the European Union”. This Article defines the purpose and scope of the directive, which covers employees who have an employment relationship, but does not provide a separate definition of gig workers, especially digital platform workers.

Directive of the European Parliament and of the Council No. 2019/1152 (2019) provides for the right to receive information about any changes

in working conditions. In particular, Article 3 “Provision of information” stipulates: “Employer provides each employee with the necessary information in compliance with this directive, in writing. Information is provided and transmitted in paper form or, provided that the information is available to the employee, that it can be stored and printed and that the employer keeps proof of its transfer or receipt, in electronic form”. These provisions are important for “platform” workers, who often face uncertainty about their rights and working conditions.

Prior to the adoption of this directive, many workers, especially those employed in non-standard forms of work (gig economy, temporary employment, contract work, etc.), may have faced legal uncertainty, unstable working conditions, and insufficient protection. Some employers have used gaps in legislation to minimise social obligations to employees. The main reasons for the adoption of the Directive: 1) Growth of the gig economy – many employees of platforms such as Uber, Deliveroo, Glovo did not have enough information about their rights and obligations. 2) Need to increase the transparency of labour relations – in many cases, working conditions were uncertain or changed without prior notice. 3) Need for social protection – the directive provides employees with minimum guarantees, including restrictions on probationary periods, protection against unjustified layoffs and the right to compensation in the event of sudden termination of the contract.

Directive of the European Parliament and of the Council No. 2019/1152 (2019) provides for the right to information – employees must receive detailed information about working conditions, remuneration, work schedule, and contract duration no later than seven days after the start of work. In addition, the probationary period is limited to no more than six months, unless there are reasonable exceptions. Protection against unexpected termination of work – the employer must

ensure predictable working conditions and notify about changes in advance. Prohibition of restrictions on parallel employment – employees have the right to work for another employer, if this does not contradict the legitimate interests of the company. Article 12, “Transition to another form of employment”, establishes an interesting principle of guaranteeing more reliable (predictable) working conditions through a change in the form of employment: “Member states shall ensure that an employee who has worked for the same employer for at least six months and has completed a probationary period (if any) may request a transfer to another form of employment with more predictable and reliable working conditions, if possible, and receive a reasoned written response. Member states may limit the frequency of submission of claims that give rise to the obligation under this article”. This provision is undesirable for platforms that attempt to define relations with employees as not labour relations, but as civil relations with independent individual contractors in order to limit their obligations regarding social guarantees and liability inherent in a classic employer. The emergence and development of such platform practices became possible, among other things, due to the lack of an appropriate regulatory framework, since the activities of platform employees are formally largely not covered by the classical definitions of labour relations. The Directive came into force on August 1, 2022, after which EU countries had to implement it in their national legislation. It has been adapted in various forms in Germany, France, Spain, Italy, and the Netherlands. The Directive was an important step in the harmonisation of labour legislation in the EU and contributed to greater transparency and social protection of employees, but such harmonisation is a complex and lengthy process that does not keep up with the actual legal relations.

An important document that directly relates to the activities of platform workers is the

Directive of the European Parliament and of the Council No. 2024/2831 “On Improving Working Conditions in Platform Work” (2024). The document is aimed at improving working conditions in the field of platform employment. The Directive recognises the prevalence of defining platform employees as those who are in an employment relationship. This means that platform employees are considered employees by default, not independent contractors, unless the employer proves otherwise. Article 5 “Legal presumption” actually explicitly sets out the following provision for the member states: “Contractual relationship between a digital employment platform and a person performing platform work through this platform is legally considered an employment relationship if facts indicating guidance and control are found, in accordance with national legislation, collective agreements or practices in force in the member states, and considering the practice of the Court of Justice of the European Union. If a digital labour platform seeks to refute a legal presumption, it must prove that the relevant contractual relationship is not an employment relationship as defined by law, collective agreements or practices in force in the member states, considering the practice of the Court of Justice of the European Union”. This important provision of the directive actually establishes the principle of presumption of employment relations. It is important to note that in respect of contractual relations concluded before and continuing on 2 December 2026, the legal presumption provided for in this Article applies only to the period beginning from that date. Directive of the European Parliament and of the Council No. 2024/2831 (2024) provides for the establishment of criteria for determining when interaction between a platform and an employee is considered an employment relationship, the introduction of requirements for transparency and ethical use of algorithms that affect working conditions and decision-making regarding

