

# Fairwork Germany Ratings 2020: Labour Standards in the Platform Economy

## Editorial

As the COVID-19 virus spreads rapidly across the world, many countries are enforcing far-reaching curfews or lockdowns, and closing state borders to contain it. Meanwhile, local shops and supermarkets have become sites of contagion. Platform workers have found themselves at the frontlines of this global health crisis.<sup>1,2</sup> For example, some deliver food to those self-isolating or quarantined, whilst others provide care and other essential services to those in need. Together with other essential workers, they make it possible for the population to access basic needs from the comfort and safety of their homes. But at what risk to themselves?

Many platform workers—especially those who are self-employed—do not have adequate health and safety protections, access to sick pay, or other forms of financial support in the case that they are unable to work. This pandemic has shone a light on the fundamental role platform workers play in our lives, while at the same time highlighting the extreme insecurity of their work arrangements. But not all platforms are the same. Labour standards in the platform economy vary a great deal from platform to platform, and from country to country. Therefore, it is ever more important to assess labour standards of different platforms in order to establish a fairer platform economy in Germany.

After launching in India and South Africa last year, in 2020 the Fairwork project has expanded its research activities to Germany. As set out in this report, the Department of Entrepreneurship and Innovation Management (EIM) at the Technical University of Berlin (TUB), together with the Oxford Internet Institute (OII) at the University of Oxford, are now implementing the Fairwork rating scheme in Germany. In collaboration with other research partners, the model is also being operationalised in Brazil, Chile, Ecuador, Indonesia and the UK. We are particularly grateful for the support of the Wissenschaftszentrum Berlin (WZB) and the Weizenbaum Institute for the Networked Society in implementing Fairwork Germany. Fairwork Germany has been endorsed by Elke Breitenbach, Berlin's Senator for

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1 This report's focus is limited to digital platforms that mediate transactions of labour, and therefore does not include platforms such as Airbnb or eBay where goods are exchanged. Digital labour platforms are of two broad types. In the first, i.e. 'geographically-tethered' platforms, the work is required to be done in a particular location, e.g. delivering food from a restaurant to an apartment, or driving a person from one part of town to another. In contrast, in the second (i.e. in cloudwork platforms) the work can, in theory, be performed from anywhere (e.g. data categorisation or online freelancing). In this report, we focus only on the first category.

2 In this report, we use 'platform worker' to refer to people who find work through geographically-tethered digital labour platforms, regardless of their employment status (e.g. employees or independent contractors).

Integration, Labour and Social Services,<sup>3</sup> and is included in the Federal Government's Digital Implementation Strategy.<sup>4</sup>

Fairwork Germany aims to shed light on the working conditions of platform workers and make practical suggestions for improving them. The analysis we present in this report is founded upon five core principles of fair platform work: Fair Pay, Fair Conditions, Fair Contracts, Fair Management, and Fair Representation. Each principle is divided into two thresholds. We award scores out of ten to a platform based on whether they meet the basic threshold (1 point) and then achieve the higher threshold (1 additional point) for each of these five principles. The first two principles concern whether workers receive a fair pay for their work and if their jobs are characterised by healthy and safe working conditions. The three others focus on whether the platform has engaged in a fair contractual agreement with the workers; whether there are clear and transparent management processes and communication channels; and whether workers are able to express themselves collectively through open worker representation.

We assessed evidence against each of these Fairwork principles through a combination of desk research, worker interviews in Berlin, and semi-structured interviews with platform managers. We acknowledge that, due to the dynamic nature of the platform economy and data confidentiality, reliable information may be difficult to obtain. We therefore only award a point when there is clear and sufficient evidence that supports a principle. In other words, our research strategy is not based on the principle of voluntary participation by platforms.

Our findings indicate that Germany's relatively stringent labour regulations provide some protections for workers, but do not always translate into fairer working conditions in the platform economy. This discrepancy is perhaps not surprising, given that in recent years, the German labour market has increasingly relied on low-wage, casual and migrant labour; partly undermining the historically strong labour regulations framework.

With Germany moving towards the Fourth Industrial Revolution at full speed, it is crucial that we safeguard important protections for all workers. The range in Fairwork scores across German platforms is proof that very different models of work are possible within the platform economy. Crucially, this points to pathways for effective regulation, and provides a basis from which collective bodies of workers can formulate their demands. Our hope is that workers, consumers, regulators and companies use the Fairwork framework and ratings to imagine, and realise, a fairer German platform economy.

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3 Boehme, J. (2020, January). Hauptstadt der Gig Economy. Berliner MietGemeinschaft, MieterEcho 407. <https://www.bmgev.de/mieterecho/archiv/2020/me-single/article/hauptstadt-der-gig-economy/>

4 Die Bundesregierung. (2019, October). Umsetzungsstrategie Digitalisierung. <https://www.bundesregierung.de/breg-de/themen/digital-made-in-de/foerderung-der-digitalwirtschaft-in-entwicklungslaendern-1547022>

# The Fairwork Framework

The Fairwork project evaluates the working conditions of digital platforms and ranks them on how well they do. Our goal is to show that better, and fairer, jobs are possible in the platform economy.

To do this, we use five principles that digital platforms should comply with in order to be considered to be offering ‘fair work’. We evaluate platforms against these principles to show not only what the platform economy is, but also what it should be.

The five Fairwork principles were initially developed at a multi-stakeholder workshop at the International Labour Organisation. We then held follow up workshops for local stakeholders in Berlin, Bangalore, Cape Town, and Johannesburg. Our Berlin workshops were held in collaboration with the Weizenbaum Institute in May 2019. Attendees represented a variety of key stakeholders, including Berlin's Senate Department for Labour and Social Affairs, the Federal Ministry of Labour and Social Affairs, and the German Trade Union Confederation (DGB). These workshops and our follow-up conversations with platform workers, platforms, trade unions, regulators, academics, and labour lawyers allowed us to revise and fine-tune the principles, and ensure that they were applicable to the German context.

Further details on the thresholds for each principle, and the criteria used to assess the collected evidence to score platforms, can be found in the Appendix.

## ***The Five Fairwork Principles***

### **1. Fair Pay**

Workers, irrespective of their employment classification, should earn a decent income in their home jurisdiction after taking account of work-related costs.

### **2. Fair Conditions**

Platforms should have policies in place to protect workers from risks arising from the processes of work, and should take proactive measures to protect and promote the health and safety of workers.

### **3. Fair Contracts**

Terms and conditions should be transparent, concise, and provided to workers in an accessible form. If workers are genuinely self-employed, terms of service are free of clauses which unreasonably exclude liability on the part of the platform.

### **4. Fair Management**

There should be a documented process through which workers can be heard, can appeal decisions affecting them, and be informed of the reasons behind those decisions. There must be a clear channel of communication to workers involving the ability to appeal management decisions or deactivation. The use of algorithms is transparent and results in equitable outcomes for workers. There should be an identifiable and documented policy that ensures equity in the way workers are managed on a platform.

## **5. Fair Representation**

Platforms should provide a documented process through which worker voice can be expressed. Irrespective of their employment classification, workers should have the right to organise in collective bodies, and platforms should be prepared to cooperate and negotiate with them.

## ***Methodology Overview***

The Fairwork project uses three approaches to effectively measure fairness at work.

