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Revista de Ciências Jurídicas
Universidade de Fortaleza
e-ISSN:2317-2150
doi 10.5020/2317-2150.2024.16869

Possibilities for work through digital platforms: analysis of bills and recommendations for a regulatory framework*

Possibilidades para o trabalho por plataformas digitais: análise de projetos de lei e indicações para um marco regulatório

Posibilidades para el trabajo por plataformas digitales: análisis de proyectos de ley e indicaciones para un marco regulatorio

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Abstract

The article examines the draft laws under consideration in the Brazilian National Congress from November 2021 to February 2022, which can define a regulatory framework for work on digital platforms. Based on research on the subject which adheres to the understanding that, given some characteristics, platforms correspond to a way of exploring business activity through digital technology. The text highlights the importance of conceptual precision in establishing a regulatory framework, including preventing unfair competition practices. Finally, recommendations are made for legally regulating these labor relations within the scope of Labor Law.

Keywords: labor law; digital platforms; legislative branch; regulatory framework.

Resumo

O artigo examina os projetos de lei em tramitação no Congresso Nacional brasileiro, de novembro de 2021 a fevereiro de 2022, aptos à definição de um marco regulatório sobre o trabalho por plataformas digitais. A partir de pesquisas sobre o tema, adere à compreensão de que, observadas certas características, as plataformas correspondem a um modo de exploração da atividade empresarial mediante o uso de tecnologia digital. O texto aponta a relevância da precisão conceitual para fins de estabelecimento de um marco regulatório, inclusive para que sejam evitadas práticas de concorrência desleal. Ao final, são feitas indicações para uma regulação jurídica dessas relações laborais no âmbito do Direito do Trabalho.

Palavras-chave: *direito do trabalho; plataformas digitais; poder legislativo; marco regulatório.*

Resumen

El artículo examina los proyectos de ley en tramitación en el Congreso Nacional brasileño de noviembre de 2021 hasta febrero de 2022, aptos a la definición de un marco regulatorio sobre el trabajo por plataformas digitales. A partir de investigaciones sobre el tema, adhiere a la comprensión de que, observadas ciertas características, las plataformas corresponden a un modo de exploración de la actividad empresarial por medio del uso de tecnología

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* Artigo traduzido por Inteligência Artificial.

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digital. El texto indica la relevancia de la precisión conceptual con finalidad de establecimiento de un marco regulatorio, inclusive para que sean evitadas prácticas de concurrencia desleal. Al final, son hechas indicaciones para una regulación jurídica de estas relaciones laborales en el ámbito del Derecho del Trabajo.

Palabras clave: *derecho del trabajo; plataformas digitales; poder legislativo; marco regulatorio.*

1 Introduction

In the field of labor, the emergence of new forms of work and models of production and management constitute a permanent and complex movement within the framework of a long-term historical structure, represented by the capitalist system of production. Currently, emerging technologies and digital reinvention that have mediated, reoriented, and intensified the flow of various transformations deserve to be highlighted.

In the report "Work controlled by digital platforms in Brazil: dimensions, profiles and rights", published by researchers from the Labor Law Clinic of the Federal University of Paraná (UFPR), attention is drawn to the estimate of people involved in work for companies that make use of digital platforms (1.5 million). It is then possible to perceive the high percentage of these people acting as drivers in passenger transport (around 850 thousand people), the concentration of work developed in favor of a large company (around 485 thousand drivers are active for Uber), informality (a situation experienced by 80% of workers) and the variety in the use of apps (in 2021 there were 1.5 thousand apps in operation in the country)[1]. Although the universe of digital platforms is dynamic, as, by the way, was evident in the research above UFPR, it is essential that the work developed is associated with citizenship rights.

However, the lack of rules, directly applicable to the so-called new labor relations, promotes undeniable legal uncertainty for entrepreneurs, which is already felt in lawsuits and formation of liabilities. The absence of a definition promotes artificial unevenness in conditions for business competition, since there are different evaluations of the level of benefits to be applied to workers. In addition, the same legislative limbo has led to the non-observance of minimum standards of health, safety and other commitments generically guaranteed in the Constitution, in favor of citizens who need work. As an example, a survey by the Federal University of Bahia (UFBA) recognized that app workers have an average working day of 64.5 hours per week and 51.7% are paid, per hour, less than the equivalent of a minimum

[1] Cf. Portal da **Labour Law Clinic - digital labour platforms** and the text "UFPR Labor Law Clinic discloses the first results of the survey on digital platforms", from 2021. Available at: https://cdtufpr.com.br/clinica-direito-do-trabalho-da-ufpr-divulga-os- first-results-of-research-on-digital-platforms/. Accessed: Feb. 08. of 2023. See also Portal **Brazil in fact** and the text "Brazil has 1.5 million workers through digital platforms, reveals survey", from July 24, 2022. Available at: https://www.brasildefato.com.br/2022/07/24/ brazil-has-1-5-million-workers-by-digital-platforms-reveals-research#:~:text=milh%C3%A3o%20-%20dos%20profissionals.-,O%20 segundo%2C%20pode%20execur%20sua%20atividade%20em%20any%20lugar%2C%20por,clickworkers%20(trabalhadores%20que%20 atuam%20n. Accessed on: Feb. 08, 2023.

wage[2].The issue is not strictly national. The report by the International Labour Organization – ILO, released in August 2020, entitled "Digital platforms and the future of work – promoting decent work in the digital world", highlights the impact of the transformations that have been seen in the world of work in the last decade with the emergence and dissemination of digital online work platforms. According to the ILO report (2020, p. 5), "this new form of work created disruptions not only in existing business models, but also in the employment model on which these business models were based". Several risks are implied in this new form, including the aspect of the type of contractual relationship, the perception of adequate remuneration and the provision of rights in the field of social protection[3].The demands for protection reveal that old dilemmas about legal protection that can induce equality are reposed in the new world of work. The question unfolds, then, about the appropriate legal regulation for work by digital platforms.

