



POLICY BRIEF

A Review of Policy Options and Scenarios on Philippine Platform Work

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Executive Summary

For the past two years, Fairwork Philippines has released its Year 1 and Year 2 Reports, which consistently show that only a few platforms have managed to earn score/s within the Fairwork Principles. Aside from the finding of lack or subpar policies and practices by the platforms themselves, what is clear from the Reports is the wide gap in government regulation as to how platform work is conducted.

The Policy Brief bridges the findings in the Reports into possible pathways for reform, upon which the Philippine government, particularly the executive and legislative branches of the government, can take action. It also aims to provide technical assistance with respect to platform work to concerned sectors, such as the government, civil society organizations, labour organizations, the academe, and the public.

An overview of the policy and legal landscape points to the fact that a regulatory bottleneck exists. Most, if not all, gig workers are identified by platforms as *partners*, *third-party service providers*, or *independent contractors*. Its main implication is the platform workers' exclusion from the worker protections granted by the Labor Code.

Despite this barrier, the recent case of *Ditiangkin v. Lazada* opens a window by establishing the two-tiered test of employment relationship: the four-fold test and the economic dependence test. Further, several House Bills and Senate Bills in the 19th Congress regulating platform work are currently pending in the respective Committees on Labour and Employment.

The Policy Brief then presents various scenarios for regulation of platform work, which include from the most favourable scenario (i.e. Congress enacts a law that declares platform workers as employees) to the least acceptable scenario (i.e. Congress does not enact any law that provides platform workers with rights and benefits).

In the event that the government (Congress and executive/administrative agencies) intends to provide platform workers with rights and benefits that are not necessarily equivalent to those received by employees, the Policy Brief proposes thirty (30) reform points based on the Fairwork Principles of Fair Pay (e.g. sufficient bookings/orders to ensure minimum wage levels after costs; access to online payment mechanism without additional cost), Fair Conditions (e.g. free onboarding training and protective equipment; meaningful access to social security and insurance), Fair Contracts (e.g. written contract with required areas of stipulations), Fair Management (e.g. implement procedural due process in disciplining workers; anti-discrimination policy), and Fair Representation (e.g. penalizing acts that tend to undermine or restrict the workers' right to self-organization and right to association).

For any of these reforms to be consistent with the Fairwork Principles, especially those through legislation, the law should have no express declaration that the platform workers are not employees and should not prejudice a subsequent court ruling on their employment status.

Background

For the past two years, Fairwork Philippines has released its Reports titled “Fairwork Philippines Ratings 2022: Towards Fair Labour Conditions in the PH Platform Economy” and “Fairwork Philippines Ratings 2023: Protecting Worker Health, Safety, and Security in the Philippine Platform Economy”, respectively. The findings show that only a few platforms have earned score/s within the Fairwork Principles. The majority of platforms considered in either Report failed to earn any score, which shows the prevalence of unfair labour policies or practices in the Philippine platform economy.

Aside from the finding of lack or subpar policies and practices by the platforms themselves, what underlies the Reports is the wide gap in government regulation as to how platform work is conducted. To some extent, the dismal performance of platforms when examined against the Fairwork Principles may be attributed to such a gap in government regulation. Without any prescription from the government as to what minimum benefits or protections should be extended to platform workers, there is no counterbalance to the platforms’ management prerogative.

While the Fairwork methodology primarily directs the search for accountability to the platforms, the results of the Fairwork Report also reflect on the importance placed by the government, or the lack thereof, in ensuring that platform workers have decent work or fair work. For instance, the continued absence of a fit-for-purpose regulation for platform workers implies that their welfare seems at the tail end of the government’s priority list.

The Policy Brief bridges the findings in the Reports into possible pathways for reform, upon which the Philippine government, particularly the executive and legislative branches of government, can take action. Specific proposals across different areas of gig work, which range from minor and piecemeal amendments to existing policies to extensive reformulations of policy frameworks, are articulated herein.

These proposals can also inform the platforms on what aspects of platform work they can already internally reform and consequently implement, without waiting for a government regulation that legally obligates them to do so. Also, civil society organizations may adopt some or all of these proposals as part of their advocacy agenda, which may include raising public awareness or contributing to public policy consultations. The Policy Brief would also prove useful to labour federations and unions. For labour organizations that are directly engaging with platform workers, the proposals presented here could add to the current list of reforms to be demanded from the government. On the other hand, for labour organizations that have yet to engage with platform workers, this presents an opportunity to take part in the struggle for better working conditions in this sector of labour.

Objectives

The Policy Brief aims to:

- a) Present specific public policy reform proposals informed by Fairwork Philippines’ research

findings;

- b)** Provide technical assistance with respect to platform work to concerned sectors, such as the government, civil society organizations, labour organizations, the academe, and the public;
- c)** Contribute to the emerging literature on platform work in the Philippines; and
- d)** Advance decent work in the platform economy through policy reform and advocacy.

Scope

The Policy Brief covers pathways for reform of government regulation or public policy with respect to areas applicable to platform workers. These include:

- a)** Laws and statutes enacted by the legislative branch or Congress; and
- b)** Administrative issuances made by the executive branch.

Laws and statutes under (a) include all legal instruments that have the force and effect of law and those that were created through legislative power. For instance, the Labor Code of the Philippines, or Presidential Decree No. 442, was promulgated by the President in the exercise of legislative powers under the 1973 Constitution. It remains in effect today, although some of its provisions were already amended by succeeding legislative acts.

Administrative issuances under (b) include those issued by the Departments or line agencies as well as bureaus, offices, or commissions attached to such agencies in the exercise of its quasi-legislative or rule-making power. These may include Implementing Rules and Regulations, Department Orders, and Administrative Orders, among others. It is a corollary that there is a law or statute granting authority to these agencies for them to issue these legal instruments. On the other hand, issuances made in the exercise of the agencies' quasi-judicial power such as Opinions and Rulings, if any, are excluded.

Further, it must be noted that judicial decisions promulgated by the Supreme Court also form part of the Philippine legal system. Indeed, numerous judicial decisions clarify rights pertaining to labour. Foremost in these decisions are the elements in determining the existence of employment relationship, more commonly known today as the four-fold test, which was first enunciated in the Supreme Court decision of *Viaña v. Al-Lagadan* in 1956. For the purposes of this Policy Brief, these doctrines will be considered as governing law or of what constitutes the present policy and legal landscape from which gaps may be identified. However, possible changes in the doctrines promulgated by the Supreme Court are excluded from the coverage for being judicial, and not political in nature.

Thus, the Policy Brief includes proposals that can be adopted either through a legislative act or an executive or administrative issuance, taking into consideration the nuances of the breadth of legislative processes and the limits of executive rulemaking as merely directed to an existing law's implementation.

Policy and Legal Landscape¹

The current policy and legal landscape surrounding platform work must first be examined and assessed before any proposal is made. It sets the local context upon which the protections as well as the vulnerabilities of platform workers may be understood. While it may show the lack of effective government regulation at this point, which amplifies the vulnerabilities faced by platform workers, it also presents windows of reform that may be made within the existing structures and institutions.

Framework in protecting Philippine labour

Social justice is the heart of the 1987 Constitution.² Article II, Section 10 of the Constitution states that “[t]he State shall promote social justice in all phases of national development.” Further, to operationalize such, Congress is directed to enact legislative measures that “protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.”³

The Constitution dedicates several provisions specifically for labour. The 1987 Constitution categorically declares that,

“The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.”⁴

Further, it guarantees the following rights to all workers: (i) self-organization; (ii) collective bargaining and negotiations; (iii) peaceful concerted activities, including the right to strike in accordance with law; (iv) security of tenure; (v) humane conditions of work; (vi) living wage; and (vii) participation in policy and decision-making processes affecting labour rights.⁵ It must be emphasized that such baseline constitutional protections equally apply to all workers.

