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The papers collected in this issue of the *E-Journal of International and Comparative Labour Studies* (EJICLS) were presented at the international conference “Towards the Social Construction of New Labour Markets. Interdisciplinary Reflections on the Changing World of Work” promoted by ADAPT, which took place in Bergamo (Italy) on 24-26 November 2022. Afterwards, they were submitted to and accepted for publication in the EJICLS.

Pro-immigrant Digital Platforms in Portugal: An Overview

Monique de Souza Arruda*

Abstract: The present study analyses work through digital platforms in Portugal, focusing on immigrant workers, and assesses the existence of initiatives guaranteeing decent work for this category of workers, given their social vulnerability. Consideration was given to Law n. 45/2018, of August 10, the law TVDE (Individual and Paid Transport of Passengers in Disabled Vehicles from an Electronic Platform); the Green Book of the Future of Work (2021), which analyses digital work in Portugal for the creation of efficient public policies capable of providing decent work, even in the face of the challenges created by work in the digital age; subsequent actions of the Portuguese government regarding work on digital platforms and, particularly, those directed at immigrants, constituents of the majority of the workforce in this economic activity.

Keywords: Digital platforms; decent digital work; platform economy; immigrants; Portugal.

Introduction

The issue of work on digital platforms has been identified as a major challenge to labour law in the context of digital transformation. This state of affairs introduced a new technological paradigm, which firstly affected the industrial sector, bringing in a latest production model, that was made possible by the technologies of the 4th Industrial Revolution, triggering, at first contact, concerns regarding the replacement of labour by machines and raising the question about how such “coexistence” would take place.

However, at the present time, after the dissemination of this current model of life to all fields of life in society (cultural, social, educational, political), fresh

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questions, much deeper than the influence of this revolution on the economy, have been shaking the structures of a rigid labor law, shaped by automated Fordist production lines.

In Portugal similarly to other countries in Europe and in the world, human work through digital platforms gained not only more robust structure, but also followers, initially in the field of passenger transport, through applications such as Uber. Today there are many active platforms in Portugal, including Bolt, Free Now, It's My Ride, Glovo, Uber Eats, Bolt Food, Take Away. There is a very relevant common feature regarding these platforms: they are predominantly made up of immigrants¹ - Brazilians, Pakistanis, Indians, Venezuelans, Bangladeshis, people who arrived in Portugal to seek better living conditions for themselves and their families.

It so happens that, when they land in this country, these workers face enormous difficulties in getting legalized with the State, either because they entered without having proper visas that could grant them for authorization to stay, or because of the existing discrimination in the "restricted" labour market – even though they are legalized and have the corresponding technical and academic training for employment. Therefore, due to lack of opportunities in their adopted country, they resort to platforms to provide their livelihood, due to the ease of entry, as well as few and viable requirements of the activity. However, for this, they find themselves framed, in most cases, as independent workers, that is, self-employed, as evidenced worldwide in this process of "uberization" of the economy.

In order to alleviate competition and tax problems, the government created in Law no. 45/2018, of August 10, the "4th person" in the relationship (client, platform, service provider), which is the TVDE operator, which makes it difficult for these people to be legalized as typical workers by presumption of the existence of the employment contract, pursuant to art. 12 of the CI, considering that, in order to carry out the activity of passenger transport, the constitution of a legal person is required, which is not always consistent with reality, since, in many cases, TVDE operators consist of a self-employed person who constitutes this institute only with the aim of complying with the legal formalities to obtain the necessary licenses to carry out the activity.

At the Portuguese court level, like in Spain, France, the United Kingdom, we had one case appreciated by the Constitutional Court², but the case does not

¹ As defined by the European Union "in the global context, a non-resident (both national or alien) arriving in a State with the intention to remain for a period exceeding a year", https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/immigrant_en (accessed April 10, 2023).

² Judgment No. 180/2022 of the Portugal's Constitutional Court, referring to Case No. 227/2022, Rapporteur: Counselor António José da Ascensão Ramos, regarding the

consider the material classification's question of the legal relationship or the working conditions to which the workers are submitted. Nonetheless, the government has discussed new policies, to reflect them on their agenda regarding dignifying work and inclusive social protection internally. With this scope, a joint effort was made on the theme of work in the digital age, carried out by experts from the national territory (academy, unions, legislators), which originated the preliminary version of the Green Book of the Future of Work (2021)³, to create lines of reflection to guide future public policies regarding work on digital platforms.

To better understand the current panorama of work on digital platforms performed by immigrants and to understand which initiatives have been adopted to improve the living conditions of these workers, given the current precariousness of the activity, first, we will analyse the reality of immigrants' work on digital platforms in Portugal; then, we will check the legal framework involving working on digital platforms there; and, finally, we will examine the public policies studied by Portuguese experts towards the guaranteed of decent work for workers in gig economy.

1. Contextualizing the Platform Economy Phenomenon and the Paradigm Shift in Labour Relations

After the year 2000, with the massification of the population's use of applications that involve intermediation by "independent" human work – uberization of work, there has been a concern at European and global level to continue to protect workers from the on-demand economy in the context of the gig economy, initially understood as sharing economy, but whose business practices are now perceived as an ultramodern tool of capitalist exploitation⁴.

unconstitutionality's pronouncement of the rules contained in paragraphs b) and f) of paragraph 2 of article 4 ° and article 13 of Decree n.º 1/2022 of the Legislative Assembly, of the Autonomous Region of the Açores, which establishes the Legal Regime of the Activity of Individual and Remunerated Transport of Passengers in Uncharacterized Vehicles Using an Electronic Platform in the Autonomous Region of the Açores (TVDERAA), approved by the Legislative Assembly of the Autonomous Region of the Açores on January 11, 2022. Such pronouncement was given due to the law enacted by the Açores, which is an invasion of the parliamentary reserve on rights, freedoms and guarantees (and fundamental rights analogous to them), guaranteed exclusively to the constitution.

³ *Livro verde sobre o futuro do trabalho*. Lisboa, Portugal: Ministério do Trabalho, Solidariedade e Segurança Social, 2022.

⁴ In that regard: Information Technology & Innovation Foundation, "What are Digital Platforms?", *ITIF*, pp. 1–2, 2018, <https://www2.itif.org/2018-tech-explainer-digital-platforms.pdf>; X. Fu, P. Ghauri, N. Ogbonna, and X. Xing, "Platform-based business model and entrepreneurs from Base of the Pyramid", *Technovation*, p. 102451, Jan. 2022,

According to what we know, this is an international phenomenon which uses platforms as “(re-)programmable digital infrastructures that facilitate and shape personalized interactions among end-users and complementors, organized through the systematic collection, algorithmic processing, monetization, and circulation of data”; and platformization as “the penetration of platform infrastructure, economic processes and government structures into different economic sectors and spheres of life”. And, from the tradition of cultural studies, we conceive this process as the reorganization of cultural practices and imaginations around platforms”, as defended Poell et al.⁵ in an innovative way. At the labour law level, however, the problem with this phenomenon is not in the field of innovation, which in fact has its beneficial aspect at the business level, but is in those involved in this process, namely a workforce called collaborator or partner, but which, in practice, is one more production tool of a new business model⁶.

They are called gig-workers⁷, freelancers⁸, crowd-workers⁹, riders and they all have jobs with common characteristics: they have to register and be admitted

<https://doi.org/10.1016/j.technovation.2021.102451>; A. Aloisi & V. de Stefano, *European Legal Framework for 'Digital Labour Platforms'*, 2018, doi: 10.2760/78590; M. Kenney and J. Zysman, “The rise of the platform economy”, *Issues Sci Technol*, vol. 32, no. 3, pp. 61–69, 2016; M. Kenney and J. Zysman, “Intelligent Tools and Digital Platforms: Implications for Work and Employment”, *Intereconomics*, vol. 52, no. 6, pp. 329–334, 2017, doi: 10.1007/s10272-017-0699-y; S. Vallas and J. B. Schor, “What do platforms do? Understanding the gig economy,” *Annu Rev Sociol*, vol. 46, pp. 273–294, 2020, doi: 10.1146/annurev-soc-121919-054857; L. Mella Méndez, *Regulating the platform economy*, Oxon, Routledge, 2020; Publications Office of the European Union, *Platform Workers in Europe Evidence from the COLLEEM Survey*, 2018, doi: 10.2760/742789.

⁵ T. Poell, D. Nieborg, and J. Van Dijck, “Platformisation”, *Internet Policy Review*, vol. 8, no. 4, 2019, doi: 10.14763/2019.4.1425, p. 3.

⁶ A. Aloisi, “Demystifying flexibility, exposing the algorithmic boss: a note on the first Italian case classifying a (food-delivery) platform worker as an employee”, *Comparative Labor Law & Policy Journal*, 2021, <https://cadmus.eui.eu/handle/1814/74937#.Y259Tf5XoFs.mendeley> (Accessed: Nov. 11, 2022); A. Aloisi and V. de Stefano, *Il tuo capo è un algoritmo: contro il lavoro disumano*. Bari, GLF Laterza, 2020; J. AMADO & T. MOREIRA, “A Glovo, os riders/estafetas e o Supremo Tribunal de Espanha: another brick in the wall?”, *Prontuário de Direito do Trabalho*, vol. 2, pp. 121–151, 2020; T. Moreira, “A discriminação algorítmica”, *Questões Laborais*, n. 58, Coimbra, pp. 85–103, Jan. 2021; T. Moreira, *Direito do Trabalho na era digital*, Coimbra, Almedina, 2021; A. GINÈS Y FABRELLAS, *El trabajo en plataformas digitales: nuevas formas de precariedad laboral*, Cizur Menor, Thomson Reuters, 2021; J. Prassl, *Humans as a service*, UK, Oxford University Press, 2018; J. Prassl, “What if your boss was an algorithm? Economic Incentives, Legal Challenges, and the Rise of Artificial Intelligence at Work”, *Comparative Labor Law and Policy Journal*, vol. 41, no. 1, pp. 1–30, 2019.