The changes underway and the tensions established were and are captured by the Brazilian parliamentary representation, so much so that there are multiple bills in progress, whose content varies with regard to the scope of the intended regulation.

In early 2023, the newly sworn in Minister of Labor announced the intention to regulate labor relations mediated by apps and platforms, as in the case of the activities of delivery workers and drivers, in order to establish "civilized standards", prioritizing "issues related to health, safety, and social protection". Thus, the proposal that will be formatted will be considered by Parliament[4].

In this scenario, this article proposes to carry out, within the scope of the Legislative Branch, a study on the bills that deal with work by digital platforms, systematizing the main points, identified in the political field, as essential for a legislative regulatory framework. The

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2 Cf. the research report of the Center for Conjunctural Studies of the Faculty of Economics of UFBA, Available at: http://abet-trabalho.org.br/wp-content/uploads/2020/08/Relato%CC%81rio-de-Levantamento-sobre-Entregadores-por-Aplicativos-no-Brasil.pdf. Accessed on: Sept. 17. of 2021.

3 On the remuneration aspect, ILO research (2020, p. 49) distinguishes between time dedicated to paid work (actual tasks for which the worker was paid) and time dedicated to unpaid work (time spent searching for tasks, acquiring qualifications, collecting information about requesters through online forums, communicating with requesters or clients, and writing reviews, as well as in the execution of tasks that were not paid, rejected or that ended up not being sent). Although there are variations in the comparison between platforms and reality in several countries, it was possible to verify, in the aforementioned survey, that workers' remuneration is quite low. Companies classify workers as self-employed, without commitment to several rights, including the minimum wage. Chapter 4 of the ILO Report seeks to answer the following question: "What is the situation of platform workers?", by exploring data on remuneration, access to social benefits, insufficient labour supply, working hours and work-life balance. Still on the subject, "the BIT inquiry [*Bureau* International Labour Index] revealed that, in 2017, on average, a worker earned USD 4.43 per hour, considering only paid work, and considering the total paid and unpaid hours, the average remuneration decreased to USD 3.29 per hour" (ILO, 2020, p. 49).

4 Cf. Portal **G1. Politics** and the report "Marinho takes over the Ministry of Labor and defends valuing the minimum wage and regulating activities by app", from 3.1.2023. Available at: https://g1.globo.com/politica/noticia/2023/01/03/luiz-marinho-assume-ministerio-do-trabalho-do-governo-lula.ghtml. Accessed on: Feb. 09. 2023. In May 2023, the Federal Government, through Decree No. 11,513/2023, established a working group with the purpose of preparing a proposal to regulate the provision of services through digital platforms. In fact, in March 2024 (after the conclusion of this research), the federal government presented Complementary Bill No. 12/2024 – the examination, however, of which is outside the objectives set for this investigation.

research focused on the period from November 2021 to February 2022 and identified, for examination, the bills that sought to establish a comprehensive legal regulation, that is, the stipulation of a set of rights and obligations applicable to these labor relations.

From the analysis of the bills and theoretical research on the subject, it is intended to contribute to the construction of answers to the following questions: i) do the proposals that have been presented so far for legal regulation precisely define their addressees?; ii) which legal concept should be used in a future regulation of platform work?; iii) what is it about when talking about work by digital platforms and, therefore, should legal regulation take place within the scope of Labor Law?

To this end, the axes of the main proposals existing in the National Congress will be presented; the importance of classifications and legal conceptualization will be discussed; indications will be presented for a future legal regulation of work by digital platforms; and, finally, conclusions will be launched that seek, albeit contingently, to answer the questions that guided the research.

2 Legislative proposals for the regulation of platform work

In a survey carried out between November 2021 and February 2022[5], it was possible to identify, in the Brazilian National Congress, about 100 bills that, directly or indirectly, were related to work through digital platforms. These bills addressed a wide variety of aspects – often reflecting the social urgencies caused by the pandemic resulting from the new coronavirus (which causes the disease covid-19)[6] –, such as the obligation to take out insurance for death, temporary and permanent disability, and medical and supplementary care expenses in favor of workers[7], or the use of personal protective equipment by the latter[8].

Although, as a rule, at the end of the legislature, the bills in progress are shelved, there are relevant exceptions, such as, for example, the automatic renewal of the proposals of

[5] This is a research undertaken in the execution of the Extension Project "Work by digital platforms, legal (re)configurations and social rights", linked to the Brazilian Institute of Teaching, Development and Research (IDP). The final report of the project can be found at https:// www.idp.edu.br/grupos-de-estudo/direito-do-trabalho-e-processo-do-trabalho/. Accessed on: July 19. of 2023.

[6] On January 30, 2020, the World Health Organization (WHO) presented a Declaration of a Public Health Emergency of International Concern and, on March 11 of the same year, it formulated a public declaration of a pandemic regarding the new coronavirus, which causes the disease covid-19. In Brazil, the Chamber of Deputies and, subsequently, the Federal Senate approved Presidential Message No. 93/2020, regarding the recognition of the state of public calamity in the country.

[7] This is the case, for example, of Bill No. 5,795/2019, which was attached to Bill No. 3,498/2019. Available at: https://www.camara.leg.br/ propositionsWeb/fichadetritacao?idProposition=2227809. Accessed on: Nov. 10. of 2022.