employees, guarantees of access of platform employees to social benefits and protection, including insurance and pension savings. It was also supposed to help counteract fictitious outsourcing – some platforms, for example, Uber, Amazon Mechanical Turk, Upwork, Glovo, use wording and terminology in the terms of use of the services, which allows avoiding the status of an employer, which affects not only the guarantees of employees' rights, but also tax risks for governments. Different approaches in EU countries to determining the status of platform employees have created a need for unified standards. The Directive was also influenced by the need to ensure fair working conditions, transparency, and social protection for all employees, regardless of the form of employment, as a result of the implementation of the EU's overall social policy. The implementation of the Directive in national legislation provides that EU member states are required to adapt their national laws in accordance with the provisions of the Directive within a certain period. The European Commission will oversee the implementation of the Directive and provide recommendations for improving working conditions on the platforms.

The Judgement of the United Kingdom Supreme Court in case "Uber BV and Others (Appellants) v Aslam and Others (Respondents)" (2021) was an important milestone in the legal regulation of the gig economy, clearly demonstrating the tendency of European courts to strengthen the protection of workers' rights. In the case, the court ruled that Uber drivers should be classified as "workers" rather than independent contractors, based on a thorough analysis of the actual employment relationship between the company and the drivers. Key to this analysis was the use of a factor test that considered aspects such as Uber's level of control over drivers (including determining fares, setting working conditions, controlling the distribution of orders, and evaluating drivers

through the rating system), drivers' dependence on Uber (in particular, not being able to set prices independently or build their own business independently of the platform), and the form of work organisation where the company actually acted as an employer and drivers were integrated into its business model.

The court's finding that Uber exercises significant control over drivers reflects an approach increasingly seen in other European jurisdictions. This approach can be traced back to other iconic solutions. For example, in the case "Asociación Profesional Elite Taxi v Uber Systems Spain SL" (2017), which concerned the regulation of Uber's activities in Barcelona, the European Court of Justice the need for a balance between the employer's right to control and employees' right to privacy. Similar to the Uber case, the Court of Justice also focused on real labour relations and the need to protect employees' rights.

In Spain, in the "Glovo Couriers Case" (Judgement of the Supreme Court of Spain No. 805/2020, 2020), the court also recognised Glovo couriers as "employees" rather than independent contractors, again based on an analysis of the platform's level of control over their work. The key argument was that Glovo owned the main assets for the business (digital platform), set prices and terms of service, and exercised significant control over the organisation of couriers through algorithms, geolocation, and evaluation system. The court concluded that couriers did not have real autonomy in conducting their activities and were integrated into the organisational structure of the company, which is a sign of labour, and not civil law relations. Thus, the couriers were recognised as "fictitious self-employed". This decision obliged Glovo to provide couriers with the rights and guarantees provided for by labour legislation, including social insurance and other payments. The case set an important precedent for regulating labour on digital platforms in Spain.

These decisions, along with the case “Asociación Profesional Elite Taxi v Uber Systems Spain SL” (2017), demonstrated the general trend of European courts to recognise platform workers as employees in order to ensure their labour rights. The decision in “Uber BV and Others (Appellants) v Aslam and Others (Respondents)” (2021) was an important reference point for courts and regulators in other countries, particularly in France, Spain and the Netherlands, which also reviewed the status of platform employees. In general, the approach of European countries shows a clear focus on providing a high level of social protection, including gig workers. These precedents demonstrate the tendency of European courts to consider gig workers as employees, while in the United States the approach differs at the level of individual states. European countries are actively experimenting with policies to protect labour rights. For example, in France, the right to “disconnect” (*droit à la déconnexion*) was introduced, which allows employees not to respond to work communications outside of working hours, formulated as: “Procedures for the employee to fully exercise their right to disconnect and establish mechanisms for the company to regulate the use of digital tools to ensure compliance with rest and vacation periods, personal and family life”. This is intended to provide some protection against digital labour overload (Lerouge, 2021). Denmark has also introduced social insurance (unemployment insurance, health insurance and pension provision) for employees of digital platforms, which provides basic social guarantees for gig workers. However, it is important to recognise that such regulatory policies can have implications for the flexibility of the business environment, and for employees themselves, who may value simplified access to platform offerings.