⁷ M. Wiener, W. Cram and A. Benlian, “Algorithmic control and gig workers: a legitimacy perspective of Uber drivers”, *European Journal of Information Systems*, pp. 1–23, 2021, doi: 10.1080/0960085X.2021.1977729; M. Graham, I. Hjorth and V. Lehdonvirta, “Digital labour

to digital platforms; they can work whenever and however they want; they don't have a fixed place of work; they are paid according to the amount of tasks they perform to the satisfaction of the digital platform; they don't provide services for the platforms themselves, but for the clients they intermediate, they have all their work activities monitored in real time; they don't have any support from the platform regarding work equipment, assuming the risk of the activity and using their own means to perform the tasks; generally they perform non-complex micro-tasks (derived from the segregation of a complex activity that would be performed by a traditional worker with an employment contract) or work with a low level of skills, as the case of passengers' transport and home delivery services and, finally, they don't have employment relationship with the platform or with the client, being, according to the business model, compared to micro-entrepreneurs.

For example, in the case of a platform delivery man: he/she rents or has the vehicle; he/she is neither employed by the platform, nor the customer or the restaurant and, therefore, he/she has no labour rights. In other words, they do not take any vacations, they don't have mandatory breaks, social security or health insurance and their work doesn't count service time.

The heart of the matter at this point is not in the benefits that digital transformation and 4th generation technologies bring to society or in the profound alteration that it has carried out in the heart of life in society, from the family sphere to extreme cases such as the question of disinformation and cyber-attacks, but focuses on the way in which the offer of "typically digital jobs" directly affects the lives of workers and their rights in the face of the existing imbalance of power between the person offering the job and the

and development: impacts of global digital labour platforms and the gig economy on worker livelihoods”, *Transfer*, vol. 23, no. 2, pp. 135–162, 2017, doi: 10.1177/1024258916687250.

⁸ STATISTA, “Amount of people freelancing U.S. 2020”, <https://www.statista.com/statistics/685468/amount-of-people-freelancing-us/> (accessed Dec. 06, 2022); OIT - Organização Internacional do Trabalho, *Perspetivas Sociais e de Emprego no Mundo 2021: O papel das plataformas digitais na transformação do mundo do trabalho*, Genebra, 2021.

⁹ J. Amado & T. Moreira (2020), *op. cit.*; E. Kluwer, *Observatorio temático de legislación Economía colaborativa y mercado de trabajo: Un repaso a propósito de la «Ley Rider»*, pp. 1–22, 2021; D. Howcroft and B. Bergvall-Kåreborn, “A Typology of Crowdwork Platforms” *Work, Employment and Society*, vol. 33, no. 1, pp. 21–38, 2019, doi: 10.1177/0950017018760136; V. de Stefano, “The rise of the «just-in-time workforce»: On-demand work, crowdwork and labour protection in the «gig-economy»”, *Conditions of Work and Employment Series*, no. 71, p. 43, 2016, www.ilo.org/publns%0Ahttp://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_443267.pdf; R. Heeks, “Decent Work and the Digital Gig Economy: A Developing Country Perspective on Employment Impacts and Standards in Online Outsourcing”, *Centre for Development Informatics Global Development Institute*, SEED University of Manchester, 2017.

person submitting to the terms of the first to provide for themselves and their families.

In work carried out through digital platforms, as well as in other sectors of the on-demand economy or the gig economy, in which both have the exercise of work activity by human beings in common, there are currently only two internal rules that grant rights at the adequate labour for this up-to-date class of workers in the State of California-USA and Spain.

There are also some judgments of extreme relevance in the United Kingdom, France, Italy, Spain, which lead to the perception of a tendency of the courts to perceive in the concrete case the necessary components for the disclosure of a typical employment relationship, despite the change made in the forms of worker control (GPS, full-time surveillance of the execution of the activity, algorithmic management), despite the relative "freedom" that the "partner" has, in terms of autonomy in the way of carrying out the activity and freedom in choosing working hours.

However, the power and flexibility they have, in terms of reformatting business strategy, constitute a complex reaction weapon for the law, as every action or direction taken by legislators has a direct impact on workers' lives. What has been experienced, as seen in Spain, is that even the task of classifying the gig worker as an effective worker, granting them the respective rights and social guarantees due, it has as a consequence reaction from the digital platforms not a little cooperative or fraternal, on the contrary, what usually happens is that they point to an immediate restructuring of their business model, in order to make it impossible to classify their workers as employees, or, in an extreme situation, not verifying another viable solution, end their activities in that country.

This time, we can see the extent of the complexity of the issue and the great multidisciplinary effort it demands, so that it can be tackled in the wisest and most efficient way possible.

2. Portugal and Migratory Currents: Obstacles to a Better Life

A common phenomenon can also be noticed regarding the workers of these platforms, the fact that they are usually integrated by immigrants¹⁰ (foreigners

¹⁰ According to the Migration Observatory in Lisbon: "Immigrants would be associated with a voluntary movement and would be characterized by initiative, taking decisions through they intend to maximize the benefits of their location, whether for economic reasons, study, retirement, health, among others. While refugees would be involved in an involuntary or forced movement, conditioned by structural factors that would determine their movements" in C. Oliveira, *Relatório Estatístico do Asilo 2022. Requerentes e Beneficiários de Proteção Internacional em Portugal*, Lisboa, 2022. (Free translation by the author).

who are not citizens of the European Union-EU) or newly arrived European citizens, that is, people of different nationalities from the national territory, who “chose” to move to other country to obtain better living conditions and opportunities; security, economic and political stability; better education; healthcare; among others.

In Portugal, according to the annual statistical report on the integration of immigrants by the Migration Observatory and the Foreigners and Borders Service (SEF)¹¹ the predominant immigration flows come from the Community of Portuguese Speaking Countries (CPLP), EU member countries and Eastern countries, with the most representative nationalities in 2021 coming from Brazil, the United Kingdom, Cape Verde, Italy, India, Romania, Ukraine, France, Angola and China, which have chosen regions such as Lisbon, Sintra, Cascais, Albufeira and Porto to set up an address.

When immigrating legally¹², for work, study, business investment, international reception or, in an undeclared way (in the case of people who enter as tourists but intend to stay in the country, as well as foreign asylum seekers who remained in Portugal after the expiry of their temporary visa, without completing their registration that formalizes the right of residence), these people hope to achieve access to capital, financial, human and social, such as security, stability, economic predictability and education stand out.

Nonetheless the reality they must face when they get here is very different. Some immediate barriers are placed in front of immigrants:

- The non-acceptance of qualifications that are not Portuguese without equivalence;
- The need for fluency in Portuguese and English languages to access employment;
- Discrimination against nationalities¹³;

¹¹ J. Estrela, S. Lopes, A. Menezes, P. Sousa and R. Machado, *Relatório de Imigração, Fronteiras e Asilo*, Lisboa, May 2022, <https://sefstat.sef.pt/Docs/Rifa2021.pdf> (accessed October 27, 2022).

¹² For a detailed overview, in case of immigrants see “Trabalhar em Portugal – Portal de Informação Ao Imigrante”, <https://imigrante.sef.pt/solicitar/trabalhar/>, (accessed February 6, 2022). For migrant European citizens: “Alto Comissariado para as Migrações”, <https://www.acm.gov.pt/trabalhar>, (accessed April 10, 2022).

¹³ As explained by the Migration Observatory (Oliveira, 2022, p. 310, *op. cit.*), as of 2017, the identified complaints made by immigrants regarding discrimination based on nationality were: “gypsy ethnicity” (32.4% of complaints in 2017, 21.4% in 2018 and 19, 3% in 2019) and “black skin colour/black/black race” (19.6% in 2017, 17.6% in 2018 and 17.7% in 2019) stand out as the main factors of discrimination. Among the identified nationalities, Brazilian nationality continues to stand out (10.1% of the complaints in 2017, 13% in 2018 and 17% in

- Requirement of national documentation such as Tax, Social Security Identification Number and other bureaucratic barriers to access employment.

Given these difficulties in entering the labour market, a large number of immigrants, especially those who do not yet reside legally, due to the fact that they do not have access to institutions that support immigrants or jobseekers, such as the IIEFP (Institute of Employment and Vocational Training) and Social Security, they join the unemployment figures. So, in order to provide for themselves and their families, they are forced to work under precarious, degrading and often informal conditions, reaffirming the connection of immigrant workers to these 3 D's: demanding, dangerous and dirty jobs¹⁴.

The consequence of these difficulties is the increasing risk of poverty or social exclusion, that combines three indicators, according to the Europe 2020 Strategy¹⁵:

- (1) The risk of relative poverty, which reports not the measure of wealth or poverty of individuals, but the comparison, between nationals and foreigners, of annual net monetary income by reference to 60% of the country's average income, after social deductions;
- (2) The situation of severe material deprivation; and
- (3) The very low per capita work intensity that measures all people under 60 years of age who, in the income reference period, lived in households where the adult population aged between 18 and 59 years (excluding students) worked on average less than 20% of possible working time.

2019) as the basis of discrimination, with other nationalities also appearing in a residual way (e.g., Ukrainian nationality with 1.7% of complaints in 2017 and 1.4% in 2019). The last year thus appears again as an atypical year in the main expression used as a basis for discrimination: “gypsy ethnicity” (11.9%) and “black skin colour/black/black/black race” (11, 9%) lose relative importance compared to previous years, with the expression “white skin color” (16%) and “foreigners/immigrants in general” (14.5%) standing out in the complaints received by the CICDR in 2020. (Free translation by the author).