[8] As can be seen in Bill No. 3,554/2020. Available at: https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2256415. Accessed on: Nov. 10. of 2022.

re-elected parliamentarians. Thus, even if some of the bills that had been presented in Parliament are shelved due to the end of the legislature, others will continue and, in any case, even those that have been shelved are useful for the analysis of the understandings that political representatives, authors or not of the propositions, are accumulating on the subject[9].

Regardless of the issue related to the recognition of the employment relationship, the bills show the intention to establish minimum working conditions in the paid activities of delivery or distribution of products via digital platforms. With regard to the provision of adequate facilities, with drinking water, toilets, support and rest room and parking space[10]. Another issue is the stipulation of guarantees against blocking workers' access to digital platforms, with the aim of providing transparency as to the reasons for the sanction adopted by the company[11].

Such bills, especially those that stipulate rights as a legislative reaction to the moment of the pandemic, end up treating labor rights, and their protective axis, as a form of protection of people, and not as access to citizenship at work (Figueira; Mendes, 2014), a circumstance that can bring losses – such as conceptual uncertainties – to the production of laws.

It would be beyond the scope of this research, then, to analyze all the bills in progress in the National Congress on work by digital platforms. For this reason, the projects were identified and classified according to their scope, in order to select those that seek to establish a set of rights and obligations in labor relations through digital platforms, even if specific to certain services (such as delivery of goods or passenger transportation), that is, they are able to stipulate a regulatory framework. Bills that provide for specific rights or that do not establish a comprehensive set of rights and obligations were then excluded from the examination[12].

Based on this initial selection, it was possible to identify eight bills that present a broad proposal for legal regulation for work by digital platforms. Such bills can be organized into two groups: the first, composed of bills that include, within the scope of the Consolidation of Labor Laws (CLT), the regulation of work by digital platforms, namely, bills No. 6,015/2019,

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[9] Cf. news on the Portal da **Chamber of Deputies**, "Change in the Internal Regulations reduces the number of bills filed in the Chamber of Deputies", of 02.08.2023. Available at: https://www.camara.leg.br/noticias/938043-mudanca-no-regimento-interno-reduz-numero-de-projetos-arquivados-na- Chamber of Deputies. Accessed on: Feb. 09. of 2023.

[10] See, for example, Bill No. 2,355/2021, which seeks to define certain working conditions, but does not stipulate anything about the nature of the work provided by a digital platform, that is, whether with or without an employment relationship. This project was also attached to PL No. 3,498/2019. Available at: https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2288464. Accessed on: Nov. 10, 2022.

[11] See, in this regard, PL No. 4,172/2020, attached to PL No. 3,797/2020. Available at: https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposition=2259942. Accessed on: Nov. 10. of 2022.

[12] PL No. 2,061/2021, for example, proposes to regulate the profession of self-employed driver by apps, classifying drivers as professional or occasional, but does not take care of rights and obligations of a labor nature and does not even conceptualize "apps". Available at: https://www.camara. leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2285905. Accessed on: Nov. 10. 2022.

5,069/2019, 6,423/2019, 3,577/2020, 1,976/2021; and the second group, made up of bills that propose this legal regulation outside the CLT, that is, Nos. 3,748/2020, 4,172/2020 and 3,797/2020.

The existence of two groups, whose main difference is regulation as a labor right, reveals that, at least in the legislative field, there is a conception that it would be constitutionally feasible to recognize some rights without them being inserted within the system of legal protection centered on employability.

Having pointed out the two groups, the question arises: how do the bills define work by digital platforms, identify its recipients and, consequently, its scope of application? It is a matter of undertaking an observation on the productions of legal meaning by the Legislative Power, which means analyzing the role of Parliament as a kind of sounding board for communications and constructions of meaning from other social systems, such as politics, economics and law itself (Luhmann, 2005, p. 383-384).

In the bills of the first group, the proposals seek to designate the companies operating the digital platforms as employers and the workers as employees. According to the parameters of the CLT. PL No. 5,069/2019 specifically refers to land transportation and provides that: "the companies operating the land transportation application platform are equivalent to the employer, for the exclusive purposes of the employment relationship"; on the other hand, the employee is defined as "the professional who performs the activity of driver, in a personal, onerous, habitual and subordinate manner, through companies operating the land transport application platform, except for those who exercise their activity on an occasional basis" (Brasil, 2019a)[13]. Similar wording is presented in PL No. 6,423/2020, which has a broader scope and deals with passenger transportation and delivery of goods services by apps[14].

PL No. 3,577/2020, in turn, proposes to insert in the CLT a section that deals with the rights of employees who provide goods delivery services through apps. The bill defines the employer in the following terms: "any electronic platform that intermediates between the supplier of products and services and its consumer is considered to be an operating company of a delivery application". On the other hand, the employee is defined as "the professional who, through delivery app operating companies, performs the activity of delivery person, in a personal, onerous and habitual way linked to the company" (Brasil, 2020a)[15].

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[13] In case of occasional service, the project proposes the possibility of hiring as an individual microentrepreneur – MEI. The project is authored by the
Federal Deputy Gervásio Maia (PSB/PB).

[14] Under the terms of the bill: "for the exclusive purposes of the employment relationship, companies operating passenger transport or goods delivery applications are equivalent to the employer"; the employee is defined as "the professional who, through application operating companies, performs the activity of driver or delivery of goods, on a personal basis, onerous, habitual and subordinate to the company" (Brasil, 2019c). The project, by Federal Deputy Rui Falcão (PT/SP), also admits the possibility of hiring as MEI when the activity is carried out without an employment relationship.

[15] The bill is authored by Federal Deputy Márcio Jerry (PCdoB/MA).

PL No. 1,976/2021, on the other hand, seeks to classify "app driver services" within the scope of intermittent work, disciplined in the CLT. However, on the other hand, the bill only refers to "applications or other network communication platforms", without defining them. The conceptualization of "app drivers" also does not allude to the legal requirements of the employment relationship (Brasil, 2021)[16].