The American approach can be described as more liberal. California Assembly Bill No. 5 (2019), which codifies the California Supreme Court’s

decision on “Dynamex Operations West, Inc. v. Superior Court” (2018), uses the so-called “ABC test” to determine whether an employee is an independent contractor or an employee. According to M.A. Cherry (2016), test offers a clear classification standard that better protects workers. This meant that platforms like Uber and Lyft had to provide their drivers with a full range of labour rights and benefits. Section 2 of Assembly Bill No. 5 (2019) sets out the criteria by which an employee is considered an employee if: “(A) The employee is free from the control and direction of the employer in connection with the performance of the work, both under the contract of service and in practice; (B) The employee performs work that goes beyond the normal business of the company; and (C) The employee normally engages in an independently established profession, occupation or business of the same nature as the work performed”. In response, gig economy companies initiated Proposition 22 (Law of California “App-based Drivers...”, 2020) to maintain their employees’ status as independent contractors. In particular, Uber and Lyft argued that classifying drivers as employees would lead to a significant increase in costs, which could force them to reduce services or leave the California market altogether. They emphasised flexibility of work for drivers who value the opportunity to work at a convenient time for them. Companies offered an alternative in the form that provides certain benefits (minimum wage at the state level, cost compensation, accident insurance), while maintaining the status of independent contractors, with significant political and legal challenges from platform companies”.

The adoption of Proposition 22 (Law of California “App-based Drivers...”, 2020) had a significant impact on the labour market, effectively cancelling the Assembly Bill No. 5 (2019) for gig economy companies such as Uber and Lyft, which continued to operate without significant changes in their operations, while maintaining flexibility

for drivers. However, in January 2021, the Service Employees International Union (SEIU) filed a lawsuit alleging that Proposition 22 was unconstitutional. SEIU argued that Proposition 22 violated the constitutional rights of the California state legislature because it restricts its power to regulate labour relations. In August 2021, the court of first instance declared the initiative unconstitutional, but in March 2023, the court of Appeal overturned this decision. In July 2024, the California Supreme Court finally confirmed the constitutionality of the Law of California "App-Based Drivers as Contractors and Labour Policies Initiative" (2020).

The adoption of Proposition 22 set a precedent in regulating the gig economy, demonstrating a balance between job flexibility and providing basic social guarantees, while sparking discussions about workers' rights and the role of corporations in determining labour relations. The US federal law Protecting the Right to Organise (PRO Act, 2021) was aimed at expanding workers' labour rights, in particular, their right to unionise and engage in collective bargaining. The bill was part of the overall policy of the US democratic administration aimed at strengthening labour guarantees. The bill proposed revising the definitions of "employee", "manager" and "employer" in order to cover more people with labour standards. This may include gig economy workers who are currently classified as independent contractors. Employers often hold mandatory meetings with employees, where they dissuade them from joining unions. The PRO Act (2021) defined such practices as unfair labour practices and banned them. The bill proposed amendments to Section 10 of the National Labour Relations Act of the USA (1935): "... (2) Notwithstanding subparagraph (m), in the event of a complaint that an employer has engaged in unfair practices within the meaning of Article 8 (a) (1), (3) or (4), which substantially impedes, hinders, or compels employees to exercise the rights guaranteed by

Article 7, or involves dismissal or other serious economic harm to the employee, such complaint shall be subject to immediate preliminary investigation and shall be dealt with as a matter of priority over all other cases, except those of a similar nature in the office where it is filed or where it has been transferred". The bill proposes to give the National Labour Relations Council (NLRB) the authority to impose fines on employers for violating labour laws. Fines can reach up to USD 50,000 for each violation. Federal labour laws set minimum standards, and states can pass stricter laws.