### **Desk Research**

The process starts with desk research to ascertain which platforms are operating in each city, as well as noting the largest and most influential ones. In Germany, we focused on platforms operating in Berlin. This research provides the overall range of the platforms that are ranked, as well as identifying points of contact or ways to access workers. Desk research also flags up any public information that could be used to score particular platforms (for instance the provision of particular services to workers, or ongoing disputes).

### **Platform Interviews**

The second method involves approaching platforms for evidence. We interview platform managers and request evidence for each of the Fairwork principles. This provides insights into the operation and business model of the platform, while also opening up a dialogue through which the platform could agree to implement changes based on the principles. In cases where platform managers do not agree to interviews, we limit our scoring to evidence obtained through desk research and worker interviews.

### **Worker Interviews**

The third method involves interviewing platform workers directly. We aim for a sample of 6-10 workers interviews at each platform. Workers are approached either through the platform directly or at known worker meeting points. These interviews do not aim to build a representative sample. They instead seek to understand the processes of work and the ways it is carried out and managed. They allow us, for instance, to see contracts and learn about platform policies that pertain to workers. The interviews also allow the team to confirm or refute that policies or practices are really in place on the platform.

### **Putting it all together**

This threefold approach provides a way to cross-check the claims made by platforms, while also providing the opportunity to collect both positive and negative evidence from multiple sources. Final scores are collectively decided by the Fairwork team based on all three forms of information gathering. The scores are peer-reviewed by the country team, the Oxford team and two reviewers from other country teams. This allows us to provide consistency and rigour to the scoring process. Points are only awarded if clear evidence exists on each threshold.

## ***03 How We Score***

Each of the five Fairwork principles is broken down into two points: a basic point and a more advanced point that can only be awarded if the basic point has been fulfilled. Every platform

receives a score out of 10. Platforms are only given a point when they can satisfactorily demonstrate their implementation of the principles.

Failing to achieve a point does not necessarily mean that a platform does not comply with the principle in question. It simply means that we are not—for whatever reason—able to evidence its compliance.

See the Appendix for further details on the Fairwork scoring system.

## Overview of The German Platform Economy

The German economy has long been characterised by a rich tradition of tripartite social partnership. In post-war Western Germany, this model of regulating the labour market involved close coordination between three pillars of competing interests: strong labour unions representing a relatively homogeneous domestic workforce, financially well-equipped employers' organisations, and the government.<sup>5</sup> On a smaller but certainly no less important scale, practices of co-determination<sup>6</sup> have frequently brought about potent legal mechanisms for workers to actively influence decisions at their workplaces, through arrangements such as works councils. With that in mind, a question that bears asking is how does Germany's distinctive labour market environment relate to the rise of digital platforms? Could Germany serve as a vanguard for other countries when it comes to taming the worst excesses of platform capitalism?

### ***Social Partnership and the Platform Economy***

At first glance, the historical legacy of strong social partnership between employers' and workers' organisations means we have powerful regulatory frameworks to thwart precarity, discrimination, and atomisation in the platform economy. However, the spread of non-standard employment and the increased tertiarisation of the economy, in combination with increased migration from within and beyond the EU, is giving rise to a rather different picture. Most importantly, many companies relying on migrant work often evade sectoral collective bargaining agreements and undermine minimum labour standards. As long-term analyses of essential sectors such as the meat industry,<sup>7</sup> the construction industry<sup>8</sup> and the health care sector<sup>9</sup> show, outsourcing and subcontracting practices have been widespread in Germany in the last two decades.

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5 Lesch, H., Vogel, S., & Hellmich, P. (2017). The state and social partners working together: Germany's response to the global financial and economic crisis. International Labour Organization. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---dialogue/documents/publication/wcms\\_566338.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_566338.pdf)

6 McGaughey, E. (2016). The Codetermination Bargains: The History of German Corporate and Labour Law. *Columbia Journal of European Law*, 23(1), 135–176.

7 Wagner, B., & Hassel, A. (2016). Posting, subcontracting and low-wage employment in the German meat industry. *Transfer: European Review Of Labour And Research*, 22(2), 163–178. <https://doi.org/10.1177/1024258916636012>

8 Kahmann, M. (2006). The posting of workers in the German construction industry: Responses and problems of trade union action. *Transfer: European Review of Labour and Research*, 12(2), 183–196. <https://doi.org/10.1177/102425890601200206>

9 Lutz, H., & Palenga-Möllnbeck, E. (2010). Care Work Migration in Germany: Semi-Compliance and Complicity 1. *Social Policy & Society*, 9(3), 419–430. <https://doi.org/10.1017/S1474746410000138>

These examples demonstrate that concerns about a two-tier labour market in Germany are by no means new. In 2018, more than half of the working population (33.3 million) were registered employees subject to social security contributions, with an unemployment rate of slightly above five percent.<sup>10</sup> Despite this low unemployment rate, there is a high share of low-wage earners (22.5 percent), which significantly exceeds the European average (17.2 percent).<sup>11</sup> In other words, in recent years, the German labour market has been characterised by a comparatively high reliance on low-wage, non-standard employment.

Against this background, several digital labour platforms have found an environment conducive to growth in Germany. A range of labour platform companies have been founded in Berlin, including Helping and Betreut.de, with the city receiving the second-largest volume of venture capital investment among European cities.<sup>12</sup> The country shows very high levels of internet connectivity, with nearly three quarters of the population using a smartphone in 2019, and almost 90 percent of the population using the internet regularly.<sup>13</sup> While there is no comprehensive or comparative public data on the precise number of platform workers in Germany, estimates range between 500,000 to 1.6 million workers.<sup>14</sup> The majority of these work in household-related services (e.g. cleaning, pet-sitting, care work), logistics (e.g. food delivery), and transport (e.g. ride-hailing services).

Platform work in Germany is often lauded for its flexibility and low entry barriers, as there is generally no need for specific occupational licences and it can often be performed with limited knowledge of the German language. Therefore, platform work can provide a fast route to earning income, and is frequently a lifeline for those who face barriers to standard employment. These characteristics make platform work particularly attractive for migrants.

## ***Migration and Platform Work***

It is thus not surprising that most of the platform workers we interviewed in the course of our research have a migration background. In our interviews, migrants often stressed that they find platform work more accessible than much of the rest of the local labour market. When migrant workers engage in platform work, a number of particular issues come to the fore. For

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10 This is based on data from: European Commission's Federal Employment Agency. (2020, June). EURES - Labour market information—National Level—European Commission. EURES: The European Job Mobility Portal. <https://ec.europa.eu/eures/main.jsp?catId=2641&countryId=DE&acro=lmi&lang=en&regionId=DE0&nuts2Code=%20&regionName=National%20Level>

11 European Commission. (2016, December). Earnings statistics. Eurostat. [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Earnings\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Earnings_statistics)

12 Berlin Business Location Center. (2020, April). Venture Capital und Inkubatoren. <https://www.businesslocationcenter.de/startups-berlin/venture-capital-inkubatoren/>

13 Statista. (2019, December). Internetnutzer—Anteil in Deutschland 2019. Statista. <https://de.statista.com/statistik/daten/studie/36009/umfrage/anteil-der-internetnutzer-in-deutschland-seit-1997/>

14 Pesole, A., Urzì Brancati, M. C., Fernández-Macías, E., Biagi, F., González Vázquez, I., European Commission, & Joint Research Centre. (2018). Platform workers in Europe (EUR 29275 EN). Publications Office of the European Union.