PL No. 6,015/2019, among those in the first group, is the only one that proposes a set of rights and obligations for the various works by digital platform, that is, it is not restricted to a certain sector, such as the delivery of goods or the transport of passengers. The bill stipulates a set of requirements for the signing of "an employment relationship between a company that manages a digital or computerized platform that manages the offer of services and the individual providing the services offered". The requirements of this employment relationship are: the performance of the service in return for payment, administration of the service offer and payment by the company, retention by the company of part of the amount paid to the individual for the service (according to limits set in a collective norm or ministerial norm) and registration of the individual with the company (Brasil, 2019b)[17]. However, the bill contains a laconic conceptualization of the company that manages the digital platform, and does not specify the characteristics of the worker in this type of relationship.

As can be seen, in the bills above, the service taker is defined as the company that operates or manages the application used to offer the passenger transport or goods delivery service. There is no emphasis on the company's way of organization, but only on the fact of operating the digital platform. On the other hand, regarding the figure of the worker, an approximation to the definition of article 3 of the CLT is sought, calling attention to the fact that the expressions non-eventuality and dependence are not used.

Among the bills of the second group, PL No. 4,172/2020 proposes the institution of a new "employment contract on digital platforms for private individual transport or delivery of goods", based on the foundations of the Constitution and in compliance with the national agenda for decent work. Although it takes care of aspects such as the deadline for payment of services, termination of the employment contract, liability for frustrated trips by third parties,

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[16] According to the bill, by Federal Deputy Nivaldo Albuquerque (PTB/AL), there would be three groups of app drivers: "I- drivers and drivers who work in the private paid transport of passengers, whatever the means of transport, to carry out individualized or shared trips requested exclusively by users previously registered in applications or other network communication platforms; II- drivers and drivers who work in the delivery services of goods, food, food, medicine and the like, whatever the means of transport, to carry out individualized or shared deliveries requested exclusively by users previously registered in applications or other network communication platforms; III- the drivers of motorcycles and scooters who provide the services alluded to in the previous items of this article" (Brasil, 2021).

[17] In the bill, authored by Federal Deputy Mário Heringer (PDT/MG), there is a provision for exclusion from the employment relationship in case of occasional work or less than 10 hours per week, as well as when the company managing the digital platform is an intermediary and the payment is made directly between the employee and the other company.

minimum wage, among others, the project does not present a conceptualization of the recipients. It is, then, the digital platforms for the transportation or delivery of goods that are not defined, nor are the characteristics of the provision of services that specify the worker pointed out[18]. The bill points out, however, that, if the requirements of article 3 of the CLT are verified, the consequence is the configuration of the employment relationship. There is a forecast, then, of situations in which the subordination that gives rise to the employment relationship would be characterized, "among others that demonstrate the direction of the work" by the contracting platform (Brasil, 2020d). The situations foreseen, however, are not necessarily defining a situation of subordination[19].

PL No. 3,797/2020 aims to establish the "regulatory framework for hiring delivery app service providers and drivers". The bill, which contains only four chapters, does not define what the "applications" for which it is intended are. Only workers are qualified and, even then, vaguely: "service providers of delivery apps and drivers are considered to be self-employed professionals, not employees, not exclusively linked to a company and who provide specific services to one or more companies" (Brasil, 2020c). The aspect of autonomy and the fact that the worker does not provide services exclusively are highlighted[20].

The two bills above, No. 4,172/2020 and No. 3,797/2020, deal with passenger transport services and delivery of goods, but they do not directly propose other activities.

PL No. 3,748/2020, in turn, is broader in scope and intends to distinguish the types of digital platforms. The bill seeks to institute the "on-demand work regime", which is defined as "the one in which customers contract the provision of services directly with the on-demand services platform, which, in turn, presents a proposal for the execution of services for one or more workers" – equating to the on-demand services platform any natural or legal person that offers services under the same terms. The on-demand work regime, according to the bill, is applicable even if the provision is occasional, or if there is a possibility of choice, by the client, among a limited cast of workers selected by the platform. It is also established the possibility of the worker being hired as an individual entrepreneur, cooperative or belonging to the corporate structure of a legal entity[21]. In an attempt to differentiate digital platforms, the bill

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[18] Here too, there is a concern to guarantee the rights of association, collective bargaining and strike.

[19] The situations stipulated are as follows: "a) the repeated or abusive practice of blocking without effective justification, as well as the punishment of refusal or disconnection; b) discrimination in the distribution and supply of services based on the provision of previous working hours; c) discrimination in the distribution and provision of services based on scoring or other reputation system; d) the failure to inform the worker in advance of the amount, distance to be covered and destination address of the proposed service" (Brasil, 2020d). This bill, authored by Federal Deputy Henrique Fontana (PT/RS), is the only one of the bills identified above that refers to algorithms, providing that they must be regularly submitted to audit by the labor inspectorate and other public bodies and that, on the occasion of collective bargaining, reports on price formation and algorithms must be presented. with respect to average earnings and rides and an overall outlook on the business.

[20] Bill No. 3,797/2020 is authored by Federal Deputy Júlio Delgado (PSB/MG).

[21] Although PL No. 3,748/2020 does not stipulate the employment relationship, it provides for the application, to the on-demand work regime, of Title VI of the CLT, on collective bargaining ("Collective Bargaining Agreements").

indicates that the on-demand work regime does not apply to "open service intermediation" platforms, as defined by the following cumulative characteristics: customers access proposals from several workers, customers contract directly with workers, the registration of offers and services is open to any worker, and the workers themselves set values and characteristics of the services (Brazil, 2020b)[22].