The US approach demonstrates flexibility for employers and gig workers, which should promote economic development through minimal overregulation, and the lack of a unified national policy. Fair Labor Standards Act (FLSA) (1938), which sets federal standards for the minimum wage, National Labor Relations Act of the USA (1935), which protects workers' rights to union and collective bargaining, and the Occupational Safety and Health Act of USA (OSHA) (1970), which sets federal standards for occupational safety and health, guarantees basic standards to be met or exceeded at the individual state level.

In Ukraine, the gig economy is gaining momentum. In 2021, the Verkhovna Rada adopted the Law of Ukraine No. 1667-IX (2021), which introduces a special legal regime "Diia City". This regime is aimed at supporting the IT sector and the digital economy, offering flexible employment and tax conditions for resident companies. The main difference from classical labour legislation is the introduction of gig contracts, which provide companies and employees with more flexible terms of cooperation. Article 1 of the Law gives the following definition: "Gig contract – a civil contract under which a gig specialist undertakes to perform work and/or provide services in accordance with the tasks of a resident of Diia City as a customer, and a resident of Diia City undertakes to pay for the work performed and/or

services rendered and provide a gig specialist with appropriate conditions for performing work and/or providing services, including social guarantees provided for in Section 5 of this Law”.

The key provisions provide for the implementation of gig contracts with employees, establish a flexible model of cooperation between the company and the specialist, differ from employment contracts in that they do not provide for classical labour guarantees, and replace such concepts as paid leave or sick leave due to pregnancy and childbirth with an annual paid break in the performance of work (provision of services) lasting 17 working days and a break in the performance of work (provision of services) due to pregnancy and childbirth lasting at least 70 calendar days.

According to Article 22, there are guarantees for a gig specialist in connection with temporary disability, but this right is provided for in the framework of the legislation on mandatory state social insurance: “Gig specialists are subject to insurance in connection with temporary disability and are entitled to temporary disability benefits provided in accordance with the procedure and amounts provided for by the Law of Ukraine “On Compulsory State Social Insurance” (1999).

The duration of working hours and a number of provisions on the mode of work and rest are very similar to the classical labour legislation, but a gig contract is a separate form of contract, which provides for the possibility of concluding only with a special resident entity “Diia City”, and Article 17 of the Law of Ukraine No. 1667-IX (2021) in the definition of a gig contract actually provides for freedom of contract, including in relation to the establishment of a minimum wage (the cost of specialist services): “The term of validity of the gig contract, the rights, obligations and responsibilities of the parties to the gig contract, the remuneration of the gig specialist, the terms of termination of the gig contract and other conditions are defined in the gig contract by agreement of the

parties, taking into account the specifics defined by this Law”. However, the minimum level of remuneration is set not in the requirements for gig contracts, but in the requirements for a company that wants to get the status of a resident of Diia City. Article 5 provides that the amount of the average monthly remuneration to attracted employees and gig specialists, starting from the calendar month following the calendar month in which the status of a resident of Diia City was acquired, of each calendar month is not less than the equivalent of EUR 1,200 at the official UAH exchange rate against the EUR established by the National Bank of Ukraine as of the first day of the corresponding calendar month). That is, these provisions actually establish indirect regulation of the minimum income of gig specialists through the requirements for a resident of Diia City, without considering such concepts as “living wage” or “minimum wage”, which change and are reduced to certain values considering actual economic conditions. In addition, the phrase “average monthly remuneration to employees involved” does not mean setting a minimum income level for a particular employee or gig specialist, but may mean that 5 out of 10 employees receive an income equivalent to EUR 2,000, and the remaining 5 – an average of EUR 400. In addition, for residents, it is allowed for a certain period of activity not to meet all the criteria specified in the requirements for residents without losing this status.