¹⁴ Cooke & Brown (2015, p. 12), footnote 6 *apud* Connell (1993) explain that these 3 D's were originated from the Japanese expression 3K: *kitanai, kiken, kitsui* and has subsequently gained widespread use, regarding labour done by migrant workers. J. Connell, “Kitanai, kitsui and kiken: The rise of labour migration to Japan”, *Economic & Regional Restructuring Research Unit*, University of Sydney, 1993; F. Cooke & R. Brown, *The regulation of non-standard forms of employment in China, Japan and the Republic of Korea*, Geneva, ILO, 2015.

¹⁵ European Commission, *Europe 2020: a European strategy for smart, sustainable and inclusive growth*. <https://ec.europa.eu/eu2020/pdf/COMPLETE%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf>, (accessed April 10, 2023).

3. Links between Platform Work and Most of the Immigrant-Made Workforce in Portugal

Due to the easy access to platforms' work, and without alternatives, immigrants choose to enter this work activity because thus, as they are qualified to drive motorcycles or vehicles, obtaining their own means of transport (which they can even rent monthly), by registering with the TVDE operator and on the digital platform, they can quickly start the activity and provide their livelihood.

As we said, apparently it would be easy to "solve" the issue of lack of work, using the opportunity to work for pay through digital platforms. It so happens that, in Portugal, there is a specific internal law for those who intend to carry out the transport of passengers in the national territory, the Law No. 45/2018, of August 10, which arises due to the concern at European and world level with the mass use by the population of applications that involve intermediation by "independent" human work (uberization of work), having been, at European level, a pioneer in dealing with the issue of transportation of passengers intermediated by digital platforms, mainly because it shows an active role of the Portuguese state in solving problems resulting from such activity, such as taxation, license to carry out the activity, possibility of inspection by the Authority for Working Conditions (ACT), access to information about business activity (which platforms, how many people work, working hours, etc.).

On the other hand, the legislator created a fourth legal entity in the relationship between passenger transport platforms, customers and service providers: the TVDE operator, a legal entity to which the license to operate the activity is granted and also the duty to comply with all legal and regulatory obligations, including those arising from the legislation on work, safety and health at work and social security. That is, the driver can only drive legally in Portugal if he/she has a contract with the TVDE operator and not with the platform operator.

This "innovation" of creating a 4th person in the relationship named TVDE operator¹⁶, to a certain extent, as stated above; however, it left a pole of the relationship extremely vulnerable to economic activity, the working people who personally carry out the service provision, platform workers.

This is because it complicates the issue of the legal framework for workers who are factually dependent, on the presumption of the existence of the

¹⁶ Article 2º, Law No. 45/2018, August 10th, *Regime jurídico da atividade de transporte individual e remunerado de passageiros em veículos descaracterizados a partir de plataforma eletrónica*, <https://dre.pt/dre/detalhe/lei/45-2018-115991688>, (accessed April 10, 2022).

employment contract, under the terms of art. 12 of the Labour Code, which have constituted legal people solely for the purpose of obtaining the necessary internal licenses for the exercise of the activity, thus privileging digital platforms. How Amado & Moreira¹⁷ explain and denounce:

La loi indique donc que le contrat signé entre le chauffeur et l'opérateur TVDE peut, mais pas nécessairement, être un contrat de travail. En fait, elle prévoit les deux cas, celui du chauffeur lié par un contrat de travail et celui du chauffeur indépendant (c'est ce qui ressort clairement de l'article 10, § 12 concernant l'aménagement du temps de travail). Toutefois, à l'article 10, § 10, il est précisé que « les dispositions de l'article 12 du Code du travail sont applicables au lien juridique établi entre l'opérateur TVDE et le chauffeur affecté à l'activité, fixé par un contrat signé par les parties, et ce quelle que soit la dénomination que celles-ci ont adoptée dans le contrat ». En d'autres termes, la loi fait expressément référence à la présomption de salariat instituée par le Code du travail et confirme, en ce cas, son application. Mais attention! – et c'est un point décisif pour comprendre la portée de cette règle: la loi ne fait référence qu'au lien contractuel existant entre l'opérateur TVDE et le chauffeur; elle ne fait pas référence à un tel lien entre l'opérateur de la plateforme numérique et le chauffeur, car elle suppose qu'il n'y en a pas.

Ainsi, selon la loi portugaise, des sociétés telle Uber seront considérées comme des opérateurs de plateforme numériques types, offrant des services d'intermédiation entre les utilisateurs/passagers et les opérateurs TVDE. Et ces derniers, en tant que personnes morales dont la mission est de fournir un service de transport individuel payant, auront recours à des chauffeurs dédiés à cette tâche dans le cadre, ou non, d'un contrat de travail. Le chauffeur, quant à lui, ne passera aucun contrat avec l'opérateur de la plateforme, même s'il doit être enregistré auprès de celui-ci pour pouvoir exercer son activité. Pourtant, la loi impose à l'opérateur de la plateforme des obligations comparables à celles d'un employeur, notamment en ce qui concerne le contrôle du temps de travail du chauffeur et le respect des limites fixées. Il suffit, pour s'en convaincre, d'examiner les dispositions de l'article 13, intitulé «Durée de l'activité»: «Les chauffeurs TVDE ne peuvent être en service plus de 10 heures sur une période de 24 heures, quel que soit le nombre de plateformes qu'ils utilisent pour exercer leur activité, sans préjudice de l'application des règles obligatoires édictées par le Code du travail à la période de référence fixée est plus courte » (§ 1) ; « Les opérateurs de plateformes numériques doivent mettre en place des mécanismes garantissant le respect des limites visées au paragraphe précédent » (§ 2) ; « Les plateformes numériques doivent conserver pendant deux ans les registres d'activité des opérateurs, des chauffeurs et des véhicules TVDE établis à partir du numéro d'enregistrement individuel des chauffeurs TVDE » (§ 3). En outre, en vertu de l'article 20, § 3 sur les obligations générales des opérateurs de plateformes, «le système informatique doit enregistrer le temps de travail du chauffeur et le respect des temps e conduite et de repos».

Thus, the mechanism of inserting the TVDE Operator in the relationship between the digital platform, the service provider and the customer can be another way of escaping the configuration of a subordinate work relationship

¹⁷ J. Amado & T. Moreira, “La loi sur les plateformes de transport et le contrat de travail au Portugal: sujets, relations et présomption de salariat”, *Les travailleurs des plateformes numériques*, TeSEO, Buenos Aires, 59–82, 2022, p. 75.

between the driver and the digital platform, since the legal entity can be opened by an individual solely with the intention of obtaining an operating license. In addition, it does not promote the minimum working conditions for the performance of decent work by the service provider since the option of signing the employment contract or the contract for the provision of services with a driver is at the discretion of the TVDE operator.

Considering these specificities and returning to the reality of an immigrant worker who needed to provide the minimum for his food, housing, clothing, health and social expenses, he will have the immediate obstacle of lack of money solved, because digital platforms effectively provide this opportunity to access to the job market and actually comply with the payment of the consideration for the service performed, that is, as long as the worker meets the minimum requirements demanded by the platform, regardless of his nationality, they will have access to the job.

The misfortune lies in the problems inherent in carrying out the daily work activity and in the conditions of health, hygiene and safety at work, since, when entering this type of work, the service provider is obliged to provide all the tools, environment, breaks and other duties, which would be the responsibility of the employer, resulting in the minimum material and immaterial conditions (related to physical and mental health, balance between family and professional life).

In this way, in the day-to-day execution of the activity, the platform worker finds himself without material support and doomed to working conditions that directly affect his physical and mental health, without any effective protection in relation to work if he has not signed an employment contract with the TVDE Operator, which is in fact rare, as in general, in order not to incur the expenses related to hiring employees, they choose to hire service providers.

The reality is that Portugal has been chosen by many immigrants, as it is a relatively safe country, with attractive places to live as a family and with a quality education system; however, given the internal inflationary crisis, they are using platforms as a means of livelihoods due to the lack of job opportunities in the country. As shown in *Jornal de Notícias*¹⁸ the workforce in 2022 on digital platforms is made up of 80% of Brazilians and by Pakistani,

¹⁸ *Jornal de Notícias* (2022), <https://www.in.pt/local/noticias/porto/porto/estafetas-das-plataformas-digitais-reclamam-melhores-condicoes--14737599.html>; *Jornal Expresso* (2022), https://expresso.pt/sociedade/2022-02-09-motoristas-e-parceiros-tvde-em-protesto-em-lisboa-e-no-porto-por-taxa-fixa-nos-servicos?utm_source=site&utm_medium=share&utm_campaign=mail; *Diário de Notícias*, “Seis estafetas contam como é trabalhar na Uber Eats: muitas horas a trabalhar e dependentes dos likes dos clientes” (2018), <https://www.dn.pt/portugal/uber-eats-sem-contrato-e-dependente-do-like-do-cliente-9408479.html>, (accessed April 10, 2022).

Indian, Venezuelan, Bangladeshi people. The number of digital platforms involving human labour in Portugal grows proportionally, showing a diversification in passenger transport platforms: Uber, Bolt, Free Now, It's My Ride, and in the transport of consumer goods: Glovo, Uber Eats, Bolt Food, Take away¹⁹.

It is important to point out that Portugal's internal regulations regarding platform workers only cover the context of passenger transport, so the other branches of work on platforms, including delivery, micro tasking and freelance platforms, do not have any type of restriction, except for those that are already "solved" by the platforms.