[https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157\\_pubsy\\_platform\\_workers\\_in\\_europe\\_science\\_for\\_policy.pdf](https://publications.jrc.ec.europa.eu/repository/bitstream/JRC112157/jrc112157_pubsy_platform_workers_in_europe_science_for_policy.pdf). Also see data commissioned by the Labour Ministry: Bundesministerium für Arbeit und Soziales (BMAS). (2018, October). Ausmaß von Plattformarbeit in Deutschland könnte höher als bisher angenommen sein. BMAS. <https://www.bmas.de/DE/Presse/Meldungen/2018/ausmass-von-plattformarbeit-in-deutschland-hoher-als-erwartet.html>

instance, language proficiency might affect a worker's ability to understand a platform's terms and conditions. It might also affect their ability to communicate with their coworkers and the platform's management to discuss any issues they might experience. Moreover, newcomers often lack a clear understanding of workers' rights in their new country of residence, including the legal procedures and institutions that might protect them.

Our research shows that clear contracts, as well as transparent terms and conditions, available in languages other than German, can make an enormous difference for many migrant workers. At the same time, establishing formalised and well-advertised channels for workers to communicate with platforms, both to raise grievances and to appeal disciplinary decisions, are fundamental to empower workers to express their voice and exercise their rights. Finally, the existence of a collective body representing workers can monitor working conditions, improve the bargaining power of workers against arbitrary decisions, and help to protect the most vulnerable workers from exploitation.

### ***New Technologies, Familiar Questions?***

Given these developments in the German labour market, it is crucial that we contextualise our results within the broader context of ongoing debates and policy proposals at the intersections of migrant labour, subcontracting, and the dynamics of social partnership. For instance, in late 2019, the German government issued a new law for protecting subcontracted parcel delivery drivers (*Nachunternehmerhaftung*)<sup>15</sup>—the majority of whom were migrant workers from Central and Eastern Europe. The law has been critiqued by unionists and labour rights advocates for not going far enough to improve the status quo in terms of workload and safety.<sup>16</sup> Still, it puts a spotlight on the ways in which companies find sophisticated ways of evading obligations of social security contributions and minimum wage laws by establishing opaque and layered networks of contractors and subcontractors within the parcel delivery sector. Recently, it has been debated whether that law could also be applied in contexts in which transportation platforms rely on intermediary firms that employ workers.<sup>17</sup> In short, the ongoing cat-and-mouse games between strong labour market regulations and creative counter-strategies by private sector actors to undermine them provide the context for understanding the German platform economy.

While recent technological advancements have made the rise of digital labour platforms possible, they have not brought about a concomitant (novel or disruptive) development in labour standards. Our focus on working conditions in the platform economy brings to the foreground familiar questions relating to the struggle to create decent working conditions for *all workers* in Germany, irrespective of their employment status or background.

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15Thomasson, E. (2019, September 18). Germany backs draft law to protect parcel delivery drivers. Reuters. <https://www.reuters.com/article/us-deutsche-post-parcels-idUSKBN1W30Z6>

16Hlava, D. (2020, January). Das Gesetz ist gut, doch es allein kann nichts am Arbeitsdruck ändern. Hans Böckler Stiftung. <https://www.boeckler.de/de/magazin-mitbestimmung-2744-das-gesetz-ist-gut-doch-es-allein-kann-nichts-am-arbeitsdruck-aendern-21485.htm>

17Neumann, P. (2020, February 25). Berliner Senat will Uber & Co. Zurückdrängen. Berliner Zeitung. <https://www.berliner-zeitung.de/mensch-metropole/berliner-senat-will-uber-co-zurueckdraengen-li.76662>

## The Legal Context: What Makes a Worker an Employee?

In Germany—as in most other jurisdictions<sup>18</sup>—worker protections, derived from labour law and social security laws, are mostly predicated on workers being classified as ‘employees’. German labour law is embedded in the country’s model of a social market economy.<sup>19</sup> The legal definition of ‘employee’ has been developed over more than a hundred years in the context of hierarchical organisations typical of the Fordist production system and informed by collective agreements. Therefore, the classification of workers in atypical and platform-mediated working contexts presents problems. Indeed, several digital labour platforms do not classify their workers as employees, depriving them of the contingent protections. For such platform workers, security over their employment status can only come through the courts. But it is difficult to know for certain how a court or tribunal would end up classifying the employment relationship in adjudicating disputes.

In these disputes, the definitional blurriness of what constitutes a ‘platform’ and ‘platform work’ has fundamental consequences for legal decisions that directly affect the livelihoods of workers. Most recently, in December 2019, the Munich Regional Labour Court ruled that a 52-year-old worker was not an employee of Roamer, a Dutch labour platform. The platform worker claimed that the contract between him and the platform constituted an ‘employment contract’ (*Arbeitsvertrag*) that could not be terminated without considering Germany’s Dismissal Protection Act. The court, however, denied him employee status, and justified its decision by finding that there was neither an obligation to accept an order nor, conversely, an obligation for the platform operator to offer orders.<sup>20</sup> However, the court left open the question of whether a fixed-term employment relationship (*befristetes Arbeitsverhältnis*) becomes established when a worker accepts a specific order on the platform, and has allowed an appeal to be heard by the Federal Labour Court. This appeal, which is expected to take place later this year, may hopefully provide further clarity on this fiercely disputed issue.

This legal situation creates a range of loopholes that digital labour platforms take advantage of. According to the definition of what constitutes an ‘employment contract’,<sup>21</sup> a good number of geographically tethered labour platforms could be argued to qualify as employers. However, by contractually classifying—or, in the frequent case of ‘disguised employment relationships’ (*Scheinselbstständigkeit*), misclassifying—platform workers as independent contractors, digital platforms circumvent obligations to provide workers with employment rights. These include minimum wages, health and safety regulations, sick pay, working time regulation, and collective bargaining rights. Furthermore, these platforms also leave workers with limited social protection, such as unemployment benefits.

Several policy responses to worker misclassification have been discussed. First and foremost, it is necessary to enforce existing labour laws in cases of disguised employment relationships. Most labour platforms—despite their claims to the contrary—are not simply intermediaries between workers and customers. Instead, they exert significant control over the labour process, and should be held accountable as such. Second, the legislative

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18 Rogers, B. (2016). Employment rights in the platform economy: Getting back to basics. *Harvard Law & Policy Review*, 10, 479.

19 Buschoff, K. S., & Schmidt, C. (2009). Adapting labour law and social security to the needs of the 'new self-employed'—comparing the UK, Germany and the Netherlands. *Journal of European Social Policy*, 19(2), 147-159.

