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# **The impact of the Riders Act on the platform market in Spain**

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# AGENDA

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## FOREWORD

Platform work is a major issue in contemporary industrial relations in Spain, with some specific features

### The headlines

- Spain is one of the still few countries to have enacted an specific piece of legislation, the so-called “Riders-Act 2021” (Ley 12/2021, from September the 28th.
- This regulation was originated in social dialogue.

## FOREWORD

Based on these two facts, one could very well reasonably expect:

The existence of social dialogue in this sector

A massive use of dependent work by Spanish platforms

The development of collective labour relations in this sector

An improvement of working conditions for platform workers

A good starting point, when dealing with a future European directive on platform work



# THE LONG JOURNEY OF PLATFORM WORKERS



- Problems of misclassification from the beginning, as platforms claimed riders were free-lances
- At first there was some debate among Courts of First Instance
- Second Instance Courts maintained that riders were parts of an employment relationship
- The Supreme Court ruled in September 2020, settling the issue
- This ruling also confirms a general trend in the case law on the definition of the employment contract, with less attention given to traditional elements such as subordination, and more sensibility to economic dependence.
- There is currently no debate at the Spanish Courts on this issue.
- Riders also organize themselves and acted with the Labour Inspectorate



## THE 2021 SOCIAL PARTNERS' AGREEMENT

- On March the tenth 2021 the social partners at a national level signed an agreement on this issue
- The objective was solving the misclassification problem of riders in the delivery industry.
- The text agreed is the same text that is published by the Official Journal and applied in practice.



**First assumption:** platforms and unions have been able to develop cooperative relationships among themselves.

**NO!**



# THE 2021 SOCIAL PARTNERS' AGREEMENT

- Platforms were not willing to agree with their employees on any issue, less than anything on the regulation of their activity.
- They stubbornly resisted bargaining because this was impossible under their business model
- They resorted to alternative instruments, as agreements with self-employed workers' associations and Codes of Good Practice

## WHAT HAPPENED, THEN?

- This is an outcome of process of negotiating started by the coalition government with the social partners the major labour problems,.
- This is not a product of labour relations in the platform economy, but rather as the result of country-wide negotiations.
- There was a major resistance by platforms, that complained about general employers' associations not defending their interests
- During negotiations somethings changed





## THE 2021 ROYAL DECREE-LAW AND ACT

- The government passed Royal Decree-Law 9/2021, of May 11, amending the revised text of the Workers' Statute Law, to guarantee the labor rights of persons engaged in delivery in the field of digital platforms.
- This is a royal decree-law, the typical instrument in the field of labour law, although in theory it is only possible in cases of extraordinary and urgent need. They must be submitted forthwith to the Congress of Deputies to be debated and voted upon within thirty days after their promulgation. This Royal Decree-Law was validated by 195 votes to 151.
- The new act, the one currently in force, is Act 12/2021, from September the 28th
- The act changes the wording of the main legal body in Spanish Labour Law, the Workers' Statute, in two main areas: the definition of dependent work; and work councils' rights to be informed by firms.





## THE 2021 ROYAL DECREE-LAW AND ACT

*Two. A new twenty-third additional provision is introduced, with the following wording:*

*"Twenty-third additional provision. Presumption of employment in the scope of digital delivery platforms.*

*By application of the provisions of Article 8.1, the activity of persons who provide paid services consisting of the delivery or distribution of any consumer product or merchandise, by employers who exercise business powers of organization, management and control directly, indirectly or implicitly, through the algorithmic management of the service or working conditions, through a digital platform, is presumed to be included within the scope of this law. This presumption does not affect the provisions of Article 1.3 of this regulation."*



## THE 2021 ROYAL DECREE-LAW AND ACT

*Sole Article. Amendment of the revised text of the Law of the Statute of Workers, approved by Royal Legislative Decree 2/2015, of October 23, 2015. Workers, approved by Royal Legislative Decree 2/2015, of October 23rd.*

*The revised text of the Law of the Workers' Statute, approved by the Royal Legislative Decree 2/2015, of October 23, 2015, is amended as follows:*

*One. A new letter d) is introduced in Article 64.4, with the following wording:  
"(d) To be informed by the company of the parameters, rules and instructions on which the algorithms or artificial intelligence systems are based that affect decisions that may affect working conditions, access to and maintenance of employment, including profiling.*

## THE IMPLEMENTATION OF THE ACT

**Second assumption:** there would be a mass conversion of the contracts of the delivery platform sector workers



DELIVEROO decided to end all its operations in the country, and laid its whole staff off

GLOVO has tried to rearrange contractual conditions in order to pass the new statutory test, operating with new models of self-employment

JUSTEAT outsourced part of its workforce and awarded employee status to roughly 2000 riders

UBER EATS is working with external companies, through outsourcing rather than hiring workers directly

## THE IMPLEMENTATION OF THE ACT

**Third assumption:** labour relations must have developed between the platforms and their workers' representatives.

- There is only one collective agreement in force so far
- Another agreement from the transportation sector applies to riders





## THE JUST EAT AGREEMENT

- A standard salary for a full-time rider of €15,200 per year
- An hourly rate of €8.50 (the Spanish minimum wage is €7.55) and a night-time allowance of 25% above the basic salary
- 30 days of vacation, of which 15 must be taken between July and August
- 80% of contracts must be permanent
- A maximum working day of nine hours
- The provision of material resources for workers, including a mobile phone and rucksack, and a reimbursement allowance for employees using their own vehicle
- The platform as contracted a Collective Accident Insurance policy for its riders
- Information and training for riders in prevention of occupational risks, an annual medical examination and personal protective equipment
- The right of information for workers and representatives about the company algorithm in relation to working conditions
- The right to digitally disconnect
- The right to privacy from the use of digital surveillance
- The right to union organising and for workers and their representatives to meet in assemblies
- This agreement applies only to riders directly hired by Just Eat, not to those employed by company's sub-contractors

## THE IMPLEMENTATION OF THE ACT

**Fourth assumption:** the economic and working conditions of riders should have improved



The impact on working and economic conditions has not been as positive as expected.

- In many cases their income has been reduced
- The social protection they have accessed to has been of low quality
- Many have been awarded few working hours
- Some riders have lost their jobs,
- In general the volume of riders hired by platform has diminished.
- With the new contractual terms self-employed riders are worse off

Quality of employment vs. quality of work

## THE FUTURE

**Fifth assumption:** Spain will not have difficulties in implementing a European directive on platform work,

Spanish law uses a single presumption, according to which riders are to be considered as dependent workers in some cases

Spanish Act of 2021 only provides work councils with a right to be informed

Spanish law applies only to dependent workers.



the proposed directive foresees a number of criteria to be considered

the draft directive additionally ensures human monitoring on their respect of working conditions and gives the right to contest automated decisions.

the directive grants rights to both workers and genuine self-employed.



## SOME CONCLUSIONS

Spain has pioneered in the regulation of platform work, and for many reasons its experience is interesting from an academic and public policy point of view.

The Spanish approach to the regulation of platform work is characterized by a number of distinctive features:

- the use of legislation
- this legislation has been reactive to prior interventions of the judiciary and the labour administration
- a sectorial approach to platform work

The passage of the Rider Act has not had the expected impact on the contracts of these workers or on their economic and working conditions.

Platforms have resisted the application of its consequences in various ways, defending a business model that is no longer sustainable in Spain.