In the face of such circumstances, we have seen more and more protests by platform workers at national level, especially after the pandemic in Lisbon, Porto, Coimbra, where many of them are concentrated, which has intensified in the face of increases in fuel prices and a decrease in the tariff paid by workers on some platforms to increase competitiveness; meanwhile, above all, it is related to the precarious working conditions they experience on a daily basis. They ask for rights like:

- Minimum wage;
- Vacation;
- Access to pensions and contingency coverage (illness, accident, parenting);
- Limitation of working hours;
- Christmas subsidies;
- Right to collective representation, with the constitution of local representatives in cities;
- Rate readjustment - updating of amounts paid per Km – 0.70e/km, counted from the receipt of the order to the customer's home;
- Addition of value in the case of night service;
- Bonus of 10 euros in case of bad weather;
- Co-participation of platforms in vehicle acquisition and maintenance;
- Travel allowance – fuel.

After recent jurisprudential decisions²⁰ in the USA, the UK, France, Italy, legislative innovation in Spain²¹ (Rider Law) and the Proposal for a Directive of

¹⁹ *Livro verde sobre o futuro do trabalho, op. cit.*

²⁰ In which a tendency is perceived towards the recognition of the employment relationship due to the presumption of employment, analysing specific cases.

²¹ *Real Decreto-ley 9/2021*, in which a series of measures are established to protect the labour rights of people dedicated to the distribution through digital platforms or riders.

The European Parliament and the Council²², on improving working conditions in platform work, in December 2021, Portugal carried out a study of the context of work in the digital environment, called Green Paper on the Future of Work²³, in order to better understand the phenomenon of work transformation for the simultaneous monitoring of the national legal system, against the precariousness of work.

The Green Paper on the Future of Work brings us that Portugal highlights the need to protect workers, even though the employment relationship is being changed by new digital business models, recognizing that it is necessary to:

- Create a presumption of work adapted to work on digital platforms;
- Ensure access to adequate social protection for workers;
- Promote the access of these workers to the rights of representation and collective participation;
- Create a minimum body of rights applicable to all who work on digital platforms, even if they do so on a service provision basis and as self-employed workers;
- Combat the risks of discrimination and the most harmful effects of segmentation and polarization in the labour market, namely in the most vulnerable and exposed groups such as among migrant workers and in sectors with higher risks of precariousness²⁴.

Such lines of reflection raised by the Portuguese government in the Green Paper of Work positively signal a proportional political movement in response to the social phenomenon of the platforming of work and place Portugal ahead of other countries in the EU, which acted in the legislative sphere as a result of the existing normative vacuum internally, denounced by the supreme jurisdictional entities, after the analysis of specific cases brought to the Court, as the example of Spain and France.

This political study also denotes an alignment between Portugal's position and the responses that have emerged at an international (ILO, EU) and national level, mainly in the EU member countries, but also in the US and the UK, around the need to adapting labour law to the phenomenon of digital transformation, to reaffirm and consolidate the European Pillar of Social Rights.

²² Eur-Lex, Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, COM/2021/762, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A762%3AFIN>, (accessed April 10, 2022).

²³ *Livro verde sobre o futuro do trabalho*, op. cit.

²⁴ Freely translated by the author.

The Green Book of the Future of Work also directs attention to workers on platforms and beyond, as well as other atypical workers produced by the on-demand economy and the digital revolution, taking them out of the shadows of flexibility, alienation and precariousness to protect appropriate social service to their needs, as stated in the same manual: "emphasizing that the fact that the service provider uses his own work tools, as well as such as the fact of being exempt from fulfilling duties of attendance, punctuality and non-competition, is not incompatible with the existence of a dependent employment relationship between the provider and the digital platform"²⁵; a pioneering political action at national level.

In the same vein, the Ministry of Labour, Solidarity and Social Security²⁶ has been discussing with partners the proposal to create a presumption of employment contract in relation to platform workers and it is presenting proposals to the social partners for materializing the decent work.

In October 2022, Portugal signed a letter rejecting the adoption of measures that "only perpetuate the existing imbalance" between electronic platforms and gig workers, that ensure digital and green transitions go hand in hand with workers' rights, with other countries like Spain, Luxembourg, Italy, Malta and the Netherlands²⁷.

In view of the above, great developments can be seen in dealing with the issue of work on platforms in Portugal, which, unlike other countries around the world, is not indifferent to changes in work and has implemented practical political measures²⁸ around the four strategic challenges raised in this sense, namely: the digital transition, demography, the fight against inequalities and the climate transition.

However, despite these advances, regarding the issue of specific protection for immigrant workers who carry out work activities on digital platforms, no direct government action could be found that would help them practically and

²⁵ *Livro verde sobre o futuro do trabalho, op. cit.*

²⁶ Secretaria-Geral do MTSSS, Agenda do Trabalho Digno - Notícias, 2022, [https://www.sg.mtsss.gov.pt/noticias/-/asset_publisher/xBQpI7NGgI5Z/content/agenda-do-trabalho-digno? 101_INSTANCE_xBQpI7NGgI5Z_redirect=%2Fnoticias;_journal=Jornal+Expresso,governo+avanca+na+agenda+do+trabalho+digno,+mas+motoristas+uber+podem+ficar+de+fora,2022,https://expresso.pt/economia/2021-07-21-Governo-avanca-na-agenda-do-trabalho-digno-mas-motoristas-Uber-podem-ficar-de-fora-5260c25a](https://www.sg.mtsss.gov.pt/noticias/-/asset_publisher/xBQpI7NGgI5Z/content/agenda-do-trabalho-digno?_101_INSTANCE_xBQpI7NGgI5Z_redirect=%2Fnoticias;_journal=Jornal+Expresso,governo+avanca+na+agenda+do+trabalho+digno,+mas+motoristas+uber+podem+ficar+de+fora,2022,https://expresso.pt/economia/2021-07-21-Governo-avanca-na-agenda-do-trabalho-digno-mas-motoristas-Uber-podem-ficar-de-fora-5260c25a), (accessed December 5, 2022).

²⁷ Luxembourg Public Relations in the European Union. https://twitter.com/RPUE_LU/status/1581962043800064001?ref_src=twsrc%5Etfw, (accessed December 5, 2022).

²⁸ República Portuguesa. Programa do XXII Governo Constitucional (2019). <https://www.portugal.gov.pt/pt/gc22/comunicacao/documento?i=programa-do-xxii-governo-constitucional>, (accessed December 5, 2022).

effectively, only the concerns raised by the Green Book of the Future of Work²⁹ in the need of action regarding inclusion, equality and non-discrimination, as we see:

The lower, less predictable or more intermittent patterns of retribution that, if not infrequently, are associated with work on digital platforms, work on demand or crowdwork hinder to full access to social protection throughout working life and in retirement, which can aggravate exposure to the risk of poverty, with different impacts for men and women.

At the intersection of these factors, and often in situations of high vulnerability and exposure to risks in the labour market, are migrants and workers foreigners in the less qualified, more precarious professional groups, more exposed to instability in the employment relationship, with lower wages and with a greater incidence of work accidents.

4. Conclusion

This study sought to fill a gap regarding work on platforms: the perspective of the immigrant who performs a work activity in this branch of the on-demand economy in Portugal and to verify the public policies that the Portuguese State has implemented towards the concession of decent work for these workers.

It was found that Portugal has received many immigrants, who choose this country to obtain better life conditions, mainly from the Community of Portuguese-Speaking Countries (CPLP), European Union member countries and Eastern countries, with the most representative nationalities in 2021 coming from Brazil, United Kingdom, Cape Verde, Italy, India, Romania, Ukraine, France, Angola and China.

However, these immigrants, after arriving in the national territory, have great difficulty entering the labour market and, therefore, see digital platforms as a quick opportunity to solve the issue of social needs.

This facility, given the current pre-configuration of consisting mostly of self-employed workers, in practice, becomes a major problem for these workers, since they have little or no social protection, having to bear the risks of activity alone, working under precarious working conditions, using their own means to perform their functions and having no social bargaining power.

Such burdens of this modern type of work, although, have been debated at an international level, legally and jurisprudentially, and in some countries some benefits and rights have already been conquered, given the difficulty of classifying these workers as employees or, as the case may be, granting a list of rights specific to their needs.

²⁹ *Livro verde sobre o futuro do trabalho, op. cit.*, p. 103-107.

In Portugal, in this sense, great progress can be seen in dealing with the issue internally, either because the country was a pioneer in the enactment of Law No. 45/2018, of August 10, which regulates Individual and Paid Transport of Passengers in Disabled Vehicles from an Electronic Platform (TVDE), either by, according to the Terms of the 2030 Agenda and in the sense of situating the emergence of further ways of providing work associated with the so-called “future of work” in the economic context and the job market in Portugal, developed the Green Book on the future of work 2021, in which it deals with the issue of platform workers and points out a very assertive list of public policies that must be adopted to provide decent work to this modern class of workers.

Anyway, in spite of facing the difficulties encountered by immigrant workers in the Portuguese labour market, it does not show concrete mechanisms to provide them with decent work until now, protected in proportion to their social vulnerability, nor are there public programs in operation with this bias.

Despite this, it should be borne in mind that the issue of work on platforms is an extremely new issue for Labour Law and that, therefore, the minimum initiatives for these workers in general are gradually being articulated by the state and the expression of a concern aimed at protecting them, regardless of the apparent freedom they have, is not an obstacle to confirming the existence of a dependent employment relationship between the provider and the digital platform.

Relevant studies on the issue of immigrant workers on digital platforms could be carried out as case studies, in cities such as Lisbon, Braga, Porto, like interviews with immigrant workers, to better understand specific essential needs for them to have decent work in this specific sector, mainly to guide future public policies for this purpose.