20 Munich Regional Labour Court, 4 Dec 2019 – 8 Sa 146/19.

21 German Civil Code, Section 611a.

definition of ‘employee’ must be clarified. A recent attempt at doing this failed in 2017.<sup>22</sup> The policy process showed the problems around such attempts: they usually address only *one* very specific form of work. The 2017 attempt was designed to address the particular problem of how outsourced workers in industrial sectors should be classified and would possibly have been of limited help in classifying platform work. Yet even labour relationships in the platform economy that *are* based on the employee model have been subject to ongoing legal disputes. Lieferando, for instance, *does* classify its German workers as employees. However, in Münster as well as in Cologne, the platform has been continuously fighting in the courts over the establishment of effective Works Councils after its Dutch parent company Takeway.com had acquired Delivery Hero and Foodora in Germany.

It is also important to note that labour law is by no means the only regulatory framework that affects the platform economy in Germany. For example, in the rich regulatory history of Uber Germany,<sup>23</sup> the law of public transport and unfair competition has long played a key role in shaping the company’s operations, including its relationship with intermediary companies employing drivers. In December 2018, the The Federal Court of Justice ruled that Uber’s business model violates Germany’s rules of public transport and constitutes unfair competition.<sup>24</sup> As a result, Uber has been adjusting its business model – most recently by operating with only one intermediary firm as a general contractor (*Generalunternehmer*) in all cities, instead of multiple intermediary companies.<sup>25</sup>

Regulating the German platform economy remains a priority for policy-makers, including the Federal Ministry of Labour and Social Affairs, which established a think tank in 2018 (*Denkfabrik Digitale Arbeitsgesellschaft*) to develop comprehensive regulatory approaches. We would argue that any such approach must consider the collective bargaining rights of platform workers—they must be able to form trade unions and conclude collective agreements with platforms in order to contribute to regulation of working conditions and pay. The European Court of Justice, in December 2014,<sup>26</sup> has already shown how this could be argued—and even the EU Commissioner Margrethe Vestager now considers collective bargaining rights of platform workers as imperative.<sup>27</sup>

These initiatives show that we need to collaboratively develop—by bringing workers and key stakeholders to the table—an enforceable code of worker rights that is compatible with sustainable business models. The diversity of digital labour platforms and types of employment classification do not make such regulation necessarily unfeasible. It is in this context that we see the Fairwork framework providing an intervention for responsive and effective policy responses in Germany, which may inspire other countries to adapt similar

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22The draft Bill is discussed in Henssler, M., Überregulierung statt Rechtssicherheit – der Referentenentwurf des BMAS zur Reglementierung von Leiharbeit und Werkverträgen, *Recht der Arbeit* 2016, 18-24.

23 Thelen, K. (2018). Regulating Uber: The politics of the platform economy in Europe and the United States. *Perspectives on Politics*, 16(4), 938-953.

24 Federal Court of Justice, 13 Dec 2018 – I ZR 3/16, on Uber Black; cf. European Court of Justice, 20 Dec 2017, C-434/15,

25 Kapalschinski, C. (2019, December 23). Ein Berliner Unternehmen könnte der große Profiteur des Uber-Streits werden. *Handelsblatt*. <https://www.handelsblatt.com/unternehmen/dienstleister/mietwagenunternehmen-ein-berliner-unternehmen-koennte-der-grosse-profiteur-des-uber-streits-werden/25362658.html>

26 European Court of Justice, 4 Dec 2014 – C-413/13 (FNV Kunsten Informatie en Media).

27 Espinoza, J. (2019, October 24). Verstager says gig economy workers should ‘team up’ on wages. *Financial Times*. <https://www.ft.com/content/0cafd442-f673-11e9-9ef3-eca8fc8f2d65>

measures. Through the Fairwork scores, we hope to stimulate policy discussions on how to guarantee that platform work is fair and to highlight good practice from which both platforms and policymakers can learn.

## **Fairwork Scores**

CleverShuttle - 9

Zenjob - 8

InStaff - 7

BerlKönig - 6

Lieferando - 5

Amazon Flex-4

Betreut.de-4

Careship-4

Helpling-2

Uber-1

The score breakdown individual platforms can be found at: [www.fair.work/ratings](http://www.fair.work/ratings).

### ***Fair Pay***

All platforms but one were able to evidence that workers are paid at least the minimum wage (which in Germany is set at €9.35 per hour in 2020). For the vast majority of platforms, workers are hired through an employment contract, rather than on a self-employment basis, and they are thus paid an hourly or monthly wage. Of those paying at least the minimum wage, the majority were also able to show that workers earn the minimum wage even after work-related costs are taken into account.

### ***Fair Conditions***

Seven out of 10 platforms were able to evidence that they have policies in place to protect workers from risks arising from the processes of work. Only one company, CleverShuttle, was able to evidence that it had adopted proactive measures to go beyond basic protections and improve the well-being of its workers. Our findings in this category indicate that more efforts are needed to improve job quality.

### ***Fair Contracts***

All platforms provide terms and conditions in a clear, transparent and accessible form. For six out of 10 companies, the contract was shown to genuinely reflect the nature of the relationship between the platform and the workers.

### ***Fair Management***

Only half of the platforms were able to demonstrate that their management processes allowed for due process for decisions affecting workers. Only one platform, InStaff, has a

substantial policy in place to prevent discrimination against people from disadvantaged backgrounds. The secrecy surrounding how some platforms use algorithms meant that it was difficult for them to clearly demonstrate that they had meaningful pro-equity policies in place.

### ***Fair Representation***

The principle of fair representation was only met by two platforms, CleverShuttle and Zenjob. CleverShuttle is the only platform that provided evidence for establishing a collective body of workers. In the case of Zenjob, the company included in their general agreement a commitment to encourage and support the establishment of a collective body of workers. However, for the majority of digital platforms, there was no evidence of a documented process through which workers' collective voice could be heard, nor was there any evidence of platforms encouraging the formation of a collective workers' body with which they would cooperate. This leaves most German platform workers without institutionalised channels for worker representation, and means that they have little influence over the decisions that impact their jobs.

### **Platform in Focus: CleverShuttle**

1.1	1
1.2	1
2.1	1
2.2	1
3.1	1
3.2	1
4.1	1
4.2	0
5.1	1
5.2	1
Total	9

CleverShuttle sits at the top of the Fairwork rankings in Germany this year. CleverShuttle is a ride-hailing platform founded in 2014. It provides an environmentally friendly car-pooling service in six German cities. All CleverShuttle drivers are classified as employees and are required to have a passenger transport certificate (*P-Schein*). The platform pays monthly wages to its workers, and there exists a documented policy which ensures that drivers earn a minimum hourly wage after work-related costs, which is higher than the German national minimum wage.

The platform also has a documented policy in place which ensures that customers agree to protect workers' health and safety in compliance with German regulations. Furthermore, CleverShuttle is the only company in Germany to be awarded point 2.2, as it is the only platform to have adopted proactive measures to promote the health and safety of its workers.

Workers are hired on either a part-time or full-time basis, and the contract genuinely reflects the nature of the relationship between the platform and the drivers. The contract is made available to drivers in a clear and accessible form. Moreover, CleverShuttle has a clearly established process through which workers can communicate with the company and raise any issues.

In contrast to the majority of other platforms rated by Fairwork, CleverShuttle has a documented process through which workers' collective voice can be heard. In Berlin, the creation of a works council is underway, meaning that in the future, CleverShuttle drivers in the city will be able to exert their right of codetermination, and potentially influence management decisions.