However, the Labor Code of the Philippines, as amended, the main operationalization of the constitutional mandate, currently places most, if not all, of worker protections conditional to the existence of an employment relationship. As mentioned above, while the Labor Code was promulgated as a Presidential Decree in 1974—preceding the 1987 Constitution, it continues to be in effect today. Although the Labor Code has been widely amended since then, the post-EDSA government and legal order have continued the legal framework institutionalized by the Labor Code.

Employment relationship as requisite

With the applicability of most labour protections conditioned on the existence of an employment relationship, the question then lies in who may be considered as employees. The Supreme Court had the opportunity to comprehensively discuss the two tests of the employer-employee relationship in the case of *Ditiangkin vs. Lazada E-Services Phil., Inc.*, namely the four-fold test and the economic dependence test.

The four-fold test requires the concurrence of the following factors: (i) power of selection and engagement; (ii) payment of wages; (iii) power of dismissal; and (iv) power of control of the employer

over the results as well as the means and methods of how the work is done. Among these, the power of control is the most significant factor.⁶

On the other hand, the economic dependence test is used when the four-fold test is insufficient in conclusively determining whether an employment relationship exists. Among the various factors⁷ examined by the court, the key factor is “whether the worker is dependent on the alleged employer for his continued employment in that line of business.”

However, most, if not all, gig workers are identified by platforms as *partners* or *third-party service providers*, to name a few. In the labour discourse, these can be interpreted as referring to gig workers as independent contractors, which are “individuals who possess unique skills and talents which set them apart from ordinary employees and whose means and methods of work are free from the control of the employer.” In this type of engagement, there is no employment relationship, which means that their contract is governed by the Civil Code, and not by Labor Code.

The main implication of limiting the status of gig workers to independent contractors is their exclusion from the worker protections granted by the Labor Code, such as rest periods, holiday pay, and unionization for purposes of collective bargaining, among others. They are also excluded from minimum wage laws.

Despite this, the Supreme Court, in the case of *Paguio v. National Labor Relations Commission*, has assured workers that “[t]he law, in defining their [referring to worker and employer/principal] contractual relationship, does so, not necessarily or exclusively upon the terms of their written or oral contract, but also on the basis of the nature of the work [the worker] has been called upon to perform.” Otherwise stated, what prevails in determining the existence of an employment relationship are the factual circumstances surrounding the worker’s engagement, notwithstanding what has been previously contractually agreed upon between the worker and the management.

Unfortunately, this presents a regulatory bottleneck. Until the labour tribunals and courts definitively declare that gig workers are employees through a proper case or claim filed by a worker, the protections under the Labor Code remain evasive for gig workers.

Ditiangkin v. Lazada

In September 2022, the Philippine Supreme Court promulgated its decision on the case of *Ditiangkin v. Lazada E-Services Philippines, Inc.* Lazada, an e-commerce platform operating in the Philippines, hired the riders involved in this case, who were primarily tasked to pick up items from sellers and deliver them to Lazada’s warehouse. After around 11 months from engagement, the riders were no longer given any schedules, and their routes were given to other riders, which led them to file a complaint for illegal dismissal, together with other money claims.

The Supreme Court, ruling in favour of the riders, declared that they were regular employees of Lazada. The Court applied the four-fold and economic dependence tests in determining employment relationship and concluded that “the circumstances of the whole economic activity between [the riders] and [Lazada] confirm the existence of an employer-employee relationship.” Some of the reasons are as follows: (i) the services performed by the riders are integral, *not merely incidental*, to Lazada’s business; (ii) the riders have invested in equipment to be engaged by Lazada; and (iii) the riders have been economically dependent on Lazada for their livelihood.

Because *Ditiangkin* is the first decision of the Supreme Court involving e-commerce or digital economy labour, many sectors consider it a good foundation for future labour cases on other aspects of the digital economy, such as platform work. To some extent, *Ditiangkin* has allowed the Court to articulate the aspects of the digital economy that are necessary to consider in determining employment relationships. For instance, on its business model, Lazada is “not merely a platform where parties can transact[,]” but it also “offer[s] the delivery of the items from the sellers to the buyers.”

However, while it is true that decisions of the Supreme Court become part of the Philippine legal system and may be cited as precedent in deciding future cases, *Ditiangkin* cannot be immediately imported into a future case that may involve platform work. Cases are decided on account of their particular factual circumstances and nuances. Unfortunately, after *Ditiangkin*, it is reasonable to think that platforms have already adjusted their business model and practices according to the previous ruling, which would make it more unlikely that *Ditiangkin* would find a square application in a subsequent case.

Nonetheless, *Ditiangkin* establishes a clear starting point in determining employment relationships. Unlike previous decisions, the case expressly declares that the four-fold and the economic dependence tests compose the “two-tiered test” of an employment relationship. Instead of merely applying either, the Court implies that, according to the constitutional mandate of full protection to labour, it is a must to consider both of these tests to have a full appreciation of the case at hand. Aside from the ruling on the facts of the case itself, this shift could be argued as *Ditiangkin*’s most significant contribution in charting Philippine labour law in the years to come.

Prospects of regulation

In the past few years, there have been attempts to regulate platform work. Foremost is the Department of Labor and Employment (DOLE) Labor Advisory 14, s. 2021: Working Conditions of Delivery Riders in Food Delivery and Courier Activities. The Advisory was issued on July 23, 2021 “to ensure compliance with applicable general labour standards and occupational safety and health standards and better working conditions for all delivery riders in food delivery and courier activities using digital platform.”

The Labor Advisory essentially states the obvious. For instance, “[a]ll delivery riders who are deemed employees are entitled to the [...] minimum benefits, as provided for in the Labor Code, as renumbered, and other labour laws, as may be applicable[.]” On the other hand, “[t]he terms and conditions of engagement of delivery riders who are deemed independent contractors or freelancers shall be governed by their respective contract or agreement with the digital platform company[.]”

Without any additional legal basis upon which to stand, as expected, there has been no meaningful impact on the welfare of gig workers. Observed from an administrative legal standpoint, the Labor Advisory merely clarifies existing labour regulations as to their potential applicability to the gig economy. It illustrates the respective pathways of platform workers who are recognized either as employees or as independent contractors. However, as Fairwork Philippines found, none of the platforms considered for the research recognize their workers as employees. This, in effect, negates the efficacy of the Labor Advisory.

Notwithstanding such shortcomings, the limited space within which the DOLE can move in terms of platform work is understandable. Aside from entertaining workers’ complaints on a case-to-case

basis and making DOLE’s other programs available to platform workers, there is an institutional limitation on what DOLE can do. This can be traced to the lack of any particular state policy as enacted by Congress.

With the persistent gap in gig worker protection, the Philippine Congress has made efforts to start discussions of possible regulations that could eventually be enacted into law.

A brief note must be made on House Bill No. 6718, or the Freelance Workers Protection Act, which was already approved by the House of Representatives on third reading. Some would make the proposition that the Bill applies to platform workers as defined by Fairwork (e.g. food and courier delivery riders). However, the Bill does not comprehensively consider the nuances of geographically-tethered platform work as inherently tied, managed, and controlled by platforms themselves—unlike those involving cloudwork. The exclusion of platform workers in the coverage of this Bill is further supported by the other pending House Bills that distinctly pertain to “delivery services”. At this point, while government regulation is welcomed, such regulation must be carefully and conscientiously drafted to address specific workers' concerns, and not offer one-size-fits-all measures.

In the 19th Congress (2022-2025), as of September 2023, six House Bills are currently under consideration in the House of Representatives, while seven Senate Bills are pending in the Senate. All of these Bills are pending in the respective chambers’ Committees on Labour and Employment. Annex 1 presents a table of these Bills with their respective Principal Authors. If any, these Bills serve as the starting point for any discourse on regulating platform work.