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The 2030 Agenda: Decent Work and the Reduction of Women's Precarious Work

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Abstract

The 2030 Agenda has, as one of its goals, Sustainable Development Goal (SDG) No. 8, which consists of promoting “sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”. To understand this, it is necessary to study the concept of decent work and its pillars, such as social dialogue, rights at work, social protection and employment creation. With that in mind, the present article analyses the importance of promoting decent work to mitigate precarious work performed by women. Therefore, the research is guided by dogmatic investigation, using bibliographic study to explain the construction of development – and sustainable development, what decent work, precarious work and women labour are. Although the paper does not exhaust the topic, it stresses the importance of the promotion of decent work and of considering unpaid domestic work to protect women from precarious work, by a systematic reading of SDG No. 8 and No. 5, without ignoring the other SDGs, like 10 and 16, to encourage more equal policies.

Keywords: 2030 Agenda; decent work; work performed by women; precarious work.

1. Introduction

With the advent of the UN 2030 Agenda, prescribed in Resolution No. 70/1, which corresponds to a soft law instrument and results from the consensus

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between 193 countries, it has been proposed important goals and targets, in an attempt to achieve sustainable development.

In this sense, among the objectives, we find SDG 8, on the promotion of decent work, whose concept was outlined within the scope of the ILO and has as its pillars the employment creation, rights at work¹, social protection and social dialogue.

It is noted that, despite advances towards the promotion of decent work, we are still facing the exercise of work in a precarious way, that is, devoid of protection, as it is carried out in unhealthy environments, with high or low working hours, low wages and restricting unionization.

With this in mind, we intend to answer the following question: is the idea of decent work enough to mitigate the precarious work performed by women?

This research has as its general objective to analyse the importance of promoting decent work to mitigate precarious work performed by women. And as specifically objectives: i) to study the UN 2030 Agenda and the construction of development – and sustainable development; ii) to study the sustainable development goal 8 about decent work; iii) to identify the concept of precarious work, analysing Brazilian data; iv) to analyse if the idea of decent work, predicted in SGD 8, can mitigate the precarious work performed by women.

For this, the research is guided by dogmatic investigation, using bibliographic study to explain the construction of development – and sustainable development, what decent work, precarious work and women labour are, each of which will be dealt with in its own section, and, at the end, will be connected.

2. UN 2030 Agenda and its Evolution

The UN 2030 Agenda consists of a document elaborated by 193 Member-States, that came into force on January 1st in 2016, by the publication of 70/1 UN Resolution. Its emergence is not unprecedented, and there are some instruments that precede it, which are 21 Agenda and the Millennium Development Goals (MDGs)².

¹ Rights at work correspond to the obligations mentioned in ILO Declaration on Fundamental Principles and Rights at Work, which are: “freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; the elimination of discrimination in respect of employment and occupation; a safe and healthy working environment.”

² See UN. The Sustainable Development Agenda. Available at: <https://www.un.org/sustainabledevelopment/development-agenda->

In summary, the 21 Agenda was elaborated through negotiations at the UN, as a result of the Second United Nations Conference on Environment and Development (Rio-92).

In turn, the MDGs result from the Millennium Summit, held in 2000, and did not correspond, according to Persson, Weitz and Nilsson³ to a universal commitment, being considered, by the mentioned authors, as a way for OECD countries to legitimize their image. In spite of this, they argue that the MDGs reflected a normative shift from international law goals, focusing not only on economic growth but also on poverty eradication and human well-being. Furthermore, it should be mentioned that these objectives receive support from 191 nations, which would even serve as inspiration for the improvement of the SDGs.

In 2015, the 2030 Agenda was adopted and, as already mentioned, come into force in 2016. It consists of 17 goals and 169 targets, understood as instruments of a non-mandatory nature (soft law), not residing, however, in a normative vacuum, as it is inserted in a context of evolution of International Law in the last decades⁴.

In addition to being based on the tripod of development, covering its economic, social and environmental aspects, a subject that will be analysed below, the Agenda is based on the “5 Ps” “people, planet, prosperity, peace and partnership”, as can be seen in UN Resolution 70/1, which aims to “leave no one behind”.

For a better understanding of the theme, as well as the content resulting from the Agenda and Resolution 70/1, it is important to study the concept of development and sustainable development, which will be done in the next section.

1.1 Development and Sustainable Development

The term development is endowed with innumerable meanings; hence, further research is necessary for its understanding.

Initially, the idea of development was related to an economic notion, in the sense that countries with greater financial capital were considered developed.

retired/#:~:text=On%201%20January%202016%2C%20the,Summit%20%E2%80%94%20of
ficially%20came%20into%20force. Access in: 06 dec. 2022.

³ See PERSSON, Åsa; WEITZ, Nina; NILSSON, Måns. Follow-up and Review of the Sustainable Development Goals: Alignment vs. Internalization. *Review of European, Comparative & International Environmental Law*, v. 25, n. 1, p. 59-68, 2016.

⁴ See KIM, Rakhyun E. The Nexus between International Law and the Sustainable Development Goals. *RECIEL (Review of European, Comparative & International Environmental Law)*, v. 25, n. 1, p. 15-26, 2016.

In that regard, the UN used the term in the post-war context, to distinguish developed countries from developing countries, serving the differentiation as support for the elaboration of projects for the neediest. Despite the emphasis on economic aspects, Ojeda-Pérez, García-Bueno and González-Franco⁵ argue that they are considered, in a way, social notions.

In spite of these considerations, made by the authors mentioned above, the term is constructed in order to take into account social aspects, with emphasis on the emergence of the action plan to determine a minimum standard of living prepared by the ILO in 1976 and the Declaration on the right to development prepared by the UN, in 1986.

Afterwards, the environmental bias was included in the concept, so that it is called sustainable development. Thus, although there are mentions that researchers such as Thomas Malthus would have already adopted the term in question, its landmark was taken as the Brundtland Report (Our Common Future), in 1987, which defines sustainable development as “one that meets to the needs of the present without compromising the ability of future generations to meet their own needs”⁶.

In parallel with the change of the notion of sustainable development, new indices for measuring development began to be created, which were not restricted to the economic aspect (this being the case of the Gross Domestic Product - GDP), highlighting the creation of the Human Development Index (HDI), introduced by Amartya Sen, in 1990⁷. There are also other indices considered as more comprehensive measures than GDP, such as the Genuine Progress Indicator and the Happy Planet Index⁸.

It is noted, through the analysis, that the notion of development has gone through gradations, until it covers the triple aspect, now adopted in the UN 2030 Agenda, hence, we think it is important to mention the sustainable development objectives (SDGs).

The SDGs consist of the objectives to be achieved by the Member States by the year 2030, by observing the targets set out therein, which can be adapted to

⁵ See OJEDA-PÉREZ, Fabián, GARCÍA-BUENO, Marco César; GONZÁLEZ-FRANCO, Rubén Antonio. *Desarrollo sostenible del trabajador a través del trabajo decente. Sociedad y economía*, v. 38, p. 89-104, 2019.

⁶ See CMNAD. *Nosso Futuro Comum*. 2 ed. Rio de Janeiro. Ed. Fundação Getúlio Vargas. 1991.

⁷ OJEDA-PÉREZ, Fabián, GARCÍA-BUENO, Marco César; GONZÁLEZ-FRANCO, Rubén Antonio, *op. cit.*

⁸ See KIM, Rakhyun E, *op. cit.*

the reality of each country. Pursuant to the provisions of UN Resolution 70/1, there are 17 objectives⁹:

Table No. 1. Sustainable Development Goals

Goal 1. End poverty in all its forms everywhere
Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture
Goal 3. Ensure healthy lives and promote well-being for all at all ages
Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
Goal 5. Achieve gender equality and empower all women and girls
Goal 6. Ensure availability and sustainable management of water and sanitation for all
Goal 7. Ensure access to affordable, reliable, sustainable and modern energy for all
Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
Goal 9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation
Goal 10. Reduce inequality within and among countries
Goal 11. Make cities and human settlements inclusive, safe, resilient and sustainable
Goal 12. Ensure sustainable consumption and production patterns
Goal 13. Take urgent action to combat climate change and its impacts
Goal 14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development
Goal 15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss
Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels
Goal 17. Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development

Source: UN, 2015.

⁹ See UN. Resolution 70/1 Adopted By The General Assembly On 25 September 2015. New York, Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement>. Access in: 10 jul. 2022.

One of them is SDG 8, which is about promoting “sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”, that will be studied in the next topic.

2. SDG 8: Decent work and the International Labour Organization (ILO)

The idea of decent work, along the lines of the one adopted in this study, was coined by the ILO, being a more recent subject than the Labour Law itself.

As it is known, the ILO was created in 1919, by the Treaty of Versailles, corresponding to a legal entity governed by public international law, of a permanent nature and tripartite composition¹⁰. There are relevant documents prepared by the organization, such as the Philadelphia Declaration, the ILO Declaration on Fundamental Principles and Rights at Work, from 1998, as well as numerous Conventions and Recommendations that deal with worker protection.

The notion of decent work, in turn, dates back to 1999, discussed at the 87th Meeting of the International Labour Conference.

Its concept, however, is not unanimous. One can cite, for example, the adopted by documents from the ILO Brazil, in which it is stated that decent work is “an adequately remunerated work, carried out in conditions of freedom, equity and security that would be capable of guaranteeing a dignified life¹¹”.

Mazzucconi¹² points out that, according to the ILO, decent work synthesizes a person's aspirations during their working life, meaning, among others, the opportunity to achieve productive employment, job security and social protection for families, better prospects for personal development and social integration, freedom and equal opportunity for all.

Abramo¹³, in turn, defines decent work as the point of convergence of the following strategic objectives, namely, “the promotion of rights at work, the

¹⁰ See SÜSSEKIND, Arnaldo. *Direito Internacional do Trabalho*. 3. ed. São Paulo: Ltr, 2000.

¹¹ See OIT. *Trabalho decente nas Américas: uma agenda hemisférica, 2006-2015*. Available at: https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---ilo-brasilia/documents/publication/wcms_226226.pdf. (Accessed Dec. 07, 2022).