The conceptualization of the service taker is vague in PL No. 3,748/2020. There is no way to identify what (or who) the on-demand services platform is. The example contained in the bill does not satisfactorily elucidate the following question: will the individual or legal entity that offers on-demand services be considered a platform? Considering the set of bills, of the two groups indicated, it is possible to observe that there is no uniformity on the recipients – that is, whether to all services provided by digital platform or to only some services, especially the delivery of goods and the transport of passengers – nor is there uniformity on how to classify or define work by digital platforms, the companies thus organized and their employees. In view of the projects that seek a conceptualization, albeit synthetic, of the recipients, the recurrence of the idea of an operating company or manager of an application or digital platform, on the one hand, and, on the other, of a professional who provides the service through that operating company[23]. There is no precise definition of the different digital platforms – what comes closest to this distinction is, as seen, PL No. 3,748/2020, which, however, adopts as a premise the form in which the service is contracted by the customer, and not the way in which the economic activity is explored and, correspondingly, the way in which the worker is hired.

In general terms, perhaps the most decisive aspect identified, from the examination of the bills, is the lack of a concept about work by digital platforms. Although the legislative proposals seek to guarantee several fundamental rights, there is no clarity as to the recipients of these rights, as the bills do not define, with the minimum of precision, the labor relations to which they refer. In this sense, the bills, in general, do not address work management through algorithms, that is, how the technology contained in the algorithms is used for the organization and management of the workforce (and, in some cases, for the expression of the directive power that characterizes the legal figure of the employer)[24].

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[22] Bill No. 3,748/2020, by Federal Deputy Tabata Amaral (PDT/SP), admits the possibility for the platform, in the on-demand work regime, to establish certain work parameters, namely, "the performance of training, the imposition of rules of conduct, the requirement of quality standards, and the monitoring of the performance of the service" (art. 4; BRAZIL, 2020b). But the forecast is nonsense. This is because it contains aspects of the employer's directive power – such as the imposition of rules of conduct and the monitoring of the execution of the work – despite the provision that there will be no employment relationship. In addition, the rule on the stipulation of certain work parameters could confuse the types of digital platforms, losing the specificity of the platforms in relation to which doctrine and jurisprudence have pointed to the existence of the employment relationship, such as Uber.

[23] In fact, in this regard, it is noted that, in the bills that include work by digital platforms in the CLT, there is some confusion about the concept of non-eventuality, provided for in article 3 of the CLT, with the idea of habituality (and repetition of working days in a given period of time). This is the case of PL No. 6,015/2019.

[24] The only reference to algorithms, as seen, was in PL No. 4,172/2020, and even then without major repercussions on labor rights.

The two issues – the conceptualization of work by digital platforms and the management of the workforce by algorithms – are fundamental in the theoretical debate on the subject (Filgueiras; Antunes, 2020; Olive tree; Carelli; Grillo, 2020). Furthermore, the lack of legislative precision can raise serious problems, including for the subsequent interpretative activity by the courts.

Finally, it is worth noting that, despite the distinction regarding the inclusion or not in the CLT of the legal discipline on work by digital platforms, even the bills that start from the premise of workers' autonomy point to the vulnerability and inequality of the latter in relation to the companies responsible for the platforms[25]. This is a significant fact to think about, in the context of a regulatory framework, the field of incidence of Labor Law and, mainly, to reflect on the meaning of conditioning the protection of the person who works to the existence of the employment relationship (Signes, 2017).

3 The importance of classification and legal conceptualization of work by platforms Digital

The analysis of the proposals for the regulation of work by digital platforms reveals the importance of the theme of the inclusion of workers through the recognition of the employment relationship, so much so that there is some level of concern in affirming or denying the existence of this contractual modality. In addition, it is evident that passenger transport and delivery services are at the epicenter of the projects. However, the predictions do not seem sufficient when one must take as a perspective the fact of the constant reinvention in the use, by companies, of digital work platforms. The conceptual legal construction is, therefore, relevant when the objective is to build a legislative regulatory framework.

There are common aspects to platform work, especially as a result of the use of new information and communication technologies. Such aspects include the realization of online contacts between producers and consumers, or workers and companies; the use of applications or platforms; the wide use of digital data in the organization and management of services; and relationships established by demand (Filgueiras; Antunes, 2020, p. 31).

But not all digital platforms (and the work done through them) have the same characteristics. Certain platforms act as simple intermediaries, by enabling contact between workers and those interested in a certain service, but without the platform stipulating price, quality, quantity,

[25] In the justification of PL No. 3,748/2020, for example, there is the following statement, demonstrating the recognition that they are not, in fact, self-employed: "workers in this situation, despite having freedom in relation to the hours and duration of work, do not have the other characteristics that are necessary to characterize them as self-employed or even individual entrepreneurs. This is because the entire business structure, from customer acquisition and advertising to the development of technological tools, standardization of services and quality monitoring, is created and maintained by the companies responsible for the applications. The worker is simply the executor of the services that are sold directly by the companies, in their own name" (Brasil, 2020b).

conditions, etc. These platforms work as a kind of virtual fair, or "*marketplace*" (Carelli, 2020, p. 67).

There are platforms, however, that assume the role of protagonists of the labor relationship and guarantee the quality of the service provided, by setting conditions for the execution of tasks, setting the price of the activity and remuneration of the person who performs the service. Thus, those who consume the service offered become customers of the digital platform, and not of the person who performs the task. As Rodrigo Carelli (2020, p. 70) observes, these platforms "take measures to guarantee the quality of the service provision, in addition to imposing price and remuneration, ending up being protagonists in the service and not mere intermediaries between traders".

In the first group of digital platforms (simple intermediaries), we have, for example, Mercado Libre; in the second (platforms that provide and guarantee a service), we have, among others, Uber and iFood (Carelli, 2020, p. 68-73).