Some of the notable provisions among these Bills are (i) prohibition against advance payment, which prohibits platforms from requiring workers “to advance any monetary amount for the fulfilment of orders” and, in the case of cancelled orders, requires platforms to pay the workers “for the service fee due to them as if the transaction was successful”;⁸ (ii) reimbursement by platforms of advance payment to workers in case of cancelled orders;⁹ and (iii) customers’ valid proof of identity and residential address as requirements for registration¹⁰ or for placing an order.¹¹

Prohibited acts, which are penalized with either imprisonment or fine, or both, include (i) requiring workers to advance payment;¹² (ii) using another person’s personal information;¹³ (iii) cancellation of confirmed orders;¹⁴ (iv) placing of hoax order;¹⁵ and (v) refusal to receive unpaid order;¹⁶ and (vi) shaming, demeaning, embarrassing, or humiliating workers.¹⁷

Only Senate Bills No. 1275 and 1373 directly tackled the issue of the employment relationship between a platform and its workers.

Instead of anchoring the determination of relationship on employment, S.B. No. 1275, which was filed by Sen. Francis Tolentino, proposes a test in determining whether a platform worker is an independent contractor, based on existing tests and the concurrence of the following conditions:

- The platform does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the worker must be logged into the application;
- The platform does not require the worker to accept any specific delivery service request as a condition of maintaining access to the application;
- The platform does not restrict the worker from performing delivery services through other platforms except during engaged time; and
- The platform does not restrict the worker from working in any other lawful occupation or business.

S.B. No. 1373, which was filed by Sen. Risa Hontiveros, presents the most progressive proposal. Notably, many of the provisions are consistent with the standards of decent work forwarded by Fairwork, which the Bill itself cites in its Explanatory Note. The Bill empowers the DOLE to “issue rules for the purpose of ensuring that Online Platform Workers who would otherwise be classified as regular employees under Philippine law, are not misclassified as independent contractors, self-employed, or any other classification falling outside the ambit of an employer-employee relationship.”

Regardless of the employment status, the Bill also provides stand-alone protections and standards for platform workers. For example, the Bill entitles gig workers to (i) written agreement, or its equivalent, between the platform and the worker; (ii) equitable compensation, or “compensation not less than the minimum wage [...], computed on an hourly or per-task basis,” considering the nuances of gig work, without any unauthorized deduction; (iii) transparency in the use of algorithmic management systems; (iv) procedural due process in any decision affecting their continued engagement with the platform; (v) portability of social protection programs; and (vi) right to organize themselves for purposes of collective bargaining; (vii) occupational safety and health standards; and (viii) non-discrimination.

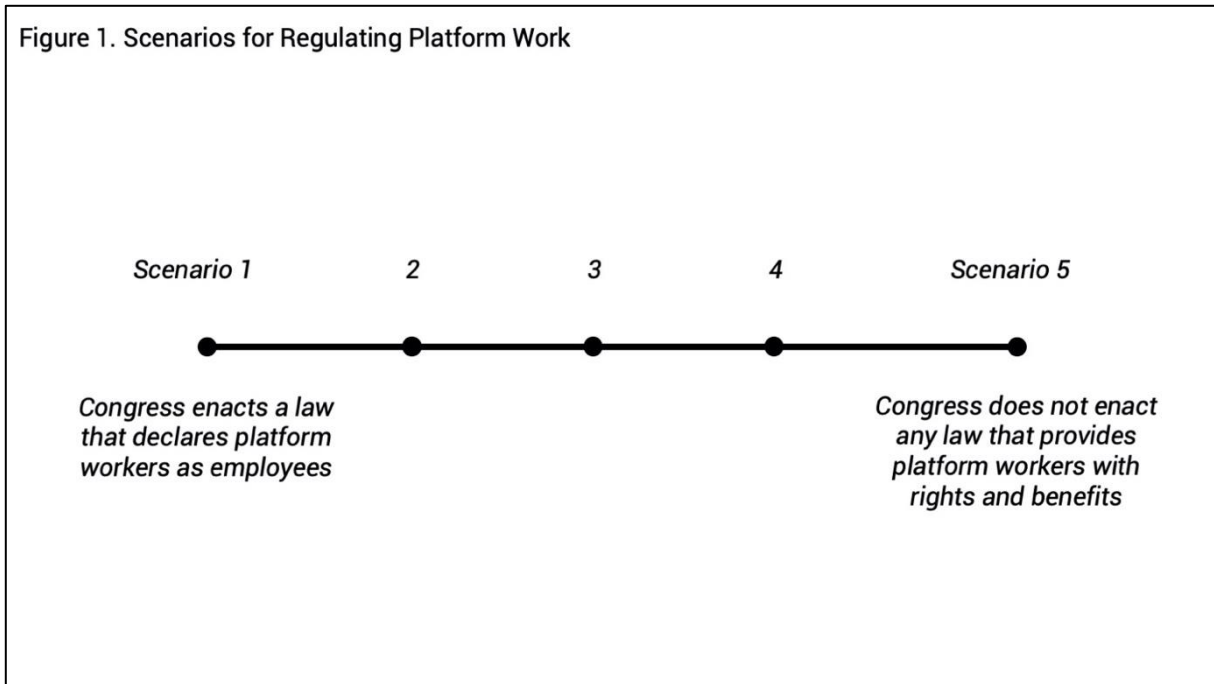
While these Bills offer viable—and, for some, innovative—solutions to problems faced by gig workers, they are still in their early stages, which means that major changes are expected as they are deliberated.

Scenarios for Regulation

At this point, the Policy Brief presents various scenarios, although not exhaustive, in regulating platform work. These include from most to the least ideal scenario within the current legal framework. Knowing the different scenarios could give a more concrete idea not only on the part of policymakers in gauging the available space for regulation, but also for advocates in strategically positioning themselves among these possibilities. See Figure 1 for an illustration of these scenarios.

Figure 1: Scenarios for Regulating Platform Work

Figure 1. Scenarios for Regulating Platform Work



For purposes of Fairwork Philippines, Scenario 1 is the most ideal, while Scenarios 2 and 3 are acceptable. However, Scenarios 4 and 5 are arguably against the Fairwork Principles and, thus, should be strongly avoided.

Scenario 1

Congress enacts a law that declares platform workers as employees.

In Scenario 1, Congress grants employment status to platform workers, as defined therein. It would necessarily result in the application of the Labor Code to platform workers, including its protections and benefits reserved for employees.

While it may be validly observed that the declaration of the existence of employment relationship usually lies with the labour tribunals and the courts, the declaration of certain workers as employees through legislation has a precedent in Article 136 of the Labor Code. The Article states that,

“Any woman who is permitted or suffered to work, with or without compensation, in any night club, cocktail lounge, massage clinic, bar or similar establishments under the effective control or supervision of the employer for a substantial period of time as determined by the Secretary of Labor and Employment, shall be considered as an employee of such establishment for purposes of labour and social legislation.”

With this, whether the provision is incorporated into the Labor Code itself through an amendment or through a separate law, the declaration of platform workers as employees is therefore possible.

This is the most ideal scenario, because it would, once and for all, clarify the unstable employment status of platform workers in favour of these workers. By congressional fiat, it is determined that categorizing platform workers as employees is the state's public policy.

Certainly, this scenario is aligned with the scenario where the Supreme Court declares platform workers as employees, after going through the appeals process from the labour tribunals to the judicial system.

However, protections granted to employees, in general, still have space for further improvement. It just occurs that these protections to employees are the most progressive in the Philippine legal system.

Scenario 2

Congress enacts a law that provides platform workers with rights and benefits equivalent to employees', without an express declaration that they are employees, without an express declaration that they are NOT employees (i.e. independent contractor or any category that precludes employment relationship), and without prejudice to a subsequent court ruling on their employment status.

In Scenario 2, Congress grants rights and benefits to platform workers that are equivalent to the rights and benefits to which employees are entitled. While there is a grant of such protections, Congress does not expressly declare that platform workers are employees. Neither does Congress expressly declare that platform workers are not employees. Lastly, Congress includes a provision in the law that such law does not preclude the finding of the labour tribunals and the Supreme Court on the platform workers' employment status.