¹² See MAZZUCCONI, Carolina San Martín. *Trabajo Femenino: la desigualdad como factor de precariedad*. In: ODS 8. *El trabajo decente y las aportaciones de la comunidad internacional*. 2020. Available at https://e-archivo.uc3m.es/bitstream/handle/10016/30340/monografias_12_IFV_2020.pdf?sequence=1. (Accessed Dec. 07, 2022).

¹³ See ABRAMO, Laís. *Uma década de promoção do trabalho decente no Brasil: uma estratégia de ação baseada no diálogo social*. Genebra: OIT, 2015. Available at:

generation of productive and quality jobs, the extension of social protection and the strengthening of social dialogue", having gender as a transversal axis¹⁴. This idea is the most adopted and accepted according to Beltramelli Neto and Voltani¹⁵, although these authors point out that this is not accepted as a "definition" and, much less, as a preemptory definition of the term.

This time, despite the possible differences in the concepts, as well as the above-mentioned note, it is understood that there is no harm in identifying decent work with its strategic pillars, which have to be read in an integrated way to achieve gender equality.

The notion of decent work is used in several international instruments, such as, the Declaration and Plan of Action of Mar del Plata (2005), Declaration on Social Justice for a Fair Globalization and the Global Pact for Employment (2008 and actualized in 2022) Rio + 20 outcome document (2012) and in the MERCOSUL Socio-Labour Declaration (2015).

Furthermore, it was listed as one of the goals of sustainable development, SDG 8, which consists of "Promoting sustained, inclusive and sustainable economic growth, full and productive employment, and decent work for all", although the SDG does not, in its notion, reflect the multidimensional character brought by the ILO, dealing only with its aspects related to the right to work and employment protection, leaving aside social protection and social dialogue¹⁶.

Despite the above, it should be noted that the MDGs did not include decent work as one of their eight objectives, in addition to highlighting that, under the terms of UN Resolution 70/1, the reading of the SDGs demands an integrated interpretation, so that SDG 8 should not be seen isolated from the others¹⁷.

https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---ilo-brasilia/documents/publication/wcms_467352.pdf. Access in: 19 may 2022.

¹⁴ See ABRAMO, Laís, *op. cit.* pp-27.

¹⁵ See BELTRAMELLI NETO, Silvio; VOLTANI, Julia de Carvalho. Investigação histórica do conteúdo da concepção de Trabalho Decente no âmbito da OIT e uma análise de sua justiciabilidade. *Revista de Direito Internacional*, [S.L.], v. 16, n. 1, p. 166-187, 20 jun. 2019. Centro de Ensino Unificado de Brasília. <http://dx.doi.org/10.5102/rdi.v16i1.5900>. Disponível em: <https://www.publicacoesacademicas.uniceub.br/rdi/article/view/5900>. Acesso em: 18 maio 2022.

¹⁶ See FREY, Diane F.; MACNAUGHTON, Gillian. A Human Rights Lens on Full Employment and Decent Work in the 2030 Sustainable Development Agenda. *Sage Open*, [S.L.], v. 6, n. 2, p. 1-13, abr. 2016. SAGE Publications. <http://dx.doi.org/10.1177/2158244016649580>. Available at: <https://journals.sagepub.com/doi/pdf/10.1177/2158244016649580>. Access in: 19 may 2022.

¹⁷ MDG 3, in the other side, predicted the promotion of gender equality and women autonomy. See NUNES, Alessandra Garcia Machado *et al.* Relação entre igualdade de gênero e o desenvolvimento sustentável (ODS 5): um panorama internacional da evolução das

Therefore, it is important to analyse the concept of precarious work, to, afterwards, identify the panorama of the work performed by women.

3. Precarious Work

Precarious work is a term that has not a certain definition in law and social studies.

Nogueira and Carvalho¹⁸ indicate several notions of what precarious work would be. These authors sustain that the notion can be understood as one that leads the worker to a precarious way of life, in view of the lack of security at work and in aspects related to housing, illness, disability and old age.

Furthermore, the authors make a distinction between precarious work and informal work, specifying that informal work is related to non-compliance with legal norms. However, its content may converge to the concept of precarious work, because both infer the idea of destabilizing workers and institutionalizing underemployment caused by the capitalist system¹⁹. In the same vein, Olinto and Oliveira²⁰ show that precarious work and informal work are interconnected, as the former tends to be located in the informal sector of the economy.

Another concept about precarious work is the one created by Kalleberg²¹, who highlights that this would correspond to unpredictable work, whose risk is mostly taken by the worker and not by the employer.

In this sense, the ILO itself and liberal protection systems, he highlights that the issue of precariousness has been examined in opposition to what has been called “standard employment relationship” (SEP). The main characteristics of SEP consist of: 1) full-time, generally eight hours; 2) full weekly duration, usually varying between thirty-five and forty-five hours; 3) for an indefinite period; 4) for service provided directly to the employer; 5) regulated through legal norms and collective bargaining promoted by unions; and 6) covered by social security and misfortune protection.

publicações na Web of Science. *Gênero*, Niteroi, v. 22, n. 1, p. 1-30. Available at <https://periodicos.uff.br/revistagenero/article/view/50026/30727>. (Access Apr 08, 2023).

¹⁸ See NOGUEIRA, Mauro Oddo; CARVALHO, Sandro. *Trabalho precário e informalidade: desprecarizando suas relações conceituais e esquemas analíticos*. IPEA – textos para discussão, n. 2707. Rio de Janeiro: IPEA, 2021.

¹⁹ See NOGUEIRA E CARVALHO, op. cit

²⁰ See OLINTO, Gilda; OLIVEIRA, Zuleica Lopes Cavalcanti de. *Gênero e trabalho precário no Brasil*. *Gênero*, Rio de Janeiro, v. 5, n. 1, p. 209-223, dez. 2012. Available at: <https://periodicos.uff.br/revistagenero/article/view/31002/18091>. Access in: 06 dec. 2022.

²¹ *apud* NOGUEIRA E CARVALHO, op. cit.

Freitas Júnior²², however, mentions that the relationship between precariousness and SEP did not occur in the same way in all countries, nor did it protect men and women equally, highlighting that the success of SEP and Fordism during the Glorious Thirty, in central economies, occurred to the detriment of precariousness in peripheral countries. Furthermore, the author explains that, if the work is performed outside the SEP molds, it would be called atypical work – and not precarious work, although it can, frequently, be performed in a precarious way.

In this sense, Betti²³ defends the thesis that precarious work is a historical phenomenon, deconstructing the idea that it is a new one, which arises with the collapse of Fordism. Referring to the Italian case, the author highlights that the gender approach reveals different forms of production and working conditions, with women and migrants experiencing a significant level of precariousness in what was called the “golden age” in the 20th century.

Resuming our review on the subject, it is mentioned that, according to the ILO (2011), precarious work can be defined based on some common characteristics, such as: i) way of transferring the risks of the activity to the employee; ii) carried out in the formal or informal economy; iii) which is characterized by varying levels of objective (legal situation) and subjective (feeling) particularities of uncertainty and insecurity; iv) uncertainty about the duration of work; v) presence of several employers; vi) covert or ambiguous employment relationship; vii) inability to enjoy social protection and benefits associated with employment; viii) low wages and obstacles to union membership and collective bargaining.

Hirata²⁴ establishes as indicators of precarious work: i) the absence of social protection and social rights, including union rights; ii) work performed in reduced hours, which leads to lower wages; iii) low levels of qualification.

Guy Standing²⁵, in turn, uses the term *precariat* – as a neologism created by combining the terms precarious and proletariat – to designate people deprived

²² See FREITAS JÚNIOR, Antonio Rodrigues de. Precarização das relações de trabalho e suas consequências. In: COSTA, Beatriz Casimiro; COSTA, Manoel Casimiro (org.). *Legislação do trabalho: publicação mensal de legislação, doutrina e jurisprudência*. São Paulo: Ltr, 2022. Prefácio. Also FREITAS JÚNIOR, Antonio Rodrigues de. La precarización de las relaciones de trabajo y sus consecuencias: un flagelo para 70 millones de brasileños en nuestros días. *Revista Derecho del Trabajo*, Montevideo, Año XI, n. 38, p. 63-70, jan-mar. 2023.

²³ See BETTI, Eloisa. Gênero e trabalho precário em uma perspectiva histórica. Bolonha: Itália, 2017. Available at: http://outubrorevista.com.br/wp-content/uploads/2017/11/03_Betti_2017.pdf. Access in 04 oct. 2022.

²⁴ See HIRATA, Helena. A precarização e a divisão internacional e sexual do trabalho. *Sociologias* [online]. 2009, n. 21 [Access in 17 Setembro 2022], pp. 24-41. Available at: <<https://doi.org/10.1590/S1517-45222009000100003>>. Epub 01 Jun 2009. ISSN 1807-0337. <https://doi.org/10.1590/S1517-45222009000100003>.

of guarantees related to: i) the labour market; ii) employment relationship; iii) job security; iv) work safety; v) skill reproduction; vi) income security and vii) representation guarantee.

There is also an understanding according to which precariousness would be in opposition to decent work – the latter being conceptualized by the ILO as based on the objectives: i) labour rights; ii) employment promotion; iii) social protection; iv) social dialogue.

Finally, systematizing the definition given by Nogueira and Carvalho²⁶, precariousness would be the antithesis of decent work, through the performance of activity whose risk is mostly assumed by the worker, corresponding to a dynamic process underway in the economy contemporary global.

In addition, there are authors that highlight the need to link to the concept under discussion with the idea of family precariousness²⁷ because, as it will be seen in the topic below, about the sexual division of labour, women are still the most responsible for domestic work performed in their own home. Thus, inequality within the family slips into the external sphere, because besides overwhelming women with heavy responsibilities, it can make them assume part-time or temporary positions so that they can reconcile their activities.