Murilo Oliveira, Rodrigo Carelli and Sayonara Grillo (2020, p. 2622) formulate a proposal with the following conceptualization for digital work platforms: business models based on digital infrastructures that enable the interaction of two or more groups with intensive work as their main object, always considering as a platform not only the nature of the service provided by the company, but the method, exclusive or combined, for carrying out the business business.

The above definition stands out because it highlights, for conceptualization purposes, not the activity itself offered by the platform (such as transportation or delivery), but the way the company operates, based on digital technologies for its organization and management. Oliveira, Carelli, and Grillo (2020, p. 2622) suggest classifying platforms as pure (those that do not carry out "relevant control" over the interaction between traders) and mixed or hybrid (those in which there is a mixture "between market and hierarchy" and "the business form of the platform serves the final provision of a service that is not to be confused with it").

Uber, for example, offers the service in its own name, as can be seen, among other evidence, by the fact that the "most popular" travel options carry the company's brand, such as "UberX" and "Uber Comfort"[26]. It is also possible to see how the guarantee of the service is given by Uber itself, as indicated on its website: "Your peace of mind is our priority. With all the safety features and all the standards of the Uber Community Code, creating a peaceful environment for our users is our priority"[27]. The digital platform stipulates rules and standards for

[26] Available at: https://www.uber.com/br/pt-br/about/uber-offerings/. Accessed on: Nov. 30. 2020.
[27] Available at: https://www.uber.com/br/pt-br/. Accessed on: July 01, 2022.

the provision of service, the guarantee of which is given by the platform itself.

iFood, in turn, presents itself in the market as the owner of a service, as stated on its website, regarding deliveries: "it has never been so easy to order Japanese food", for example[28]. Loggi, on the other hand, expressly indicates that it is a delivery company, as can be seen on its website: "Loggi is a delivery company that offers the best shipping service the way you need it. Ideal for virtual stores and companies of all sizes. Send as many packages as you need – whether it's just one or more than a thousand"[29].

In these three cases, the management and organization of a business activity through digital technology stand out. In the digital platforms mentioned, it is possible to identify the characteristic pointed out by Oliveira, Carelli and Grillo: the interaction provided by the platform is not its purpose, but the means to offer a service (transportation or delivery). The three companies, which are organized in the form of digital platforms, provide and guarantee a specific service, that is, the transport of people, in the case of Uber; the delivery of goods or foodstuffs, in the case of iFood; and the simple delivery of packages, in the case of Loggi.

The distinction drawn by the authors is also fundamental from the economic aspect and from the point of view of market competition. Digital platforms that offer the provision of a specific service (which, it should be repeated, is not to be confused with mere intermediation) do not simply compete with other digital platforms, but compete, in the market, with companies that provide the same service. Uber, for example, which, as already indicated, offers the service of transporting people, competes directly (not with Loggi, which makes deliveries, but) with other companies that also offer, in the market, the service of transporting people[30].

The finding is crucial because it indicates that digital platforms do not comprise a specific economic sector, that is, they are not technology companies, but refer, as already pointed out above, to a form of exploitation of business activity, based on digital technologies for its organization and management and aimed at the provision of a specific service (i.e., transport or delivery)[31].

The concern with market competition is also justified by the way the platforms are

[28] Available at: https://www.ifood.com.br/. Accessed on: Nov. 30, 2020. On the page for "partners", that is, restaurants and markets, it is possible to see that the guarantee comes from the digital platform itself: "sell more with iFood – customers are just a click away and your business selling like never before". Available at: https://parceiros.ifood.com.br. Accessed on: Nov. 30. 2020.

[29] Available at: https://www.loggi.com/. Accessed on: July 01, 2022.

[30] It is true that there may be competition between digital platforms, for example between Uber Eats and iFood. However, the competition took place, in this case, not because they were digital platforms per se, but because both were focused on the provision of the same service, that is, the delivery of goods and foodstuffs. Uber Eats ended its activities in Brazil in March 2022.

[31] For Oliveira, Carelli and Grillo (2020, p. 2622), "a digital platform in the transport sector has much more similarities and occupies the same space of competition with other business modes of providing transport services than with other platforms. (...) A ready-to-eat food delivery platform brings specific problems to society that are the same as 'physical' *delivery* companies. In other words, for legal purposes, treating platforms as a specific sector is a serious mistake that brings real problems of regulation of competition, labor, safety and other legal assets".

organized focused mainly on the algorithm. In fact, according to Carelli, Oliveira and Grillo (2020, p. 2616):

The algorithm – understood as a set of procedures and instructions – enables management and operation based on millions of information and data, something impossible for human management. The storage of these millions of data on users, workers, prices and demands allows us to understand much deeper into economic activity and its market, enabling artificial intelligence to be able to present ideas, plans and changes in this venture.

In terms of public policy, it is essential to identify the actors that compete in the same market, in order to in order to avoid practices involving unfair competition.

Whether due to the existence of differences between digital platforms in terms of their way of operating and managing work, or due to the economic aspect of market competition, the importance of legislative precision in the legal regulation of the topic addressed here is noted. It is also necessary to add an argument that refers to the respective competences of the Legislative and Judicial Branches.

Legislative competence and judicial competence are reciprocally interfering, insofar as laws provide the decision-making premises for the courts, while the legislator must take into account how new laws are integrated into the set of decisions of the courts and how cases will be dealt with judicially. In the observation of Niklas Luhmann (2005, p. 364-366), more legislation entails more judicial competence. But legislation that adequately addresses social problems – with the democratic mechanisms proper to capturing consensus – tends to reduce the pressure on the courts, whose decision-making parameters would then be better defined, even if without eliding their interpretative function[32].