What this scenario presents is the possibility that Congress considers platform workers equivalent to employees by way of protections, but without express declaration on the employment status.

It is key, however, that the last two clauses are reflected in this scenario: (i) that there is no express declaration that they are NOT employees (i.e. independent contractor or any category that precludes employment relationship); and (ii) that there is no prejudice to a subsequent court ruling on their employment status.

These serve as safeguards that platform workers are not relegated by Congress to a status that would pre-determine the absence of employment relationship. As a matter of principle, it would be ideal for Congress not to initiate the public policy that platform workers are not employees, and instead to leave this to the judgment of labour tribunals and courts.

This scenario is acceptable because Congress grants protections to platform workers equivalent to those received by employees. More so, it is most especially important that the window for platform workers to be subsequently declared as employees based on factual circumstances of their nature of work by labour tribunals and courts are not closed.

Scenario 3

Congress enacts a law that provides platform workers with rights and benefits not necessarily equivalent to employees', without an express declaration that they are NOT employees and without prejudice to a subsequent court ruling on their employment status.

In Scenario 3, Congress also grants rights and benefits to platform workers, but these are not equivalent to those received by employees. It also includes the clauses (i) that there is no express declaration that they are NOT employees; and (ii) that there is no prejudice to a subsequent court ruling on their employment status.

These may include the proposed interventions of some House and Senate Bills discussed in the previous section. For example, the proposed prohibition against advance payments and reimbursement by platforms of advance payment to workers in the case of cancelled orders may fall under this scenario.

This scenario is acceptable, because, to some extent, Congress grants protections to platform workers. Further, it can be considered as a stopgap measure to grant some form of protection, but not the end-all-be-all for platform workers. While it is not ideal, it is not at all detrimental to the welfare of platform workers. As similarly stated above, the window for platform workers to be subsequently declared as employees based on factual circumstances of their nature of work by labour tribunals and courts is not closed.

It is also noteworthy that this scenario also presents an opening for Congress to carefully create a framework of protections for platform workers, which could in itself be progressive, without a prior determination that these workers cannot be considered as employees later on.

Scenario 4

Congress enacts a law that provides platform workers with rights and benefits not necessarily equivalent to employees, with an express declaration that they are independent contractors or any category that precludes employment relationship.

In Scenario 4, Congress also grants rights and benefits to platform workers that are not equivalent to those received by employees. The main difference, however, between Scenarios 3 and 4 is that, in the present scenario, there is an express declaration that platform workers belong to a category of workers that preclude the finding of employment relationship by labour tribunals and courts. There is then a predetermination that platform workers are indeed independent contractors or belong to a new category crafted for platform work, which is separate and distinct from an independent contractor and an employee.

While this presents an opening to create a legal framework that could accommodate platform workers in the current legal system, the costs of precluding the finding of employment relationship outweigh the benefits of creating this new legal framework. It is the view of this Policy Brief that a public policy, through legislation, that automatically prevents the subsequent finding of employment relationship is against the interests of workers.

This scenario is not acceptable, because it closes the window for platform workers to be subsequently declared as employees based on factual circumstances of their nature of work by labour tribunals and courts. To further highlight its implications, once Congress legislates that platform workers are indeed not employees, and instead, falling under any other category of workers, then this may be used as the new basis by labour tribunals and courts in refusing to recognize the employment status in favour of platform workers. Otherwise stated, it has become public policy that platform workers are not employees.

However, the creation of a new legal framework may be resorted to if the Supreme Court rules definitively that platform workers are not employees. This should also be tempered with the principle that such a ruling for platform workers of one kind may not be squarely applied to other platform workers, because of differences in the factual circumstances.

Scenario 5

Congress does not enact any law that provides platform workers with rights and benefits.

In Scenario 5, Congress does not recognize the state's interest in protecting platform workers as a sector of Philippine labour. It would be business as usual and Congress would just let the existing legal frameworks and legal mechanisms to potentially cover platform workers, without further intervention from the state.

This scenario is not acceptable, because the government neglects the vulnerabilities experienced by a sector of labour with a substantial number of workers depending on it for livelihood and economic security. It goes without saying that this attitude toward platform work is incompatible with the contribution of the platform economy fuelled by workers that it engages in the Philippine economy.

To end, while the lack of action by Congress on regulating platform work is frowned upon, it must be emphasized that “regulation for regulation’s sake” should also be avoided at all costs. Scenario 4, as discussed above, presents the danger of regulating without contemplation whether it will in fact advance welfare and protections in platform work.

Pathways for Reform

In identifying pathways for reform in the Philippine policy and legal landscape affecting platform workers, the Fairwork Principles, namely Fair Pay, Fair Conditions, Fair Contracts, Fair Management, and Fair Representation, are used as a guide to cover various areas of platform work. See Annex 2 for a detailed description of these Fairwork Principles. See Annex 3 for the summary of pathways for reform with respect to Fairwork Principles.

These proposals would fit in Scenario 3 as discussed in the previous section. While these cover reforms both through the executive or administrative agencies and through the legislative, it must be emphasized that these proposals should be without prejudice to the employment status of platform workers (i.e. finding that they are legally considered as employees).

Fair Pay

The Fairwork principle of Fair Pay is met when “[w]orkers, irrespective of their employment classification, [...] earn a decent income in their home jurisdiction after taking account of work-related costs.” The mandated minimum wage, as well as the living wage, are considered.

A key finding in this area is that workers cannot earn minimum wage levels, after taking into account the costs of task-specific equipment and other work-related costs. Despite working for extremely long hours, workers fail to earn a take-home pay that meets minimum wage levels, which highlights the financial insecurity experienced by platform workers.

Table 1: Pathways for Reform with respect to Fair Pay

	Reform Point	Rationale
A.1	Congress to enact a law obligating platforms to ensure that workers are provided with sufficient bookings/orders in order to receive an amount equivalent to the existing minimum wage level, computed on an hourly basis, taking into account the costs of operation	<ul style="list-style-type: none"> • Minimum wage levels are key to reducing financial insecurity of platform workers • In the context of platform work, minimum wage levels must be redefined to an hourly basis (instead of the current daily basis) and to take into account the costs associated with platform work • Due to the nature of platform work, minimum wage levels can be ensured only when there are sufficient bookings provided to a worker for a certain period of time • One of the prevalent problems faced by workers, which must be addressed by platforms, is the substantial period of unpaid waiting time in between bookings • This disincentivizes platforms from engaging more than sufficient workers than what is demanded by the market
A.2	Congress to enact a law obligating platforms, should they opt to accept online modes of payment, to establish at least one (1) online payment mechanism or an e-wallet system that the workers can use in all phases of operation without additional cost	<ul style="list-style-type: none"> • Platforms offer cashless/e-wallet modes of payment to its consumers, which then requires workers to transact through these • Platform workers, however, incur additional charges or fees in cashing-in to and -out from these cashless systems on a daily basis, which further reduces income
A.3	Congress to enact a law obligating platforms to pay the amount due to workers in legal tender, except when the worker does not incur additional charges or fees if paid through an online payment mechanism or an e-wallet system	<ul style="list-style-type: none"> • Payment in legal tender ensures that the workers have autonomy in spending their income • Given the availability of online payment mechanisms, should the worker choose to receive payment through such, there must be no additional charges or fees in converting this amount to legal tender

A.4	Congress to enact a law obligating platforms to release the payment due to workers immediately upon the completion of work or service	<ul style="list-style-type: none"> • The immediate release of payment ensures that workers are not withheld of their income for a long period of time, which likewise considers that this is also used to cover for the costs of operation in platform work
A.5	Congress to enact a law applying the provisions in Book Three, Title II, Chapter IV of the Labor Code on Prohibitions Regarding Wages to platform workers	<ul style="list-style-type: none"> • The prohibitions would ensure that the payment due to platform workers are not unnecessarily reduced or interfered with by the platform

Fair Conditions

The Fairwork principle of Fair Conditions is met when “[p]latforms [...] have policies in place to protect workers from foundational risks arising from the processes of work, and [...] take proactive measures to protect and promote the health and safety of workers.”