3.1. Precarious Work and Women

In a piece of research conducted by World Economic Forum²⁸, published in July 2022, it is explained that countries that invest in human capital and facilitate balancing work and family tend to be more prosperous.

In another recent study realized by Economic Commission for Latin America and the Caribbean (ECLAC) and ILO, it was highlighted that differences between the participation and occupation in labour market, comparing the years 2020 e 2021 still persist, showing that the female employment recovery is slower and less complete than male employment²⁹.

²⁵ See STANDING, Guy. *O precariado: a nova classe perigosa*. Belo Horizonte: Autêntica, 2013.

²⁶ *Op. cit.* pp. 37

²⁷ Hirata, 2009, *op. cit.*

²⁸ See WEF. *Global Gender Gap Report: insight report*. Geneva: World Economic Forum, 2022. Available at: https://www3.weforum.org/docs/WEF_GGGR_2022.pdf. Access in: 06 dec. 2022.

²⁹ See ILO (Chile). *Employment Situation in Latin America and the Caribbean: real wages during the pandemic: trends and challenges*. Santiago: United Nations, 2022. Available at: https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---sro-santiago/documents/publication/wcms_849283.pdf. Access in: 06 dez. 2022.

The mentioned study concluded that while the participation rated for men rose 3 percentage points, the rate for women was just of 2,8, meaning that while regional participation of men was about 73,5 percent in 2021, women was 50,4 percent. This slow recovery, or the maintenance of the difference are justified by the higher number of women performing caregiving activities for the children, the sick and the elderly people³⁰.

Furthermore, in general, when considering the work performed by women, we understand that the analysis by gender lens is not enough, that an intersectional view must be adopted, to frame, for example, race, age, disability, nationality as analysis categories.

In this sense, Betti³¹ emphasize that, since the late 1990s, migrant women have been allocated in jobs with higher levels of precariousness when compared to Italian women, due to their lack of citizenship.

In Brazil, we found, in the fourth quarter of 2022, 65,9 million of people out of the labour market, 38,5 million of informal workers, 8,5 million of unemployed and 21,3 million of sub-utilized workers³².

The amount of occupation between men, was about 61,4%, opposite to the total of 41,2% of women³³. We can mention the existence of inequalities with regard to race, so that we find a proportion of 45.6% of employed white people, to the detriment of 53.5% black people. Nevertheless, what matters in this composition is not, in itself, the percentage, which is higher among black people, but rather, its concentration in occupations of agriculture, construction and domestic services, activities characterized by lower incomes³⁴.

In addition to lower incomes, the activities mentioned are also marked by higher rates of informality. Thus, in agriculture, we found 63.3% of men in the informal sector and 71.6% of women. Adding the race factor, there are 53.9% white informal workers and 72% black informal workers. In construction, 64.8% of men are informal at the expense of 30.5% of women: whites are 45.4% and blacks, 54.6%. In domestic service, in turn, there are 56.2% of informal men and 72.2% of women, among them whites represent 69% and blacks 71.6%.

Still in an analysis carried out in the Brazilian context, it is possible to verify that the white population perceived, in 2020, 73.3% more than blacks or

³⁰ *Idem ibidem.*

³¹ BETTI, 2017, *op cit.*

³² See PNAD. Pessoas em idade de trabalhar. Available at: <https://painel.ibge.gov.br/pnadc/>. Access in 27 apr. 2023.

³³ See IBGE. Síntese de indicadores sociais: uma análise das condições de vida da população brasileira. 2021b. Available at: <https://biblioteca.ibge.gov.br/visualizacao/livros/liv101892.pdf>. Access in: 06 dez. 2022.

³⁴ *Idem ibidem.*

browns and men, 28.1% more than women³⁵. As for accidents at work, in a study carried out by Menegon et al³⁶ in analysis between the years 2006 and 2015, it was found that a greater number of male victims were injured, corresponding to 95%, the majority with low education and only 5% female. Mentioning the hours worked, it can be seen from the analysis of the table below that the majority of men and women work 40 to 44 hours per week, with a greater concentration of women in activities performed in less hours as opposed to a greater number of men in activities with more hours³⁷:

Table No. 2. Hours worked

Selected characteristics	People aged 14 or more, occupied in the reference week						
	Total (1000 people)	until 14 hours	from 15 to 30 hours	from 31 to 39 hours	from 40 to 44 hours	from 45 to 48 hours	49 ou more hours
	absolut	proportion	proportion	proportion	proportion	proportion	proportion
Brazil	86673	3,3	17	4	54,4	10	11,2
sex							
Men	50492	1,8	12,7	3,5	56,7	11,6	13,7
Women	36181	5,3	23,2	4,6	51,3	7,8	7,8
colour							
white	39493	2,8	15,2	3,6	56,3	9,3	12,7
black or brown	46344	3,7	18,6	4,3	52,9	10,7	9,8
colour and sex							
white man	22168	1,5	10,8	3,1	57,7	10,8	16
black or brown man	27842	2,1	14,2	3,9	55,9	12,3	11,6
white woman	17325	4,4	21	4,3	54,5	7,3	8,5
black or brown woman	18503	6,2	25,2	4,9	48,5	8,2	7

Source: Adapted from IBGE, 2021a

³⁵ IBGE. Síntese de indicadores sociais. 2021a. Available at: <https://www.ibge.gov.br/estatisticas/sociais/saude/9221-sintese-de-indicadores-sociais.html?=&t=resultados>. Access in: 06 dec. 2022.

³⁶ See MENEGON, Lizandra da Silva, MENEGON, Fabrício Augusto e Kupek, Emil. Mortalidade por acidentes de trabalho no Brasil: análise de tendência temporal, 2006-2015. Revista Brasileira de Saúde Ocupacional [online]. 2021, v. 46 [Access in 8 Oct. 2022] , e8. Available at: <<https://doi.org/10.1590/2317-6369000025219>>. Epub 19 Nov 2021. ISSN 2317-6369. <https://doi.org/10.1590/2317-6369000025219>.

³⁷ Adapted from IBGE. Síntese de indicadores sociais. 2021a. Available at: <https://www.ibge.gov.br/estatisticas/sociais/saude/9221-sintese-de-indicadores-sociais.html?=&t=resultados>. Access in: 06 dec. 2022.

This relationship, however, does not include unpaid work performed in the domestic sphere, which cannot be overlooked, because it is mostly done by women. To exemplify, in Brazil, white men perform, on average, 10.9 hours of chores per week, black and brown men 11 hours, white women 20.7 hours and black and brown women 22 hours per week³⁸.

When it comes to domestic unpaid work that is done by occupied people, the number does not change substantially, with an average of 10.3 hours for white men, 10.6 for black and brown men, 17.7 for white women and 19.2 for black and brown women³⁹.

Young⁴⁰, in this sense, describes that women are overrepresented in precarious jobs in the U.S and Canada. They use to earn less than male, are less likely to hold permanent positions, work far fewer hours and are less likely to have union protection.

As a partial conclusion, we must say that it is crucial to adopt a gender lens to the work issue and family precariousness⁴¹, due to the exercise of domestic labour, as we have mentioned, mostly by women.

Finally, we reckon that SDG 8 must be analysed in an interconnected and integrated manner with SDG 5 so that the purposes of the UN 2030 Agenda are implemented⁴².

4. SDG 5: Gender Equality and Unpaid Work

To understand SDG 5, we have to analyse some introductory concepts, such as the difference between gender and sex.

³⁸ See IBGE. Em média, mulheres dedicam 10,4 horas por semana a mais que os homens aos afazeres domésticos ou ao cuidado de pessoas. Available at: <https://agenciadenoticias.ibge.gov.br/agencia-sala-de-imprensa/2013-agencia-de-noticias/releases/27877-em-media-mulheres-dedicam-10-4-horas-por-semana-a-mais-que-os-homens-aos-afazeres-domesticos-ou-ao-cuidado-de-pessoas>. (Accessed Dec 06, 2022).

³⁹ IBGE, 2019, *op. cit.*

⁴⁰ See YOUNG, Marisa C. Gender Differences in precarious work settings. *Relations Industrielles*, Quebec, v. 65, n. 1, p. 74-97, jan. 2010. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/meetingdocument/wcms_161370.pdf. (Accessed Dec 06, 2022).

⁴¹ HIRATA, 2009. *op. cit.*

⁴² “The interlinkages and integrated nature of the Sustainable Development Goals are of crucial importance in ensuring that the purpose of the new Agenda is realized. If we realize our ambitions across the full extent of the Agenda, the lives of all will be profoundly improved and our world will be transformed for the better”. See UN. Resolution 70/1 Adopted By The General Assembly On 25 September 2015. New York, Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement>. (Accessed Jul 10, 2022).

In this way, while sex is related to biological aspects of people, which support the categorization of individuals into males, females and intersex people, gender corresponds to a notion developed between the 70s and 80s, and can be understood as a "social organization of relations between the sexes"⁴³. It refers to the set of socially constructed characteristics, relating, therefore, to culturally and historically determined aspects⁴⁴.

Thus, the 2030 Agenda used the expression "gender" in SDG 5, which denotes an attitude towards the concept in its more social than biological sense.

In these terms, the aiming for equality between the genders is an important objective, as there are still differences regarding the treatment between men and women at work. Furthermore, we cannot neglect the existence of differences in the work carried out within the family, with the unequal distribution and assumption of tasks between men and women, which is associated with the notion of the sexual division of labour.

This is because women were assigned reproductive work, associated with domestic life and care⁴⁵ – often unpaid –, which are related to the private aspect of life, in order to keep them away from the exercise of public activities, as is the case of legal drafting legal rules⁴⁶.