Legislative regulation plays an important role, in this sense, regarding the primacy of legal certainty. In the democratic dimension of law, and in the emergence of contemporary complexity, a simplistic view is one that confuses legal certainty with predictability of decisions, judicial or not, and even that credits legislative texts, for their benefits or imperfections, with the successes or mistakes in the normative application. The legislative text, which is not the norm (since this requires the context of application), only inaugurates a new and long stage of defining the legal meanings that can be connected, in an adequate and coherent way, with the demands of society today. However, and without a doubt, the textual aspect is relevant. Therefore, the importance of the commitment of legal regulatory frameworks to the density of legal concepts must be accredited. In the functional and non-hierarchical relationship between legislation and jurisdiction (Luhmann, 2005, p. 385), what is relevant is the role to be played by law, and, more specifically, regarding the expansion of the emancipatory dimensions that labor law can assume

[32] It is also worth remembering that legislative action does not definitively solve the problems of legal regulation, not least because positivity does not end with the production of the law, but presupposes the process of interpretation (Grossi, 2007, p. 76).

(Grillo; Figueira, 2012, p. 322). In addition to the important aspect of the density of the concepts, the link to the centrality of the protection of the human person constitutionally established, including in the theme of work, should create institutional links that condition legislative autonomy.

4 Indications for a legal regulation of work by digital platforms

The above analysis of the bills indicates that a first relevant issue is whether or not to include digital platform work within the scope of the legal protection granted to employment relations, substantially governed by the CLT or, in any case, by Labor Law[33]. Another important issue involves the identification of the recipients of a normative regulation of work by digital platforms, that is, how to define and characterize the service takers and the respective workers.

Regarding the legal regulation for work by digital platforms, Oliveira, Carelli and Grillo (2020, p. 2626-2627) point out four alternatives. The first – and rejected by the authors – is the non-application of labor regulation, so that the legal relationships between providers and platforms would be governed by Civil Law. The second is the incidence of labor law rules, but with the need to draft new legislation, on the grounds of inadequacy of the existing one. In addition, this alternative signals the establishment of an intermediate protection, similar to the Italian para-subordination. The third possibility involves the recognition that a new labor relationship is taken care of, but all labor rights must be guaranteed, in a similar way to the regulations on casual work. Finally, the fourth option would be the application of labor law legislation in the exact terms defined in the CLT, which conceptualizes employee and employer in its articles 2 and 3 and alludes, in article 6, to legal subordination exercised by telematic or computerized means.

For "pure digital platforms", the authors propose the application of the discipline of casual work, with recognition of labour rights where applicable[34]. In the case of "hybrid platforms", they suggest that the current labor legislation is sufficient and adequate for the regulation of these legal relationships. After all, to classify platform workers "as 'dependent' or subordinate 'telematically' is to capture that the small freedom of activation or deactivation does not alter a work system economically and technologically directed by the platform" (Oliveira; Carelli; Grillo, 2020, p. 2629)[35].

[33] In this regard, it is important to remember that, in Brazil, Labor Law is a legal branch that disciplines, almost exclusively, the relationship between the to the extent that other legal labor relations are, as a rule, excluded from its scope of application.

[34] It is worth remembering that the Constitution, in article 7, XXXIV, guarantees "equal rights between workers with a permanent employment relationship and casual workers" (Brasil, 1988).

[35] In the same vein, cf. Cardoso; Arthur; Oliveira, 2020.

Other research in the area also points to legal regulation within the field of Labor Law. Cardoso, Artur and Oliveira (2020, p. 211) observe, based on an analysis of the methods used in the exercise of business activity, that "platform companies (...) act in a similar way to traditional companies, with regard to labor control, thus removing the justification for their relations with workers not to be regulated by existing standards." For the authors, "the main premise" of Labor Law "is still valid: there is asymmetry between its subjects, whether economic or technological" (Cardoso; Arthur; Oliveira, 2020, p. 226).

Legal regulation within the scope of Labor Law is also the path pointed out by Rocha, Porto and Abaurre (2020), Chaves Júnior (2017) and Gaia (2019) – the latter specifically on the Uber case –, among others. Collective bargaining, an institute specific to this legal branch, is indicated to deal with certain aspects, such as freedom of working hours, according to Dockès (2019).

Adrián Todolí Signes (2017, p. 32) puts the question, however, in a broader perspective: "should the protection of people who provide services personally really be conditioned to the existence of a subordinate legal relationship?"Death[36]. According to the author, the business model of work by virtual platforms does not seem to be successful because it provides more efficient and productive work networks, but rather because it avoids the application of protective norms. In addition, there are social (such as inequality in bargaining power) and economic (such as the guarantee of a minimum wage) reasons for there to be protected labor, regardless of the existence of a subordinate labor relationship. The real question is not to know whether, in digital platform work, there is labor that fits, legally, to the concept of employment relationship, developed since the nineteenth century. Thus, Signes (2017, p. 39) answers in the affirmative: "the needs for protection continue to exist in new workers, whether called workers or microentrepreneurs, whether they are dependent or independent"[37].

Therefore, the author points towards the expansion of the subjective scope of Labor Law, to include workers who, although they have independence as to the form of performance of services, have their autonomy restricted due to the fragility of their negotiating position (Signes, 2017, p. 44). Thus, although one can consider the existence of new forms of management and use of labor, this does not indicate the anachronism of the legal system of protection that involves human labor. At the same time, however, it signals the relevance of reflecting on the field of incidence of Labor Law, which is still very much linked to the employment relationship.

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[36] Free translation.

[37] Free translation. As seen above, the situation of vulnerability of workers by digital platforms is also a premise in the bills examined.