The flexible tax system for residents of Diia City allows them to choose between an income tax (18%) or a special tax on withdrawn capital (9%), and specialists working under gig contracts pay only 5% of personal income tax (against the standard rate of 18%). Law of Ukraine No. 1667-IX (2021) guarantees companies the right to intellectual property created by employees under the contract (Article 24 “Intellectual property rights to an object created by a gig specialist in connection with the performance of a gig contract belong

to a resident of Diia City, who is the customer under such a gig contract”).

In general, this is a step to stimulate the development of certain types of economic activity, in particular, it is focused on supporting the IT sector. However, the concepts of gig economy and platform work are much broader, and in this sector, the Ukrainian regulation of gig work does not cover such areas as platform work (Uber, Glovo, Upwork, and other similar services). The classic scheme of positioning platforms in their terms of use is that the platforms only provide performers with access to information about ordering services and are not employers in the context of labour relations, do not pay for work, but on the contrary receive commission income from participants. Accordingly, employees engaged in such work or services do not have access to the protection and guarantees provided for employees. This creates a serious problem, as platform workers run the risk of being exposed to instability and uncertainty, which will only exacerbate socio-economic inequality (Segdiepco & Krainik, 2024).

The problem of avoiding formalisation of labour relations by platforms and employers of temporary short-term or irregular types of employment is the disproportionate result of additional, complex, and expensive administration of labour relations. Neither the employee nor the employer is more likely to be interested in entering into a classic employment contract to perform one trip with a passenger around the city once a week, deliver a parcel, or perform some other one-time work by proxy in their spare time.

The Labour Code of Ukraine (1996), developed in Soviet times, does not meet these modern needs of the labour market. This thesis is reflected in other studies on this topic, in particular, I. Atamanchuk and Yu. Kovalchuk (2019) concluded that the current development of labour relations does not correspond to the classical theory of the labour market. It is outdated and requires

significant modernisation, regulation of new forms of labour relations adapted to the digital economy, and the inclusion of social guarantees for employees of the gig economy.

The analysis of the regulation of the gig economy allows summarising the following main approaches: in the EU there is a potential conflict between the freedom of entrepreneurship and labour guarantees of gig workers, in the US there is a certain legal uncertainty due to the application of regulation at the federal level of TV at the level of individual states, and in Ukraine there is no legal definition of the status of a gig employee outside the legal regime of “Diia City”, the lack of regulation of platform employment creates a legal vacuum.

**The need for international legal regulation.** Analysis of available data on the digital economy reveals a significant impact of digitalisation on the labour market, in particular for migrant workers. According to updated experimental data from Eurostat (2024), 3% of people aged 15-64 in the EU during 2022 performed work through digital platforms for at least one hour per month. This represents a significant share of the labour market, which gradually affects the nature of employment. In the United States, according to the Pew Research Centre (2021), about 16% of American adults have been involved in digital platforms in one way or another, of which 9% work full-time. In 2025, this figure reached 20% of the country’s population (Board of Governors of the Federal Reserve System, 2025) in the study by N. Datta *et al.* (2023) provides conclusions on the global scale of employees employed in the gig economy – 154 million unique registered and 60 million active gig employees. The second evaluation model used a global survey and estimated that there are 435 million gig employees. This number of employees increases the need to adapt labour legislation to new working conditions. The intensification of the use of artificial intelligence in all spheres of life will also contribute to

a further increase in the number of gig workers (Khanenko, 2024).

Nowadays, the competition between local workers and foreign labour migrants has reached a new level, which includes remote foreign workers and raises issues of protecting citizens' rights to the priority right to work. An example of this phenomenon is the involvement of companies to work in support services, sales departments, programmers, engineers, and other categories of employees who can perform work remotely from other countries, thus creating additional competition for local workers, reducing the number of available jobs, or creating a kind of dumping due to lower requirements for the level of remuneration and social guarantees. Restrictive measures such as quotas for foreign workers or requirements for work permits to protect the national labour market are one of the regulatory tools that apply at the level of an individual country or region. For example, Canada uses a quota system for various categories of foreign workers, in particular through the Temporary Foreign