At the moment, CleverShuttle is close to being an example of best practice in Germany with respect to fair working practices. The company should be recognised for adopting proactive measures to improve the health and safety of its workers and encouraging a collective body through which its workers will be represented. In the future, we hope CleverShuttle will remain an example of fair working practices for other platforms in Germany and beyond.

## Platform in Focus: Zenjob

1.1	1
1.2	1
2.1	1
2.2	0
3.1	1
3.2	1
4.1	1
4.2	0
5.1	1
5.2	1
Total	8

Zenjob is one of the top-scoring platforms in our rating. Zenjob provides a range of temporary jobs for students in a variety of sectors, such as hospitality, retail, and logistics. The platform's wages exceed the German minimum wage, even after including work-related costs.

Zenjob has a documented policy which ensures that clients agree to protect workers' health and safety in accordance with German regulations. Jobs that are advertised on the platform are constantly reviewed by the management to ensure compliance, and workers are able to raise complaints about issues related to their health and safety. That said, the platform does not offer health and safety training to its workers.

The platform uses either temporary contracts (*kurzfristige Beschäftigung*) or working student contracts (*Werkstudentenvertrag*) for its workers. While temporary contracts are capped at 70 days per year, the duration of working student contracts ranges between three and six months, and the working hours are between 10 and 20 hours per week.

Zenjob has a formalised process through which workers can communicate with the platform and be informed of disciplinary decisions affecting them. In the event of a contract being terminated, the platform interface is still available for appeals. However, a policy to protect workers against discrimination is still needed for the company to receive full points in the Fair Management category.

Zenjob has now agreed to make a proactive effort to encourage collective representation among its workers, and has explicitly stated this in the updated general agreement. This is a commendable step to ensure fair worker representation. Having voice and collective power in the workplace is essential for workers if they wish to move away from exploitative relationships.

## Workers' Stories

**Lech\*** completed a university degree in graphic design in his home country in Eastern Europe, and worked as a designer for several years before moving to Berlin. Upon arrival, he signed up with a prominent ride-hailing platform. He was attracted to the platform because of its flexibility. He also hoped the regular contact with riders would help him improve his German. However, practising German while working as a driver proved rather difficult for Lech. He found that most of his customers were not actually native German speakers, but tourists visiting the city. He still sees driving in Berlin as “easy money, and a way to get in touch with people”.

When we interviewed Lech, he had been working for four months *on* the platform, but not exactly *for* the platform. He receives his payslips, as well as the car he uses to work, from an intermediary company, which leases cars to many others like him. Lech says he does not know how many drivers work for that intermediary or what relationship that firm has with the platform he uses. Though he works around 40 hours per week, his income tends to fluctuate quite a lot. In the month we met him, he made just over half of what he had made in the previous month. He does not have any contact with other drivers using the same platform or other employees of the intermediary firm, so he does not know whether his experience is similar to other drivers or not. Being far from home, one thing Lech worries about is what would happen if he had an accident—he is not sure whether he has insurance that would protect him. Luckily, nothing serious has happened so far, save for the occasional unruliness from the passengers he sometimes drives back and forth between Berlin’s clubs.

**Mia\*** had been working for a domestic work platform in Berlin for about five months when we spoke to her. She signed up to the platform as she saw it as a “fast way to earn money without providing a lot of documents and certifications, plus you don’t have to speak German”. Previously, she had worked in retail in her home country in South America. Some of her friends from home suggested the platform to her. It is hard for her to estimate her average monthly earnings from this work because she has not submitted her tax declaration for this year yet.

Mia keeps in regular contact with others using the platform through Facebook and WhatsApp groups. They talk about challenges and problems they face during work, and where possible, help each other out. Overall, she is satisfied with the platform but she is also wary of “negative aspects like high commission and unpaid travel time to customers”. Mia also does

not like that she is unable to comment on the behaviour of her customers: while they can leave her public reviews on her platform profile, she cannot reciprocate it. She gets the impression that the platform prioritises consumers over workers. For this reason, she sometimes asks clients she finds through the platform if she can work for them independently. That way, she does not have to pay the platform a commission or deal with negative reviews on her profile.

\*Names changed to protect worker identity.

## **Theme in Focus: COVID-19 and Platform Workers in Germany**

An increasing number of countries, including Germany, have implemented COVID-19 related lockdown measures, obliging people to stay at home, unless for specific essential activities. Together with other essential workers like cashiers, care workers, police, and construction workers, platform workers have been at the frontlines of the health crisis, allowing those who are self-isolating to purchase goods and services without leaving their home. But at what risk to themselves? Platform workers, both full-time and part-time, often live from paycheck to paycheck. Many of them do not have any option but to continue working during the health crisis.

In view of the crisis, a number of platforms in Germany have started to offer improved health and safety protections for their workers. In the delivery sector, for instance, platforms have widely publicised the introduction of so-called ‘contact-free deliveries’, intended to minimise the risk of workers and clients infecting each other. While this measure benefits customers and workers at the moment of delivery, it remains unclear if and how German platforms are protecting their workers at the other stages of work that involve physical proximity to others, including, for example, when workers pick up the item for delivery at a collection points frequented by other workers, or when they travel in public spaces. This issue came to the fore recently in France, where Amazon was forced to close its French warehouses after a court ruled that its safety measures to protect warehouse workers against COVID-19 were inadequate.<sup>28</sup> It is highly advisable for German delivery platforms as well to consider the enormous risks being borne by workers, and establish robust health protection safeguards.

In the ride-hailing sector, platforms have also adopted measures to protect against COVID-19. For instance, CleverShuttle has introduced a partition between drivers and passengers for some vehicles.<sup>29</sup> However, many of the measures adopted by platforms have been superficial and insufficient, leaving many workers at risk of contracting the virus during work. In fact, platforms sometimes seem to put a lot of energy into telling customers how they are protecting workers, without actually informing the workers themselves, leading to rather absurd cases where workers learn about platform policies through the media rather than

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28 Deutschlandfunk (2020, April 15). Deutschlandfunk.de.Amazon schließt nach Gerichtsurteil seine Standorte in Frankreich für fünf Tage wegen Coronavirus. [https://www.deutschlandfunk.de/covid-19-amazon-schliesst-nach-gerichtsurteil-seine.1939.de.html?drn:news\\_id=1121149](https://www.deutschlandfunk.de/covid-19-amazon-schliesst-nach-gerichtsurteil-seine.1939.de.html?drn:news_id=1121149)

29 Düll, H. (2020, April 8). Coronavirus: So geht es den Car- und Ridesharing-Anbietern – ein Überblick. Movinc. <https://movinc.de/carsharing/coronavirus-so-geht-es-den-car-und-ridesharing-anbietern-ein-ueberblick/>

from the platform.<sup>30</sup> However, workers have started to push back against platforms' insufficient responses. For example, a petition demanding that Lieferando provide disinfectants and protective clothes for all workers was signed by nearly 10,000 people in April 2020, though this has yet to see any impact.<sup>31</sup>