A key finding in this area is that workers do not have a safety net when work-related deaths, accidents, injuries, or illnesses occur. They are unable to meaningfully access and rely on government-mandated social welfare benefits, if ever the need arises. As to the insurance policies extended by the platforms themselves, workers cannot effectively file for and claim insurance proceeds due to the precarity of platform work.

Table 2: Pathways for Reform with respect to Fair Conditions

	Reform Point	Rationale
B.1	Congress to enact a law obligating platforms to provide free and mandatory onboarding training and orientation to workers, which include occupational safety and health standards and procedures, prior to the start of engagement	<ul style="list-style-type: none"> • Free training for workers is essential not only for them to know their rights and obligations with respect to the platform, but most especially the health and safety precautionary measures that they need to personally uphold with respect to the nature of platform work
B.2	Congress to enact a law obligating platforms to establish an in-app emergency button accessible to workers at all times	<ul style="list-style-type: none"> • Emergencies, such as accidents, crimes, and untoward behaviour toward workers, among others, pose much risk to the health and safety of workers

		<ul style="list-style-type: none"> Workers must be provided with the necessary and working helpline to ensure that their immediate needs are addressed
B.3	Congress to enact a law obligating platforms to provide free personal protective equipment (e.g. helmet, raincoat) to workers prior to the start of engagement	<ul style="list-style-type: none"> Majority of workers shoulder the costs of personal protective equipment required for platform work, whether through up-front payment or through instalment payment, which negatively affect their long-term financial standing Baseline protective equipment serves as an added layer of protection for workers' occupational health and safety
B.4	Local government units (LGUs) to enact ordinances obligating establishments to provide free and adequate waiting areas and parking spaces for workers transacting (e.g. pick-up, drop-off) in such establishments	<ul style="list-style-type: none"> LGUs, through their legislative power, have a role in ensuring that workers in their jurisdictions have better working conditions Having designated waiting areas and parking spaces greatly contributes to workers' welfare, especially in cases of extreme heat or rainfall
B.5	Congress to enact a law obligating platforms to provide mandatory rest period after successive bookings/orders for a predetermined period of time, taking into account the detrimental effect of platform work to their health and safety	<ul style="list-style-type: none"> The health and safety of platform workers are of paramount importance. While the workers' willingness to work in order to receive greater income is respected, instituting mandatory rest periods of, for instance, fifteen (15) minutes after 2-3 hours of continuous work may prevent overexposure to the elements and unwarranted fatigue
B.6	Social Security Commission to issue rules and regulations expressly referring to platform workers as compulsorily covered by the SSS	<ul style="list-style-type: none"> The non-recognition by platforms of workers as employees shall not be a reason for precluding registration of the workers with the SSS SSS is one of the key social safety nets available to Filipino workers In the current framework, platform workers may register as self-employed with the SSS. However,

		such registration shall be without prejudice to the later finding on their employment status
B.7	Social Security Commission to adopt a special social security program for platform workers taking into consideration their “unique economic, social and geographic situations”	<ul style="list-style-type: none"> • Section 4 (a) (10) of R.A. No. 11199, or the Social Security Act of 2018, gives authority to the SSC to adopt a special social security program • Given the nature of platform work, the social security program must take into consideration the absence of counterpart contribution on the part of the employer, unless there is a subsequent recognition that platforms are indeed the workers’ employer, and the costs of operation • The special social security program must not further increase the financial burden and insecurity of platform workers
B.8	Congress to enact a law allowing platform workers who are compulsorily covered by the SSS to avail of unemployment insurance	<ul style="list-style-type: none"> • The non-recognition by platforms of workers as employees shall not be a reason for precluding workers’ access to unemployment insurance • There can be different conditions before a platform worker can access unemployment insurance • However, such access, as distinct from those regularly employed, shall be without prejudice to the later finding on the platform workers’ employment status
B.9	PhilHealth to issue rules and regulations permitting the proof of income required in determining the income level for PhilHealth contribution of self-earning individuals to take into account the costs of operation in platform work	<ul style="list-style-type: none"> • The non-recognition by platforms of workers as employees shall not be a reason for precluding meaningful access of the workers to PhilHealth • PhilHealth is one of the key social safety nets available to Filipino workers • In the current framework, platform workers may register as self-earning individuals with PhilHealth. However, such registration shall be without prejudice to the later finding on their employment status

		<ul style="list-style-type: none"> Given the nature of platform work, the PhilHealth must take into consideration the absence of counterpart contribution on the part of the employer, unless there is a subsequent recognition that platforms are indeed the workers' employer, and the costs of operation
B.10	<p>Congress to enact a law obligating platforms to require from workers, as an initial qualification for engagement, the registration in government-mandated social services, such as SSS, PhilHealth, and PAGIBIG, among others</p>	<ul style="list-style-type: none"> Platforms must be responsible in engaging workers While platforms continue to not recognize employment relationship between them and their workers, they should ensure that their workers are registered in government-mandated social services This may add another layer of social protection that the workers may access when needed However, the monthly contributions to such services remain to be a challenge without the counterpart contributions on the part of the platforms
B.11	<p>Insurance Commission to issue rules and regulations prescribing a set of baseline terms and conditions in insurance policies offered to workers, taking into account the nature of platform work</p>	<ul style="list-style-type: none"> Current experiences of workers point to the failure to file insurance claims due to lack of clear knowledge of the terms and unreasonably short period to file claims Given the nature of platform work, the terms and conditions of insurance policies offered particularly to platform workers as well as the processes for filing a claim must be responsive to their realities

Fair Contracts

The Fairwork principle of Fair Contracts is met when “[t]erms and conditions [are] accessible, readable and comprehensible”, when “[t]he party contracting with the worker [is] subject to local law and must be identified in the contract”, and when “[r]egardless of the workers’ employment status,

the contract is free of clauses which unreasonably exclude liability on the part of the service user and/or the platform.”

A key finding in this area is that workers are not provided with contracts or terms and conditions in a language or dialect understood by them. Nor do these documents, often couched in legalese, clearly state the rights or benefits due to the workers. Changes made to the work agreements that can affect pay or working conditions were also not announced within a reasonable timeframe before implementation. It is also common for most platforms to include contractual stipulations that absolutely exempt them from any liability arising from the different phases of platform work.

Table 3: Pathways for Reform with respect to Fair Contracts

	Reform Point	Rationale
C.1	Congress to enact a law obligating platforms to execute a contract, with required areas of stipulations (e.g. duties/responsibilities and rights/benefits of the worker), with workers before the commencement of the service in a language or dialect understood by the worker	<ul style="list-style-type: none"> • A contract with clear terms and conditions in a language understandable to the platform workers is essential in decent work • This is akin to the required contract in Section 11 of R.A. No. 10361, or Batas Kasambahay • The Department of Labor and Employment (DOLE) shall develop a model contract
C.2	National Privacy Commission to issue rules and regulations prescribing data privacy and protection policy specifically tailored for platform work	<ul style="list-style-type: none"> • Given the prevalence of data-sharing in platform work, an ethical data privacy policy that protects platforms, consumers, and workers is essential • Workers must not unnecessarily compromise their data privacy in order to engage in platform work
C.3	Congress to enact a law obligating platforms to comply with the principle of non-diminution of workers’ benefits, unless sufficient notice is provided to workers	<ul style="list-style-type: none"> • Once workers are engaged by platforms, workers should not be at the receiving end of any changes in benefits, especially their reduction, that the platform wishes to implement • For example, platforms cannot unilaterally reduce the rates per kilometer ought to be received by the workers; platforms cannot unilaterally increase the commission due to them that would result in the reduction of overall earnings or rates ought to be received by the workers

		<ul style="list-style-type: none"> • This is consistent with the principle of non-diminution of benefits in Philippine labour law
C.4	Congress to enact a law declaring contractual stipulations that tend to absolutely exclude platforms from liability as void for being against public policy	<ul style="list-style-type: none"> • Provisions absolutely exempting platforms from liability and unreasonably shifting liability to workers are against decent work

Fair Management

The Fairwork principle of Fair Management is met when there is “a documented process through which workers can be heard, can appeal decisions affecting them, and be informed of the reasons behind those decisions.” Further, there should also be transparency in the use of algorithms and an equitable management of workers, which includes hiring, disciplining, and firing of workers.