Worker Programme, setting restrictions on attracting low-paid workers (Government of Canada, 2025). Switzerland also applies quotas for foreign workers, especially from non-EU/EFTA countries (Federal Act of Switzerland No. 142.20, 2005). These quotas regulate the number of work permits issued to foreigners to control migration and protect the Swiss labour market. But these measures cannot regulate access to the labour market for foreign remote workers. Restrictions such as legislative quotas and regulation of foreigners' access to the national labour market help to reduce competition for local workers, but require adaptation to the conditions of the digital economy. In particular, new approaches should be developed for digital migrants that will ensure a balance between protecting local labour rights and supporting global economic mobility. Given the global nature of the gig economy, it is necessary to create international standards for its regulation. To do this, it is necessary to model changes in international legal instruments of regulation (Table 1).

**Table 1.** Necessary changes to international legal instruments of regulation

|                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Development and implementation of a new ILO Convention | The convention should provide for recommendations on a unified conceptual framework and recommendations for ensuring appropriate basic social guarantees for platform workers, establish unified approaches to the principles of taxation and protection of the priority right to work of citizens, and help to close the legal gap in national legislation. However, the issue of social protection policies should remain a matter for the relevant government bodies of individual countries, which will determine the balance of overregulation and economic freedom |
|                                                        | Consideration of the experience of the EU, where Directive of the European Parliament and of the Council No. 2019/1152 (2019) on transparent and predictable working conditions and Directive of the European Parliament and of the Council No. 2024/2831 (2024) on improving working conditions in platform employment can serve as a basis for defining minimum standards and unifying concepts                                                                                                                                                                        |
|                                                        | Court precedents, such as Uber's employee classification decisions and Dynamex Operations West, Inc., can help in determining the criteria for labour relations in the digital economy                                                                                                                                                                                                                                                                                                                                                                                   |
| Amendments to existing international treaties          | It is necessary to adapt existing treaties, in particular, within the framework of the World Trade Organisation, to consider the specifics of the functioning of digital platforms and cross-border labour                                                                                                                                                                                                                                                                                                                                                               |
|                                                        | Regional integration associations, such as the Association of Southeast Asian Nations (ASEAN), should serve as an example for developing regional standards for regulating digital labour                                                                                                                                                                                                                                                                                                                                                                                |

**Table 1.** Continued

|                                        |                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Making recommendations for governments | <p>The recommendations should be aimed at ensuring transparent regulation of labour relations, access to social protection, and resolution of labour disputes.</p> <p>Learn from the relevant experience of countries that have already implemented national legislation to regulate the gig economy, such as the California Assembly Bill No. 5 (2019)</p> |
|----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**Source:** developed by the author

Conventional approaches to regulating labour relations generally do not fully cover the interests of digital migrant workers who work on platforms and do not have stable labour relations. The lack of a unified legal status makes it difficult to determine the level of social guarantees and working conditions for gig employees. Therefore, the extension of the conceptual unified apparatus to include the term “gig-worker”, “digital labour migrant”, or “virtual labour migrant” can contribute to better coverage of real relations and protection of the rights of this category of employees in the international legal field. The existence of a unified conceptual framework and regulatory principles will become the basis for the adaptation and development of national legislation. Additional local norms that set better than generally accepted norms can be a tool for attracting employees and employers to individual jurisdictions to achieve economic goals at the level of individual states or unions.

### Discussion

The authors of studies on the regulation of relations between gig participants and the economy express different opinions on the issue of regulation and identify problems, which confirms the complexity of the problem and the lack of a unified approach. For example, M. Risak (2018) analysed discussions about creating an intermediate category between the employee and the self-employed (“third way”) to regulate gig work: “Creating a “third category” may seem like a pragmatic solution... but it risks institutionalising lower standards and not solving the key problem of

dependency and control”. It examines the advantages (flexibility, basic protection) and disadvantages (risk of lowering standards, complexity of definition) of this approach. V. Dubal (2021) critically analysed the impact of Proposition 22, arguing that it undermines labour standards and creates a third, less protected class of workers. Her study showed the political and economic struggles around classification and the implications of “exceptions” for certain platforms: “Proposition 22 is a corporate takeover of labour law, setting a dangerous precedent that takes gig workers out of fundamental protection... It institutionalises undefined work under the guise of flexibility”. A. Aloisi *et al.* (2023) discussed the regulation of platform work in the EU, in particular, by analysing the adoption process and content of the Directive on improving working conditions on platforms. The researcher examined the mechanism of presumption of employment relations and the potential challenges of its implementation at the national level. The analysis showed the EU’s attempt to strike a balance between employee protection and innovation: “The EU Platform Work Directive is a significant attempt to curb bogus self-employment. However, its effectiveness will largely depend on national implementation and enforcement mechanisms”.