Beyond platform measures, the German government has also introduced certain measures to compensate workers for income lost due to COVID-19, both for workers classified as 'employees', and those classified as 'self-employed'. Workers employed by platforms can claim sick leave and qualify (through their employer) for *Kurzarbeitergeld* (reduced hours compensation), which compensates them for 60% of lost income (paid by the German government).<sup>32</sup> The Berlin Senate also announced a generous support programme for self-employed workers, where each worker could claim 5,000 Euros as a non-repayable grant. Self-employed platform workers could in theory have benefitted from this, but the funds for this scheme dried up after only three weeks in operation.<sup>33</sup> The currently available governmental support is rather geared towards supporting companies with their expenses, including personnel costs for employees. Most platform workers—not being employees—see no benefit from this scheme.<sup>34</sup>

Besides the current impacts of the COVID-19 pandemic on platform workers in Germany, another aspect that bears mention concerns the crisis of jobs and work which is unfolding alongside the health crisis. According to the ILO, the pandemic could result in a devastating worldwide loss of 195 million full-time jobs in the second quarter of 2020.<sup>35</sup> When people are stripped of their work, they experience loss at all levels—not only of income, but also dignity, meaning and hope. Although losing work is hard for everyone, its dangers are likely to disproportionately affect those who can least afford it, including platform workers.<sup>36</sup> Platform workers will be particularly affected, as they tend to be low paid, and have unstable employment and limited savings, meaning that they have a reduced ability to withstand the negative effects of the crisis.

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30Wachter, D.S. (2020, 17 March). Streit bei Lieferando: Schützt das Unternehmen seine Fahrer genug vor Coronaviren?. Stern. <https://www.stern.de/genuss/essen/lieferando--betriebsrat-beschwert-sich---fahrer-sollen-keine-hygieneausrustung-erhalten-haben-9183772.html>

31 Mittenmayer O. (2020). Disinfectant, protective clothing and better working conditions for Lieferando riders!. Change.org.

<https://www.change.org/p/lieferando-disinfectant-protective-clothing-and-better-working-conditions-for-lieferando-riders-coronadeutschland-coronavirusde-covid19de>

32 Michael, R. (2020). Corona-Hilfe vom Staat: Wem steht was zu – und von wem?. Merkur.de. <https://www.merkur.de/leben/karriere/corona-hilfe-vom-staat-hartz-iv-wem-steht-was-zu-und-von-wem-zr-13630248.html>

33 Senate Department for Culture and Europe (2020, 19 March). Senat beschließt finanzielle Zuschüsse für Soloselbstständige und Kleinunternehmen. Berlin.de.

<https://www.berlin.de/sen/kulteu/aktuelles/pressemitteilungen/2020/pressemitteilung.909707.php>

Capital (2020, April 7). Capital.de. Wenn die Soforthilfe zur unerwarteten Finanzpritze wird. <https://www.capital.de/wirtschaft-politik/wenn-die-soforthilfe-zur-unerwarteten-finanzspritze-wird>

Bundesagentur für Arbeit (2020 March), Corona-Krise: FAQ zur Grundsicherung. Arbeitsagentur.de. <https://www.arbeitsagentur.de/corona-faq-grundsicherung>

34InvestitionsBank Berlin (2020). Corona Zuschuss. <https://www.ibt.de/de/foerderprogramme/corona-zuschuss.html>

35 ILO (2020, 7 April). COVID-19 causes devastating losses in working hours and employment. Press Release. [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_740893/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_740893/lang--en/index.htm)

36 McKinsey&Company (2020, April). How to rebuild and reimagine jobs amid the coronavirus crisis. <https://www.mckinsey.com/industries/public-sector/our-insights/how-to-rebuild-and-reimagine-jobs-amid-the-coronavirus-crisis>

To protect this vulnerable contingent of our societies, it is now more important than ever to hold all platforms accountable for the way they treat their workers, and ensure that standards of fair work are not undermined in this period of crisis.

## Impact and Next Steps

The scores presented in this report are the result of a one-year pilot project in Germany. We will continue our research into the Germany platform economy, updating our ratings on an annual basis. As Fairwork's reach and visibility increases, we see four avenues for contributing to improvements in the conditions faced by German platform workers.

Our first and most direct pathway to improving working conditions in the platform economy is by engaging directly with the platforms we rate. In other countries, we have found a number of platforms to be eager to work with us to improve their Fairwork scores. Fairwork's engagement with platforms in Germany has already yielded important contributions to improving working conditions for platform workers.

For instance, Zenjob has amended its General Agreement with workers to formally indicate its willingness to encourage workers to form a collective body and engage in negotiations with it. Both Zenjob and InStaff have welcomed our suggestions on codifying and institutionalising anti-discrimination policies, incorporating into their terms of service the anti-discrimination and anti-harassment guidelines recommended by the federal and regional agencies. Zenjob have also begun to use their business data to develop their own localised anti-discrimination strategy. These first achievements point to greater possibilities in the future, testifying to the effectiveness of Fairwork's rating system in incentivising platforms to change their policies, and also setting the bar for other platforms operating under the same legal and regulatory context.

Fairwork's theory of change draws on the understanding that human empathy is a powerful force. Given enough information, many consumers will be intentional about the platforms they choose to interact with. Our yearly ratings give consumers the ability to choose the highest scoring platform operating in a sector, thus contributing to put pressure on platforms to improve their working conditions and their scores. In this way, we enable consumers to be workers' allies in the fight for a fairer platform economy. Beyond individual consumer choices, our scores can help inform the procurement, investment and partnership policies of large organisations. They can serve as a reference for institutions and companies who want to ensure they are supporting fair labour practices.

We also engage with policy makers and government bodies to advocate for extending appropriate legal protections to all platform workers, irrespective of their legal classification. Fairwork Germany is endorsed by Elke Breitenbach, Berlin's Senator for Integration, Labour and Social Services, and is included in the Federal Government's Digital Implementation Strategy.<sup>37</sup> We will continue our policy advocacy efforts in the coming years to help ensure that workers' needs and platforms' business imperatives are effectively balanced.

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<sup>37</sup><https://www.bundesregierung.de/breg-de/themen/digital-made-in-de/foerderung-der-digitalwirtschaft-in-entwicklungslaendern-1547022>

Finally, and most importantly, workers and workers' organisations are at the core of Fairwork's model. Our principles have been developed, and are continually refined, in close consultation with workers and their representatives. Our fieldwork data, combined with feedback from workshops and consultations involving workers, inform how we systematically evolve the Fairwork principles to remain in line with their needs. Through continual engagement with workers' representatives and advocates, we aim to support workers in exercising their rights.

A key challenge in the platform economy is that workers are often isolated, atomised, and placed in competition with one another. The platform work model presents challenges for workers to connect and create networks of solidarity.<sup>38</sup> But many of the workers we have interviewed are either already starting to organise or have said they would want to join a labour union if one existed. For example, we have observed that CleverShuttle workers have started conversations to exert their legal right to establish a works council in Berlin, with the platform actively supporting their efforts. Our principles can provide a starting point for envisioning a fairer future of work, and setting out a pathway to realise it. Principle Five in particular, on the importance of fair representation, is a crucial way in which we aim to support workers to assert their collective agency.