A key finding in this area is that workers are not provided with clear processes, if any, in appealing decisions such as deactivation or access restriction. This results in a situation where workers are left unheard and without sufficient recourse, which leads to a sudden loss of income source.

Table 4: Pathways for Reform with respect to Fair Management

	Reform Point	Rationale
D.1	Congress to enact a law obligating platforms to implement procedural due process in disciplining workers	<ul style="list-style-type: none"> • Procedural due process (e.g. written notice to and ample opportunity to be heard for workers) is one of the essential protections provided to workers in Philippine law • While substantive and procedural due process as an implement of the right to security of tenure is currently reserved for employees, procedural due process must likewise be implemented to platform workers to not unduly deprive them of opportunity to stay engaged in the platform
D.2	Department of Labor and Employment to issue rules and regulations prescribing the procedure for settlement of disputes arising from platform work	<ul style="list-style-type: none"> • Clear procedure in settling disputes arising from platform work would give a platform and incentivize workers in enforcing their rights

D.3	Philippine Mediation Center to issue rules and regulations prescribing the procedure for mediation in disputes arising from platform work, in cases where the employment relationship has been declared with finality to be absent	<ul style="list-style-type: none"> • Clear procedure in settling disputes arising from platform work would give a platform and incentivize workers in enforcing their rights
D.4	Office for Alternative Dispute Resolution, Department of Justice to issue rules and regulations prescribing the procedure for alternative dispute resolution in disputes arising from platform work, in cases where the employment relationship has been declared with finality to be absent	<ul style="list-style-type: none"> • Clear procedure in settling disputes arising from platform work would give a platform and incentivize workers in enforcing their rights
D.5	Congress to enact a law obligating platforms to establish an anti-discrimination policy	<ul style="list-style-type: none"> • To prevent discrimination in platform work, an anti-discrimination policy that protects platforms, consumers, and workers is essential • Workers must not unnecessarily subject themselves to discrimination in order to engage in platform work
D.6	Congress to enact a law obligating platforms to publish the algorithm/s used, which include the factors considered therein, in determining the allocation of bookings/orders to workers	<ul style="list-style-type: none"> • There is information asymmetry and gap on the algorithms used by platforms in deciding the quantity (number) and quality (prices) of bookings/orders that workers receive • Stakeholders, which include workers themselves, consumers, competitors, and government, are not aware of how bookings/orders are allocated and what factors (e.g. review/feedback rating of workers) are taken into consideration • Transparency in the algorithms deter discriminatory practices in the management systems

D.7	Philippine Commission for Women to formulate an anti-discrimination policy with respect to women in platform work	<ul style="list-style-type: none"> • Most platform work are not as accessible to women as compared to men • Responsible government agencies should spearhead the crafting of anti-discrimination policy that would protect the marginalized sector that they are mandated to serve
D.8	National Council on Disability Affairs to formulate an anti-discrimination policy with respect to persons with disabilities in platform work	<ul style="list-style-type: none"> • Most platform work are not accessible to persons with disabilities given the precarious nature of work • Responsible government agencies should spearhead the crafting of anti-discrimination policy that would protect the marginalized sector that they are mandated to serve

Fair Representation

The Fairwork principle of Fair Representation is met when “[p]latforms [...] provide a documented process through which worker voice can be expressed. Irrespective of their employment classification, workers [...] have the right to organise in collective bodies, and platforms [are] prepared to cooperate and negotiate with them.”

A key finding in this area is that workers’ freedom of association and expression of collective worker voice were not expressly recognized by platforms. Some platforms even discriminate against or penalize workers who take active roles in labour organizations.

Table 5: Pathways for Reform with respect to Fair Representation

	Reform Point	Rationale
E.1	Congress to enact a law penalizing platforms that tend to undermine or restrict the workers’ right to self-organization and right to association	<ul style="list-style-type: none"> • The right to self-organization is a constitutional right of workers, which must be upheld regardless of work • Platforms should be prohibited, with penal and administrative consequences, from instituting policies or implementing practices that tend to discourage or limit the workers’ participation in duly organized labour organizations • For example, platforms cannot suspend workers or decrease bookings received by workers who have been participating in labour organizations

E.2	Department of Labor and Employment to issue rules and regulations prescribing the registration requirements of legitimate labour organizations for platform workers	<ul style="list-style-type: none"> • The procedure in forming legitimate labour organizations for platform workers must be prescribed by the DOLE • This is essential in empowering the workers to act collectively whether for the purposes of mutual aid, education, or advocacy
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Fairwork Philippines 2023 Team

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Annex 1: Congressional Bills on Platform Work, 19th Congress

	House Bill Number and Short Title	Principal Author
1	H.B. No. 3784 – Food, Grocery, and Pharmacy Delivery Services Protection Act	Rep. Ivan Howard Guintu
2	H.B. No. 4393 – Food and Grocery Delivery Services Protection Act	Rep. Gus Tambunting
3	H.B. No. 5467 – Delivery Riders Protection	Rep. Ernesto Dionisio, Jr.
4	H.B. No. 7192 – Food and Delivery Services Protection Act	Rep. Edwin Olivarez
5	H.B. No. 7274 – Delivery Providers Protection Act	Rep. Aniela Bianca Tolentino
6	H.B. No. 8207 – Delivery Riders Protection Act	Rep. Gus Tambunting

All House Bills are pending in the House Committee on Labour and Employment.

	Senate Bill Number and Short Title	Principal Author
1	S.B. No. 38 – Food, Grocery, and Pharmacy Delivery Services Protection Act	Sen. Lito Lapid
2	S.B. No. 977 – Food, Grocery, and Pharmacy Delivery Services Protection Act	Sen. Aquilino Pimentel III
3	S.B. No. 1184 – Food, Grocery, and Pharmacy Delivery Services Protection Act of 2022	Sen. Christopher Lawrence Go
4	S.B. No. 1234 – Delivery Riders Protection Act	Sen. Joseph Victor Ejercito
5	S.B. No. 1275 – Delivery Platform Riders Protection Act of 2022	Sen. Francis Tolentino
6	S.B. No. 1373 – Protektadong Online Workers, Entrepreneurs, Riders at Raketara (“POWER”) Act of 2022	Sen. Risa Hontiveros
7	S.B. No. 1385 – Delivery Services Protection Act	Sen. Robinhood Padilla

All Senate Bills are pending in the Senate Committee on Labour and Employment.

Annex 2: Fairwork Principles

Principle 1: Fair Pay

1.1 – Ensures workers earn at least the local minimum wage after costs (one point)

Platform workers often have substantial work-related costs to cover, such as transport between jobs, supplies, or fuel, insurance, and maintenance on a vehicle. Workers' costs sometimes mean their take-home earnings may fall below the local minimum wage. Workers also absorb the costs of extra time commitment, when they spend time waiting or travelling between jobs, or other unpaid activities necessary for their work, such as mandatory training, which are also considered active hours. To achieve this point platforms must ensure that work-related costs do not push workers below local minimum wage.

The platform takes appropriate steps to ensure both of the following:

- Payment must be on time and in-full.
- Workers earn at least the local minimum wage, or the wage set by collective sectoral agreement (whichever is higher) in the place where they work, in their active hours, after costs.

1.2 – Ensures workers earn at least a local living wage after costs (one additional point)

In some places, the minimum wage is not enough to allow workers to afford a basic but decent standard of living. To achieve this point platforms must ensure that work-related costs do not push workers below local living wage.