The study confirmed the thesis that the gig economy is a significant challenge for conventional labour law and social protection systems around the world. The results, which indicate the specifics of gig employment – flexibility on the one hand and instability of income and lack of social guarantees on the other – are consistent

with both the conclusions given above and the opinions of V.G. Panchenko *et al.* (2024), who analysed the transformational impact of the gig and collaborative economy on the international labour market and related social protection issues. K. Hara *et al.* (2018) using the example of Amazon Mechanical Turk demonstrated the problem of low earnings in the gig sector, which supports conclusions about the economic vulnerability of gig workers.

One aspect of the study was to identify legal imbalances and differences in regulatory approaches in different countries, which makes it difficult to protect the rights of employees of digital platforms in a cross-border context. This problem was discussed in the scientific literature. In particular, J. Carby-Hall and M. Méndez, L. (2020) emphasised that digitalisation creates new forms of employment that go beyond conventional labour law, and highlighted the urgent need to adapt legal norms. The researchers also pointed out the impact of new technologies and the growing role of the gig economy, which requires the development of new protection mechanisms. The study confirmed these theses, demonstrating by examples of international ILO conventions that existing tools are extremely effective in regulating relations in the gig sector due to outdated definitions and difficulties in applying them to individuals classified as “independent contractors”.

The study focused on comparing EU and US regulatory models. It was found that the EU demonstrates a proactive approach aimed at strengthening the protection of platform workers. This approach was also confirmed by judicial practice, in which courts, analysing the level of control and dependence, recognised platform employees as “employees”, and not contractors. In contrast to the European approach, the American model demonstrates a balance between protecting employees and maintaining

the flexibility of the platform’s business models, preferring to classify a specific category of employees as independent contractors with certain additional guarantees. This difference in approaches highlights the complexity of finding a universal solution and confirms the conclusion that international harmonisation of definitions and standards is necessary. The same aspect was emphasised by A. Huys (2024) and S. Raignone (2024), pointing out the need to review legislation in the digital era, and the European Commission (2023), in the context of the rights of migrant workers working remotely.

The research theses on the need to adapt definitions and the need to standardise approaches are confirmed by the study of the problem of regulating platform work at the international level, which was previously written by the leading expert of the ILO V. De Stefano (2016), who emphasised the inadequacy of conventional binary classifications (employee/self-employed) and the need for international standards. The researcher highlighted the risks of “regulatory arbitration” when platforms exploit differences in national legislation. The researcher called for a rethinking of the concepts of “enterprise” and “control” in the digital age.

The results of the study are consistent with the conclusions of scientists on the key problems of the gig economy: legal uncertainty of the status of employees, the insufficiency of existing international legal norms, the need for social protection, and significant differences in national regulatory approaches. The generalisation of the data obtained confirmed that the existing legal mechanisms do not keep up with the transformation of labour relations caused by digitalisation, which is particularly acute in the cross-border dimension. Attempts to create intermediate forms of employee status, such as the “third way”, are controversial in the scientific community due to the

threat of lower standards and uncertainty in the legal status of gig employees. However, the analysis of European and American experience shows that there are opposite approaches. This demonstrates the complexity of finding a universal model of legal regulation and confirms the need for the development of international standards that could ensure a balance between the rights of employees and the needs of the digital economy.