There is nothing inevitable about poor working conditions in the German platform economy. Notwithstanding their claims to the contrary, platforms have substantial control over the nature of the jobs that they mediate. That power is especially evident in the context of the ongoing COVID-19 crisis, with many platforms rapidly implementing changes to protect their workers. Workers who find their jobs through platforms are ultimately still workers, and there is no basis for denying them the key rights and protections that their counterparts in the formal sector enjoy. Our scores show that the platform economy, as we know it today, already takes many forms, with some platforms displaying greater concern for workers' needs than others. This means that we do not need to accept low pay, poor conditions, inequity, and a lack of agency and voice as the norm. We hope that our work—by highlighting the contours of today's platform economy—helps paint a picture of what it could become.

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38 Woodcock, Jamie, and Mark Graham. 2020. *The Gig Economy: A Critical Introduction*. Cambridge, UK; Medford, US: Polity Press.

## Appendix: Fairwork Scoring System

The five Principles of Fairwork were developed through an extensive literature review of published research on job quality, stakeholder meetings at UNCTAD and the ILO in Geneva (involving platform operators, policymakers, trade unions, and academics), and in-country stakeholder meetings held in India (Bangalore and Ahmedabad), South Africa (Cape Town and Johannesburg) and Germany (Berlin). This document explains the Fairwork Scoring System.

Each Fairwork Principle is divided into two *thresholds*. Accordingly, for each Principle, the scoring system allows one ‘basic point’ to be awarded corresponding to the first threshold, and an additional ‘advanced point’ to be awarded corresponding to the second threshold (see Table 1). The advanced point under each Principle can only be awarded if the basic point for that Principle has been awarded. The thresholds specify the evidence required for a platform to receive a given point. Where no verifiable evidence is available that meets a given threshold, the platform is not awarded that point.

A platform can therefore receive a maximum Fairwork Score of ten points. Fairwork scores are updated on a yearly basis. For example, Fairwork’s South Africa 2020 scores – which were published in March 2020 – were based on data pertaining to the 12 months between March 2019 and March 2020, and are valid until March 2021.

Table 1: Fairwork Scoring System

Principle	Basic Point	Advanced Point	Total
Fair Pay	1	+ 1	= 2
Fair Conditions	1	+ 1	= 2
Fair Contracts	1	+ 1	= 2
Fair Management	1	+ 1	= 2
Fair Representation	1	+ 1	= 2
Maximum possible Fairwork Score:			10

### ***Principle 1: Fair Pay***

#### **1.1 – Pays at least the local minimum wage (one point)**

Irrespective of the employment status of the worker, workers earn at least a local minimum wage, or there is a policy which requires payment above this level

The threshold for 1.1 is based on the level for a local minimum wage.<sup>[1]</sup> Workers on the platform must earn more than the minimum wage rate in their active hours,<sup>[2]</sup> and this can be evidenced by either:

- A policy that guarantees the workers receive at least the local minimum wage in their active hours; or
- The provision of summary statistics of transaction data.

In the case of (b), the platform is asked to submit a weekly earnings table (see Table 2) that averages worker earnings and worker hours for any three month period over the previous twelve months.

Table 2. Weekly Earnings Table.

Weekly earnings	<X	X to (X+(X/2))	(X+(X/2)+1) <sup>[3]</sup> to 2X	>2X
Active hours less than 40 hours/week (part-time)	%	%	%	%
Active hours between 40 and 48 hours/week (full-time)	%	%	%	%
Active hours more than 48 hours/week (full-time plus overtime)	%	%	%	%

Note: X = the local minimum wage, calculated at 45 hours per week. This header row is filled out by the Fairwork team, before submitting it to the platform for completion.<sup>[4]</sup>

## 1.2 – Pays the minimum wage plus costs (one additional point)

Workers earn at least the local minimum wage after work-related costs, or there is a policy which requires payment above this level

The threshold for the minimum wage plus costs varies between different kinds of platform work. In order to establish a threshold, the platform is asked to provide an estimate for work-related costs, which are then checked (by the Fairwork team) through worker interviews.<sup>[5]</sup> To be awarded this point, there must be either:

- A policy that guarantees workers earn at least the local minimum wage plus costs; or
- Evidence from the platform that workers earn at least the local minimum wage plus costs.

If the platform has completed Table 2, the mean weekly earnings minus the estimated work-related costs must be above the local minimum wage (see Table 2).

## Principle 2: Fair Conditions

### 2.1 Mitigates task-specific risks (one point)

There are policies to protect workers from risks that arise from the processes of work

This threshold requires the platform to ensure that there are safe working conditions, and that potential harms are minimised.<sup>[6]</sup> For 2.1, this means identifying the task-specific risks that are involved for the worker, for example, if a vehicle is used, or there is interaction with customers. The specific practices leading to the awarding of this point may vary by the type of work and the risks involved.

To be awarded a point for 2.1, the platform must be able to demonstrate that:

- There are policies or practices in place that protect workers' health and safety from task-specific risks

## **2.2 Actively improves working conditions (one additional point)**

There are proactive measures to protect and promote the health and safety of workers or improve working conditions

For 2.2, the threshold is higher, involving practices that go beyond addressing the task-specific risks addressed by 2.1. This means a policy that goes beyond ameliorating the direct task-specific risks, by promoting greater health and safety or improvements in working conditions, beyond what is specified by local regulations for employment. For example, an insurance policy that covers workplace accidents would meet the threshold for 2.1, while one that also covers the worker or their family outside of work would meet 2.2. As policies and practices may be focused on the specific form of work, the examples that meet the threshold may vary by the type of work.

To be awarded a point for 2.2, the platform must be able to demonstrate:

- There is a documented policy (or policies) that promotes the health and safety of workers or improves working conditions, going beyond addressing task-specific risks

## ***Principle 3: Fair Contracts***

### **3.1 – Clear terms and conditions are available (one point)**

The terms and conditions are transparent, concise, and provided to workers in an accessible form

The threshold for 3.1 involves demonstrating that the terms and conditions of the contract issued to workers are available in an accessible form.<sup>[7]</sup> Platforms must demonstrate that the contracts are accessible for workers at all times, whether through the app itself or direct communication with the worker. This is necessary for workers to understand the requirements of their work. The contracts should be easily understandable by workers, and available in the language/languages commonly spoken by the workers on the platform.

To be awarded a point for 3.1, the platform must be able to demonstrate all of the following:

- The contract is written in clear and comprehensible language that the worker could be expected to understand; and,

- The contract is issued in the language/languages spoken by workers on the platform; and,
- The contract is available for workers to access at all times.

### **3.2 – The contract genuinely reflects the nature of the employment relationship (one additional point)**

The party contracting with the worker must be subject to local law and must be identified in the contract. If workers are genuinely self-employed, the terms of service are free of clauses which unreasonably exclude liability on the part of the platform

The threshold for 3.2 involves the platforms demonstrating that the contract issued to workers accurately describes the relationship between the platform, the workers, and the users. In the case where there is an unresolved dispute over the nature of the employment relationship exists, a point will not be awarded.

If workers are genuinely self-employed,<sup>[8]</sup> platforms must be able to demonstrate that the contract is free of clauses that unreasonably exclude liability on the part of the platform for harm caused to the workers in the course of carrying out their duties.