The platform takes appropriate steps to ensure the following:

- Workers earn at least a local living wage, or the wage set by collective sectoral agreement (whichever is higher) in the place where they work, in their active hours, after costs.

Principle 2: Fair Conditions

2.1 – Mitigates task-specific risks (one point)

Platform workers may encounter a number of risks in the course of their work, including accidents and injuries, harmful materials, and crime and violence. To achieve this point platforms must show that they are aware of these risks and take basic steps to mitigate them.

The platform must satisfy the following:

- Adequate equipment and training are provided to protect workers' health and safety from task-specific risks. These should be implemented at no additional cost to the worker.
- The platform mitigates the risks of lone working by providing adequate support and designing processes with occupational safety and health in mind.

2.2 – Ensures safe working conditions and a safety net (one additional point)

Platform workers are vulnerable to the possibility of abruptly losing their income as a result of unexpected or external circumstances, such as sickness or injury. Most countries provide a social safety net to ensure workers don't experience sudden poverty due to circumstances outside their control. However, platform workers usually don't qualify for protections such as sick pay, because of their independent contractor status. In recognition of the fact that most workers are dependent on the income they earn from platform work, platforms should ensure that workers are compensated for the loss of income due to their inability to work. In addition, platforms must minimise the risk of sickness and injury even when all the basic steps have been taken.

The platform must satisfy ALL of the following:

- Platforms take meaningful steps to ensure that workers do not suffer significant costs as a result of accident, injury or disease resulting from work.
- Workers should be compensated for income loss due to inability to work commensurate with the worker's average earnings over the past three months.
- Where workers are unable to work for an extended period due to unexpected circumstances, their standing on the platform is not negatively impacted.
- The platform implements policies or practices that protect workers' safety from task-specific risks. In particular, the platform should ensure that pay is not structured in a way that incentivizes workers to take excessive levels of risk.

Principle 3: Fair Contracts

3.1 – Provides clear and transparent terms and conditions (one point)

The terms and conditions governing platform work are not always clear and accessible to workers.³⁸ To achieve this point, the platform must demonstrate that workers are able to understand, agree to,

and access the conditions of their work at all times and that they have legal recourse if the other party breaches those conditions.

The platform must satisfy ALL of the following:

- The party contracting with the worker must be identified in the contract, and subject to the law of the place in which the worker works.
- The contract/terms & conditions are presented in full in clear and comprehensible language that all workers could be expected to understand.
- Workers have to sign a contract and/or give informed consent to terms of conditions upon signing up for the platform.
- The contracts/terms and conditions are easily accessible to workers in paper form, or via the app/platform interface at all times.
- Contracts/terms & conditions do not include clauses that revert prevailing legal frameworks in the respective countries.
- Platforms take adequate, responsible and ethical data protection and management measures, laid out in a documented policy.

3.2 – Ensures that no unfair contract terms are imposed (one additional point)

In some cases, especially under “independent contractor” classifications, workers carry a disproportionate amount of risk for engaging in a contract with the service user. They may be liable for any damage arising in the course of their work, and they may be prevented by unfair clauses from seeking legal redress for grievances. To achieve this point, platforms must demonstrate that risks and liability of engaging in the work is shared between parties.

Regardless of how the contractual status of the worker is classified, the platform must satisfy ALL of the following:

- Every worker is notified of proposed changes in clear and understandable language within a reasonable timeframe before changes come into effect; and the changes should not reverse existing accrued benefits and reasonable expectations on which workers have relied.
- The contract/terms and conditions neither include clauses which exclude liability for negligence nor unreasonably exempt the platform from liability for working conditions. The platform takes appropriate steps to ensure that the contract does not include clauses which

prevent workers from effectively seeking redress for grievances which arise from the working relationship.

- In case platform labour is mediated by subcontractors: The platform implements a reliable mechanism to monitor and ensure that the subcontractor is living up to the standards expected from the platform itself regarding working conditions.
- In cases where there is dynamic pricing used for services, the data collected and calculations used to allocate payment must be transparent and documented in a form available to workers.

Principle 4: Fair Management

4.1 – Provides due process for decisions affecting workers (one point)

Platform workers can experience arbitrary deactivation; being barred from accessing the platform without explanation, and potentially losing their income. Workers may be subject to other penalties or disciplinary decisions without the ability to contact the service user or the platform to challenge or appeal them if they believe they are unfair. To achieve this point, platforms must demonstrate an avenue for workers to meaningfully appeal disciplinary actions.

The platform must satisfy ALL of the following:

- There is an easily accessible channel for workers to communicate with a human representative of the platform and to effectively solve problems. This channel is documented in the contract and available on the platform interface. Platforms should respond to workers within a reasonable timeframe. There is a process for workers to meaningfully and effectively appeal low ratings, non-payment, payment issues, deactivations, and other penalties and disciplinary actions. This process is documented in a contract and available on the platform interface.
- In the case of deactivations, the appeals process must be available to workers who no longer have access to the platform.
- Workers are not disadvantaged for voicing concerns or appealing disciplinary actions.

4.2 – Provides equity in the management process (one additional point)

The majority of platforms do not actively discriminate against particular groups of workers. However, they may inadvertently exacerbate already existing inequalities in their design and management. For example, there is a lot of gender segregation between different types of platform work. To achieve this

point, platforms must show not only that they have policies against discrimination, but also that they seek to remove barriers for disadvantaged groups, and promote inclusion.

Platforms must satisfy ALL of the following:

- The platform has an effective anti-discrimination policy laying out a clear process for reporting, correcting and penalising discrimination of workers on the platform on grounds such as race, social origin, caste, ethnicity, nationality, gender, sex, gender identity and expression, sexual orientation, disability, religion or belief, age or any other status.⁴⁰
- The platform has measures in place to promote diversity, equality and inclusion on the platform. It takes practical measures to promote equality of opportunity for workers from disadvantaged groups, including reasonable accommodation for pregnancy, disability, and religion or belief.
- Where persons from a disadvantaged group (such as women) are significantly under-represented among a pool of workers, it seeks to identify and remove barriers to access by persons from that group.
- If algorithms are used to determine access to work or remuneration or the type of work and pay scales available to workers seeking to use the platform, these are transparent and do not result in inequitable outcomes for workers from historically or currently disadvantaged groups.
- It has mechanisms to reduce the risk of users discriminating against workers from disadvantaged groups in accessing and carrying out work.

Principle 5: Fair Representation

5.1 – Assures freedom of association and the expression of worker voice (one point)

Freedom of association is a fundamental right for all workers and enshrined in the constitution of the International Labour Organisation, and the Universal Declaration of Human Rights. The right for workers to organise, collectively express their wishes—and importantly—be listened to, is an important prerequisite for fair working conditions. However, rates of organisation amongst platform workers remain low. To achieve this point, platforms must ensure that the conditions are in place to encourage the expression of collective worker voice.

Platforms must satisfy ALL of the following:

- There is a documented mechanism for the expression of collective worker voice that allows ALL workers, regardless of employment status, to participate without risks.
- There is a formal, written statement of willingness to recognise, and bargain with, a collective, independent body of workers or trade union, that is clearly communicated to all workers, and available on the platform interface.
- Freedom of association is not inhibited, and workers are not disadvantaged in any way for communicating their concerns, wishes and demands to the platform, or expressing willingness to form independent collective bodies of representation.

5.2 – Supports democratic governance (one additional point)

While rates of organisation remain low, platform workers’ associations are emerging in many sectors and countries. We are also seeing a growing number of cooperative worker- owned platforms. To realise fair representation, workers must have a say in the conditions of their work. This could be through a democratically governed cooperative model, a formally recognised union, or the ability to undertake collective bargaining with the platform.

The platform must satisfy at least ONE of the following:

1. Workers play a meaningful role in governing it.
2. In a written document available at all times on the platform interface, the platform publicly and formally recognises an independent collective body of workers, an elected works council, or trade union. This recognition is not exclusive and, when the legal framework allows, the platform should recognise any significant collective body seeking representation.