The theme of human labor has a clear constitutional character, notably when it is observed that the 1988 Constitution explicitly included social rights in the list of fundamental rights (Title II). Article 7, *caput*, of the Constitution refers to the minimum protection of urban and rural workers. It challenges the constitutional supremacy to the thesis that legal protection would be more restricted than the proposal and, therefore, would be packaged in a specific contractual modality, that is, the employment relationship. This reveals the impertinence of circumscribing the issue to the existence or not of an employment contract between the worker and the company that uses the digital platform.

With regard to the second issue pointed out – about the addressees of a legal regulation of work by digital platforms – not all research proposes definitions that could serve as a parameter for legislative action. In fact, there are a variety of terms to refer to digital platforms, as put together by Filgueiras and Antunes (2020, p. 30): "*gig-economy, platform economy, sharing economy, crowdsourcing, on-demand economy,* uberization, *crowdwork*, digital work, among others". But, as a rule, the discussion is concentrated, primarily, in the characteristics of work by digital platforms, including its classification and the reality of workers, in the application or not of Labor Law or other forms of protection, as in the research already indicated and in others (*e.g.*, De Stefano, 2016).

The concept developed by Oliveira, Carelli and Grillo (2020) stands out, then, in investigations on the subject. As highlighted above, by defining digital labor platforms as "business models" that are based on digital infrastructures that allow interaction between two or more groups, with "intensive labor" being the main objective, the authors emphasize the company's mode of exploitation, and not the activity offered by the platform. It can be added that those digital infrastructures refer to information and communication technologies, according to the expression of Filgueiras and Antunes (2020). Thus, a change in terminology is necessary so that the designation digital platform is used to indicate, not the company, but the way in which the company is organized and explores its economic activity[38].

Based on these premises and against the backdrop of the critical analysis of the bills in progress in the National Congress, it is understood here that the legal regulation of labor by digital platforms must take place within the scope of Labor Law, without prejudice to the subjective expansion of the scope of this legal branch, as well as must consider the diversity of forms of digital platforms, understood, however, as a way of exploiting business activity.

Considering the issues raised here, it is possible to make the following indications:
1. Labor Law should regulate work by digital platforms and this regulation should take place in the form of an employment relationship, without excluding the possibility of a labor law

[38] In view of one of the main cases on the subject, instead of designating Uber as a digital platform, it would be more accurate, in the terms suggested here, to state that it is a company, organized in the form of a digital platform, aimed at exploring the economic activity of transporting people.

regulation, with the same standard of rights, when the worker is effectively self-employed; 2. The digital platform is a way of exploiting business activity, so that, for regulatory purposes, the digital platform can be designated as the company, individual or legal entity, with or without profit, organized through digital infrastructures of technology, information and communication, which enable interaction between two or more people, and whose main objective is to provide a service or carry out an activity; 3. The company organized in the form of a digital platform may have its activities aimed at mere intermediation between two or more people, aiming at the provision of work, or it may have its activities aimed at controlled and directed interaction between two or more people, who negotiate, with the company, through the platform, the conditions for the provision of work, aiming at the final execution of a service, such as the transport of people or the delivery of goods, among others; and 4. The worker will be considered an employee when it is a natural person who, in a personal, non-occasional and onerous way, provides the service under the dependence of the company organized in the form of a digital platform.

5 Conclusions

The variability in the way work develops, especially considering the intensification in the use of technological resources, as in the case of digital platforms, in addition to the lack of rules directly and strictly applicable to the so-called new labor relations, in general, are cited as justifications for the non-incidence of labor rights. However, citizenship at work does not depend, for its recognition, on the prevalence of a single contractual modality, as is the case of the employment relationship. Absence of a bond is not equivalent to the absence of rights. Certainly, the transformations that occur in the world of work demand renewed normative provisions, but they cannot depart from the primacy of human dignity.

Regardless of the initiative of studies within the scope of the Executive Branch, it is a fact that, so far, about 100 bills have been presented that focus on working through digital platforms, which reveals the topicality of the topic. It so happens that the debate regarding the regulation of workers' rights, which are activated in digital labor platforms, cannot involve only the aspect of providing for rights and obligations, and it is necessary, for reasons of coherence and legal certainty, to discuss the legal concepts that will structure future provisions.

Also, by February 2022, it was possible to identify eight bills that present a proposal legal regulation for work by digital platforms and, among these, there is the block that includes, within the scope of the CLT, the regulation of work by digital platforms and another that proposes this legal regulation outside the CLT. In any case, in both groups, it is noted the importance given to the requirements that characterize the employment relationship and that passenger transport and delivery services are at the epicenter of the proposals. The analysis of the bills, undertaken here, reveals the lack of a concept about work by digital platforms, despite the effort to guarantee several fundamental rights, and also the absence of an approach to work management through algorithms. For the construction of a regulatory framework, it is relevant to identify the form of exploitation of the company, based on digital technologies for its organization and management, as well as the realization that digital platforms do not comprise a specific economic sector.

Several possibilities are presented, but the principles that give identity to Labor Law should not be ignored. On the other hand, it must be recognized that the employment relationship cannot be the only door to access work with rights and guarantees. What was aimed here was only the theoretical definition for a possible regulation of work by digital platforms, seeking an approximation for the purpose of conceptualizing the legal relationship and its recipients.

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How to cite:
LOURENÇO FILHO, Ricardo; PORTO, Noemia Aparecida Garcia. Possibilities for working through digital platforms: analysis of bills and indications for a regulatory framework. **Pensar – Revista de Ciências Jurídicas**, Fortaleza, v. 29, n. 4, p. 1-15, Oct./Dec. 2024. DOI: https://doi.org/10.5020/2317-2150.2024.16869

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Received: 11/04/2023
Accepted on: 07/04/2024