To be awarded a point for 3.2, the platform must be able to demonstrate that:

- The employment status of the workers is accurately defined in the contract issued by the platform; and,
- There is no unresolved dispute about the nature of the employment relationship; or,
- The self-employed status of the worker is adequately demonstrated and free from unreasonable clauses

## ***Principle 4: Fair Management***

### **4.1 – There is due process for decisions affecting workers (one point)**

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. There is a clear channel of communication to workers involving the ability to appeal management decisions or deactivation

The threshold for 4.1 involves a platform demonstrating the existence of clearly defined processes for communication between workers and the platform. This includes access by workers to a platform representative, and the ability to discuss decisions made about the worker. Platforms must be able to evidence that information about the processes is also easily accessible to workers.

To be awarded a point for 4.1, the platform must be able to demonstrate all of the following:

- The contract includes a documented channel for workers to communicate with a designated representative of the platform; and,

- The contract includes a documented process for workers to appeal disciplinary decisions or deactivations; and,
- The platform interface features a channel for workers to communicate with the platform; and,
- The platform interface features a process for workers to appeal disciplinary decisions or deactivations; and,
- In the case of deactivations, the appeals process must be available to workers who no longer have access to the platform.

## **4.2 – There is equity in the management process (one additional point)**

*There is evidence that the platform is actively seeking to prevent discrimination against workers from disadvantaged groups.*

To be awarded a point for 4.2 the platform should demonstrate the following:

- It has a policy which guarantees that the platform will not discriminate against persons on the grounds of race, gender, sex, sexual orientation, gender identity, disability, religion or belief, age or any other status which is protected against discrimination in local law; and,
- Where persons from a disadvantaged group (such as women) are significantly under-represented among its workers, it has a plan to identify and remove barriers to access by persons from that group, resulting in improved representation; and
- It takes practical measures to promote equality of opportunity for workers from disadvantaged groups, including reasonable accommodation for pregnancy, disability, and religion or belief; and
- If algorithms are used to determine access to work or remuneration, these are transparent and do not result in inequitable outcomes for workers from historically or currently disadvantaged groups; and
- It has mechanisms to reduce the risk of users discriminating against any group of workers in accessing and carrying out work.

### ***Principle 5: Fair Representation***

## **5.1 – There are worker voice mechanisms and freedom of association (one point)**

There is a documented process through which worker voice can be expressed. There is no evidence of freedom of association being prevented by the platform. There is no evidence that platforms refuse to communicate with designated representatives of workers

The first step for the justification of 5.1 is establishing the platform's attitude towards and engagement with workers' voice. This includes both listening to and responding to worker voice when raised with the platform, as well as clearly documenting for workers the process for engaging the platform in dialogue. Workers should be able to freely organise and associate with one another, regardless of employment status. Workers must not suffer discrimination for

doing so. This includes the freedom to associate beyond the remit of organisational spaces (for example, via instant messaging applications).<sup>[9]</sup>

To be awarded a point for 5.1, a platform must be able to demonstrate that:

- There is a documented process for the expression of worker voice.

## **5.2 – There is a collective body of workers that is recognised, and that can undertake collective representation and bargaining (one additional point)**

There is a collective body of workers that is publicly recognised and the platform is prepared to cooperate with collective representation and bargaining (or publicly commits to recognise a collective body where none yet exists)

This threshold requires the platform to engage with, or be prepared to engage with, collective bodies of workers that could take part in collective representation or bargaining. The collective body must be independent of the platform, and the majority of its members must be workers of the platform. It may be an official trade union, or alternatively a network or association of workers. Where such organisations do not exist, the platform can sign a public statement to indicate that they support the formation of a collective body.

To be awarded a point for 5.2, the platform must:

- Publicly recognise an independent, collective body of workers or trade union and not have refused to participate in collective representation or bargaining; If such a body does not exist, it must:
- Sign a public statement of its willingness to recognise a collective body of workers or trade union.

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[1] [The ILO](#) defines minimum wage as the “*minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract.*” Minimum wage laws protect workers from unduly low pay and help them attain a minimum standard of living. The ILO’s [Minimum Wage Fixing Convention, 1970 C135](#) sets the conditions and requirements of establishing minimum wages and calls upon all ratifying countries to act in accordance. Minimum wage laws exist in more than 90 per cent of the ILO member states.

[2] According to the ILO’s (2018) report on “[Digital Labour Platforms and the Future of Work](#)”, for every hour of paid work, workers spend 20 minutes on unpaid activities, including, for example, searching for tasks and researching clients. In order to account for this additional time spent on searching for work, as well as time spent between work tasks, we define ‘working time’ as including both direct (completing a task) and indirect (travelling to or waiting between tasks) working hours.

[3] The “+1” is one unit of the lowest denomination of the currency, to ensure a boundary between the two figures

[4] The table contains four columns of data. The first is the percentage of workers earning less than the minimum wage (X). The rows represent less than full time, full time, and full time with overtime.

[5] Taxes are not considered to be a work-related cost.

[6] The starting point is [the ILO's Occupational Safety and Health Convention, 1981 \(C155\)](#). This stipulates that employers shall be required “so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health”, and that “where necessary, adequate protective clothing and protective equipment [should be provided] to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health.”

[7] [The ILO's Maritime Labour Convention, 2006 \(MLC 2006\), Reg. 2.1](#), and [the Domestic Workers Convention, 2011 \(C189\)](#), Articles 7 and 15, serve as helpful guiding examples of adequate provisions in workers' terms and conditions, as well as worker access to those terms and conditions.

[8] [ILO's Employment Relationship Recommendation, 2006 \(R198\)](#) recommends that member countries develop legal and regulatory frameworks containing specific indicators that speak to the existence of an employment relationship, which might include:

(a) the fact that the work is carried out according to the instructions and under the control of another party; involves the integration of the worker in the organization of the enterprise; is performed solely or mainly for the benefit of another person; must be carried out personally by the worker; is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work; is of a particular duration and has a certain continuity; requires the worker's availability; or involves the provision of tools, materials and machinery by the party requesting the work';

(b) periodic payment of remuneration to the worker; the fact that such remuneration constitutes the worker's sole or principal source of income; provision of payment in kind, such as food, lodging or transport; recognition of entitlements such as weekly rest and annual holidays; payment by the party requesting the work for travel undertaken by the worker in order to carry out the work; or absence of financial risk for the worker'.

[9] See [the ILO's Freedom of Association and Protection of the Right to Organise Convention, 1948 \(C087\)](#), which stipulates that “workers and employers, without distinction, shall have the right to establish and join organisations of their own choosing without previous authorisation” (Article 2); “the public authorities shall refrain from any interference which would restrict the right or impede the lawful exercise thereof” (Article 3) and that “workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority” (Article 4). Similarly [the ILO's Right to Organise and Collective Bargaining Convention, 1949 \(C098\)](#) protects the workers against acts of anti-union discrimination in respect of their employment, explaining that not joining a union or relinquishing trade union membership cannot be made a condition of employment or cause for dismissal. Out of the 185 ILO member states, currently 155 ratified C087 and 167 ratified C098.

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Fairwork draws on the expertise and experience of staff at the University of Oxford, the University of Cape Town, the University of the Western Cape, the University of Manchester, the International Institute of Information Technology Bangalore, and the Technical University of Berlin. Project staff work to translate the Fairwork Principles into measurable thresholds, conduct rigorous research to evaluate platforms against those thresholds, and publish the results in a transparent manner.

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