Annex 3: Summary of Pathways for Reform with respect to Fairwork

Principles

Fairwork Principle		Reform Point	Responsible Institution
A. FAIR PAY	A.1	Enact a law obligating platforms to ensure that workers are provided with sufficient bookings/orders in order to receive an amount equivalent to the existing minimum wage level, computed on an hourly basis, taking into account the costs of operation	Congress

	A.2	Enact a law obligating platforms, should they opt to accept online modes of payment, to establish at least one (1) online payment mechanism or an e-wallet system that the workers can use in all phases of operation without additional cost	Congress
	A.3	Enact a law obligating platforms to pay the amount due to workers in legal tender, except when the worker does not incur additional charges or fees if paid through an online payment mechanism or an e-wallet system	Congress
	A.4	Enact a law obligating platforms to release the payment due to workers immediately upon the completion of work or service	Congress
	A.5	Enact a law applying the provisions in Book Three, Title II, Chapter IV of the Labor Code on Prohibitions Regarding Wages to platform workers	Congress
B. FAIR CONDITIONS	B.1	Enact a law obligating platforms to provide free and mandatory onboarding training and orientation to workers, which include occupational safety and health standards and procedures, prior to start of engagement	Congress
	B.2	Enact a law obligating platforms to establish an in-app emergency button accessible to workers at all times	Congress
	B.3	Enact a law obligating platforms to provide free personal protective equipment (e.g. helmet, raincoat) to workers prior to start of engagement	Congress
	B.4	Enact ordinances obligating establishments to provide free and adequate waiting areas and parking spaces for workers transacting (e.g. pick-up, drop-off) in such establishments	Local government units (LGUs)
	B.5	Enact a law obligating platforms to provide mandatory rest period after successive bookings/orders for a predetermined period of time, taking into account the detrimental effect of platform work to their health and safety	Congress

	B.6	Issue rules and regulations expressly referring to platform workers as compulsorily covered by the SSS	Social Security Commission
	B.7	Adopt a special social security program for platform workers taking into consideration their “unique economic, social and geographic situations”	Social Security Commission
	B.8	Enact a law allowing platform workers who are compulsorily covered by the SSS to avail of unemployment insurance	Congress
	B.9	Issue rules and regulations permitting the proof of income required in determining the income level for PhilHealth contribution of self-earning individuals to take into account the costs of operation in platform work	PhilHealth
	B.10	Enact a law obligating platforms to require from workers, as an initial qualification for engagement, the registration in government-mandated social services, such as SSS, PhilHealth, and PAGIBIG, among others	Congress
	B.11	Issue rules and regulations prescribing a set of baseline terms and conditions in insurance policies offered to workers, taking into account the nature of platform work	Insurance Commission
C. FAIR CONTRACTS	C.1	Enact a law obligating platforms to execute a contract, with required areas of stipulations (e.g. duties/responsibilities and rights/benefits of the worker), with workers before the commencement of the service in a language or dialect understood by the worker	Congress
	C.2	Issue rules and regulations prescribing data privacy and protection policy specifically tailored for platform work	National Privacy Commission
	C.3	Enact a law obligating platforms to comply with the principle of non-diminution of workers’ benefits, unless sufficient notice is provided to workers	Congress
	C.4	Enact a law declaring contractual stipulations that tend to absolutely exclude platforms from liability as void for being against public policy	Congress

D. FAIR MANAGEMENT	D.1	Enact a law obligating platforms to comply with procedural due process in disciplining workers	Congress
	D.2	Issue rules and regulations prescribing the procedure for settlement of disputes arising from platform work	Department of Labor and Employment
	D.3	Issue rules and regulations prescribing the procedure for mediation in disputes arising from platform work, in cases where the employment relationship has been declared with finality to be absent	Philippine Mediation Center
	D.4	Issue rules and regulations prescribing the procedure for alternative dispute resolution in disputes arising from platform work, in cases where the employment relationship has been declared with finality to be absent	Office for Alternative Dispute Resolution, Department of Justice
	D.5	Enact a law obligating platforms to establish an anti-discrimination policy	Congress
	D.6	Enact a law obligating platforms to publish the algorithm/s used, which include the factors considered therein, in determining the allocation of bookings/orders to workers	Congress
	D.7	Formulate an anti-discrimination policy with respect to women in platform work	Philippine Commission for Women
	D.8	Formulate an anti-discrimination policy with respect to persons with disabilities in platform work	National Council on Disability Affairs
E. FAIR REPRESENTATION	E.1	Enact a law penalizing platforms that tend to undermine or restrict the workers' right to self-organization and right to association	Congress
	E.2	Issue rules and regulations prescribing the registration requirements of legitimate labour organizations for platform workers	Department of Labor and Employment

Endnotes

¹ A portion of this Section was initially included in *Fairwork Philippines Ratings 2023: Worker Health, Safety, and Security*.

² Monsod, Christian S. 2014. "Social Justice." *Ateneo Law Journal* 59 (3): 691-722.

³ 1987 Constitution, Art. XIII, Sec. 1.

⁴ 1987 Constitution, Art. XIII, Sec. 3.

⁵ *Ibid.*

⁶ The Supreme Court has clarified that "[t]he power of control does not have to be actually exercised by the employer. It is sufficient that the employer has a right to wield the power."

⁷ The Supreme Court, in *Francisco vs. National Labor Relations Commission*, enumerates the such factors as follows: "Thus, the determination of the relationship between employer and employee depends upon the circumstances of the whole economic activity, such as: (1) the extent to which the services performed are an integral part of the employer's business; (2) the extent of the worker's investment in equipment and facilities; (3) the nature and degree of control exercised by the employer; (4) the worker's opportunity for profit and loss; (5) the amount of initiative, skill, judgment or foresight required for the success of the claimed independent enterprise; (6) the permanency and duration of the relationship between the worker and the employer; and (7) the degree of dependency of the worker upon the employer for his continued employment in that line of business."

⁸ H.B. No. 3784, 5467, 7274, 8207. S.B. No. 38, 977, 1184, 1234, 1385.

⁹ H.B. No. 4393, 7192.

¹⁰ H.B. No. 3784, 4393, 5467, 7274, 8207. S.B. No. 38, 977, 1184, 1234, 1385.

¹¹ H.B. No. 7192.

¹² H.B. No. 3784, 5467, 7274, 8207. S.B. No. 38, 977, 1184, 1234, 1385. In addition, the business licenses and permits of the violating platform shall be revoked.

¹³ H.B. No. 3784, 5467, 7274, 8207. S.B. No. 38, 977, 1184, 1234, 1385.

¹⁴ H.B. No. 3784, 4393, 5467, 7192, 7274, 8207. S.B. No. 38, 977, 1184, 1234, 1385. H.B. No. 4393 and H.B. No. 7192 recognize exceptions from the prohibited cancellation of confirmed orders, such as when the customer uses credit card services as a mode of reimbursement and payment, which will still be credited to the platform notwithstanding the cancellation; the customer remits to the platform any such reimbursement and payment as a pre-condition for the cancellation of the order; the delivery will be or was delayed for at least one (1) hour from the expected time of arrival.

¹⁵ H.B. No. 3784, 5467, 7274, 8207. S.B. No. 38, 977, 1184, 1234, 1385.

¹⁶ H.B. No. 3784, 5467, 7274, 8207. S.B. No. 38, 977, 1184, 1234, 1385.

¹⁷ H.B. No. 4393 and H.B. No. 7192.



A collaboration between



Fairwork is an action-research project coordinated by the Oxford Internet Institute and the WZB Berlin Social Science Center. Through a global network of researchers, Fairwork evaluates the working conditions on digital platforms and ranks them based on five principles of fair work. Fairwork collaborates closely with workers, platforms, advocates, and policymakers to envision and build a fairer future of work.

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