### **Conclusions**

The gig economy is an important element of the current and future labour market, but its development requires up-to-date legal regulation. International legal standards can help ensure fair working conditions, social protection, and reduce the risks associated with income instability. The introduction of universal standards will help to create a fairer and more stable labour market. An analysis of regulation in the EU, the UK, the US, and Ukraine showed that tight regulation creates high guarantees for workers, but can hinder economic development, as Uber and Lyft argued when discussing AB-5, arguing that if their business model is loaded with social security responsibilities, they will have to stop operating in California. The flexible approach of the United States allows rapid business development, but creates social risks. For Ukraine, the minimum sufficient solution is, first of all, the legal definition of new forms of work for the purpose of transparent regulation, de-shadowing, and further harmonisation of legislation to EU standards, in the event of joining the EU within the framework of the declared pro-European course (Association Agreement). The next big challenge for governments and legislators will be to regulate the use of technologies that replace the human being as an employee and how to balance the rights of workers and businesses that strive to be technological, competitive, and efficient.

The above indicates that digitalisation significantly affects labour activity, including the processes of labour migration, and changes the nature of employment in the global labour market. The analysis of regulatory approaches to the social protection of gig workers has shown that developed countries are already engaged in integrating new forms of employment into legal regulation systems, but in general it remains fragmented and is focused so far only on the upper level of needs, such as social protection, but does not cover relations systematically, leaving gaps in concepts, issues of protection of local labour markets, wages, and taxation. Existing legal mechanisms need to be adapted to fully protect the rights of employees on digital platforms, in particular, due to the growing number of employees involved in the gig economy. Such adaptation includes a revision of employment conditions, social guarantees and social security rights, which is becoming particularly relevant in connection with new challenges of digitalisation, including the development of artificial intelligence technologies, and changes in legal norms for migrant workers.

The prospects for further research include a deeper study of the effectiveness of existing and new models of legal regulation for migrant workers in the digital economy, and research into the impact of digital technologies on new forms of employment to ensure adequate protection of workers' rights in the context of globalisation.

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## Право людини на працю у контексті гіг-економіки: міжнародно-правове регулювання

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### Анотація

Суттєві зміни у трудових відносинах, зумовлені розвитком цифрової економіки, викликали появу нових форм зайнятості, зокрема гіг-економіки. Проте такі форми зайнятості породжують численні проблеми щодо соціального захисту працівників та необхідності міжнародно-правового регулювання у цій сфері. Метою цього дослідження став аналіз проблем та викликів гіг-економіки у контексті міжнародно-правового регулювання захисту працівників та розробка пропозицій щодо адаптації існуючих міжнародних норм. Методологія дослідження базувалась на порівняльно-правовому аналізі міжнародних норм та регіональних підходів до регулювання трудових відносин у секторі гіг-економіки, оцінці правозастосовчої практики в різних юрисдикціях і моделюванні можливих варіантів уніфікації правового регулювання на міжнародному рівні. Дослідження вказало на те, що різниця у підходах до трудового законодавства в різних країнах призводить до значного правового дисбалансу, що ускладнює забезпечення рівних прав для працівників цифрових платформ. Зроблено висновок про широку практику застосування поняття незалежного виконавця до працівників цифрових платформ самими платформами з метою уникнення зобов'язань, які виникають у трудових відносинах. Невизнання трудовими відносинами зайнятості працівників на цифрових платформах породжує як проблеми захисту прав таких працівників, так і дозволяє гарантувати певну свободу діяльності. Виявлено різні нормотворчі підходи, практику застосування діючого законодавства та методики визначення фактичних трудових відносин, зокрема через оцінку рівня контролю, залежності та форми організації праці. У підсумку, виявлено необхідність у запровадженні уніфікованих міжнародних норм, які б охоплювали питання надання визначень сучасним видам зайнятості, а також пов'язаним із такою діяльністю питанням. Надані рекомендації можуть бути використані для розвитку концепцій, політик, національних та міжнародних нормативно-правових актів, спрямованих на захист трудових прав у цифрову еру, а також на забезпечення державних економічних інтересів, пов'язаних із трудовою діяльністю.

**Ключові слова:** право на працю; регуляція трудових відносин; трудова міграція; цифрова ера; гармонізація законодавства; міжнародне право