Thus, aware of this dichotomy, SDG 5, which consists of achieving gender equality and empower all women and girls, has some important targets, as could be seen below⁴⁷:

⁴³ See MACCISE, Regina Larrea. *Feminismo(s), perspectiva de género y teorías jurídicas feministas*. 2011. *Revista Derecho en Libertad*, Facultad Libre de Derecho de Monterrey. Available at: <https://apmj.pt/documentacao/teoria-feminista-do-direito>. (Access Sep 08, 2022).

⁴⁴ See CNJ. *Protocolo para julgamento com perspectiva de gênero [recurso eletrônico]*. Brasília: Conselho Nacional de Justiça – CNJ; Escola Nacional de Formação e Aperfeiçoamento de Magistrados, 2021.

⁴⁵ Care can be defined as "processes, relationships and feelings between people who care for each other, as well as for living beings and even objects, covering various dimensions of social life." See HIRATA, Helena; DEBERT, Guita Grin. *Dossiê gênero e cuidado – Apresentação*. Cadernos Pagu. Campinas, n. 46, 2016.

⁴⁶ Sexual division of work.

⁴⁷ See UN. *Goal 5: achieve gender equality and empower all women and girls*. Available at: <https://www.un.org/sustainabledevelopment/gender-equality/>. (Accessed Dec. 06, 2022).

Table No. 3. Goal 5 targets

5.1 End all forms of discrimination against all women and girls everywhere
5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation
5.3 Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation
5.4 Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate
5.5 Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life
5.6 Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences
5.A Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws
5.B Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women
5.C Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels

Source: UN, 2022.

Note that, since 2015, the 2030 Agenda establishes, for instance, the importance of recognizing and valuing unpaid care and domestic work, the necessity to end all forms of discrimination and to adopt and strengthen policies and legislation for the promotion of gender equality, which undoubtedly glance in working relationship.

On the subject, we can verify some international norms that deal with the promotion of equality between men and women, as is the case of Conventions No. 111 and 156 – not ratified by Brazil – of the ILO and the Convention on

the elimination of all forms of discrimination against women (CEDAW). In the Brazilian context, in addition, there are provisions in the CLT and Law No. 9,029/1995.

However, in the Brazilian case, for example, there is no specific legislation for the recognition of unpaid work performed in the domestic sphere, except for the possibility of contributing in the optional category to social security, which reinforces the sexual division of labour, since unpaid domestic work is mostly performed by women. To mitigate such inequality, according to Marcondes and Vieira⁴⁸, it would be necessary to have normative, supervisory, financing and provision functions, such as day care and elderly care policies and measures to protect maternity and male co-responsibility.

4.1 Decent Work and the Mitigation of Precarious Work Performed by Women

In view of what we have studied above, it is clear that, despite the existence of numerous definitions given to the notion of precariousness, it can be understood as a counterpoint to what is called decent work, which is one of the goals that UN 2030 Agenda predicts:

Table No. 4. Precarious x Decent Work

Precarious work	Decent work
Low wages	employment creation, rights at work
Unhealthy work	rights at work
Journeys in a few or exhaustively hours	rights at work
Employment relationship without legal protection	employment creation
Absence of Social Security coverage	social protection
Absence of unionization	social dialogue, rights at work
Instability or insecurity at work	social protection, employment creation, rights at work

Source: Own elaboration, 2023.

⁴⁸ See MARCONDES, Mariana Mazzini; VIEIRA, Regina Stela Corrêa. Perspectiva de gênero nas licenças por nascimento: uma análise do Brasil, da Argentina e do Uruguai durante governos de esquerda. *Revista de Informação Legislativa*, Brasília, v. 228, n. 57, p. 11-36, out. 2020. Available at: https://www12.senado.leg.br/ril/edicoes/57/228/ril_v57_n228_p11.pdf. (Accessed Dec. 06, 2022).

Thus, in view of the analysed data, in the Brazilian case, it can be considered that there are more women performing informal activities, receiving lower wages and working for less than the standard time, but spending more hours on unpaid domestic work. In turn, men are the majority who work longer hours and have suffered more accidents at work.

With this, we may say that, although both women and men realize the precarious work, we must consider that mostly women perform the unpaid domestic work, so that we suggest the relevance of the joint reading of SDGs 8 and 5, adding intersectional aspects, as race, to the analysis.

In spite of those considerations, we do not ignore the importance of the others SDG, such as SDG 10, that explores reducing inequalities and 16, that covers peace, justice and strong institutions, to promote more equal gender policies.

Conclusion

In this study, we approached the UN 2030 Agenda and its evolution, noting that it was preceded by documents such as 21 Agenda and the Millennium Development Goals, consisting of a global effort by 193 countries, with a forecast of 17 goals and 169 targets.

This Agenda, as seen, takes into account the idea of sustainable development anchored in its three aspects, economic, social and environmental, and is based on the “5 Ps” “people, planet, prosperity, peace and partnership”, with the motto of not leaving anyone behind.

About SDG 8, we identified the term decent work with their pillars, which are: employment creation, rights at work, social dialogue and social protection, considering the gender lens as a transversal aspect, mentioning that the SDG 8 do not include all these aspects.

We pointed that precarization is used to describe jobs that have, as common characteristics: lack of safety and certainty; a way of transferring the risks of the activity to the employee; inability to enjoy social protection and benefits associated with employment; low wages and obstacles to union membership and collective bargaining and journeys in a few or exhaustively hours.

In this path, we talked about the characterization of women's work, exemplified by the Brazilians case, to conclude that, although the precarious work is realized by both women and men, we must consider the unpaid domestic work, that is performed mostly by women, so decent work, as predicted in SDG 8, is not enough to promote decent work for women, suggesting the relevance of the joint reading of SDGs 8 and 5.

This is because, when studying SDG 5, we analysed the productive and reproductive work, reinforcing the importance of consider the unpaid domestic work, which is one of the targets of the mentioned SDG, not

ignoring the importance of an intersectional analysis and the inclusion of the others SDG, such as SDG 10 and 16 to promote more equal gender policies.

References

ABRAMO, Laís. Uma década de promoção do trabalho decente no Brasil: uma estratégia de ação baseada no diálogo social. Genebra: OIT, 2015. Available at: https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---ilo-brasilia/documents/publication/wcms_467352.pdf. (Accessed May 19, 2022).

BELTRAMELLI NETO, Silvio; VOLTANI, Julia de Carvalho. Investigação histórica do conteúdo da concepção de Trabalho Decente no âmbito da OIT e uma análise de sua justiciabilidade. *Revista de Direito Internacional*, [S.L.], v. 16, n. 1, p. 166-187, 20 jun. 2019. Centro de Ensino Unificado de Brasília. <http://dx.doi.org/10.5102/rdi.v16i1.5900>. Available at: <https://www.publicacoesacademicas.uniceub.br/rdi/article/view/5900>. (Accessed May 18, 2022).

BETTI, Eloisa. Gênero e trabalho precário em uma perspectiva histórica. Bolonha: Itália, 2017. Available at: http://outubrorevista.com.br/wp-content/uploads/2017/11/03_Beti_2017.pdf. (Accessed Oct. 04, 2022).

CMNAD. *Nosso Futuro Comum*. 2 ed. Rio de Janeiro. Ed. Fundação Getúlio Vargas. 1991.

CNJ. *Protocolo para julgamento com perspectiva de gênero [recurso eletrônico]*. Brasília: Conselho Nacional de Justiça – CNJ; Escola Nacional de Formação e Aperfeiçoamento de Magistrados, 2021.

FREITAS JÚNIOR, Antonio Rodrigues de. Precarização das relações de trabalho e suas consequências. In: COSTA, Beatriz Casimiro; COSTA, Manoel Casimiro (org.). *Legislação do trabalho: publicação mensal de legislação, doutrina e jurisprudência*. São Paulo: Ltr, 2022. Prefácio.

FREITAS JÚNIOR, Antonio Rodrigues de. La precarización de las relaciones de trabajo y sus consecuencias: un flagelo para 70 millones de brasileños en nuestros días. *Revista Derecho del Trabajo*, Montevideo, Año XI, n. 38, p. 63-70, jan-mar. 2023.

FREY, Diane F.; MACNAUGHTON, Gillian. *A Human Rights Lens on Full Employment and Decent Work in the 2030 Sustainable Development*

Agenda. Sage Open, [S.L.], v. 6, n. 2, p. 1-13, abr. 2016. SAGE Publications. <http://dx.doi.org/10.1177/2158244016649580>. Available at: <https://journals.sagepub.com/doi/pdf/10.1177/2158244016649580>. (Accessed May 19, 2022).

HIRATA, Helena. A precarização e a divisão internacional e sexual do trabalho. *Sociologias* [online]. 2009, n. 21, pp. 24-41. Available at: <<https://doi.org/10.1590/S1517-45222009000100003>>. Epub 01 Jun 2009. ISSN 1807-0337. <https://doi.org/10.1590/S1517-45222009000100003>. (Accessed Sep. 17, 2022).

HIRATA, Helena; DEBERT, Guita Grin. Dossiê gênero e cuidado – Apresentação. *Cadernos Pagu*. Campinas, n. 46, 2016.

IBGE. Síntese de indicadores sociais. 2021a. Available at: <https://www.ibge.gov.br/estatisticas/sociais/saude/9221-sintese-de-indicadores-sociais.html?=&t=resultados>. (Accessed Dec. 06, 2022).

IBGE. Síntese de indicadores sociais: uma análise das condições de vida da população brasileira. 2021b. Available at: <https://biblioteca.ibge.gov.br/visualizacao/livros/liv101892.pdf>. (Accessed Dec. 06, 2022).

ILO (Chile). Employment Situation in Latin America and the Caribbean: real wages during the pandemic: trends and challenges. Santiago: United Nations, 2022. Available at: https://www.ilo.org/wcmsp5/groups/public/---americas/--ro-lima/---sro-santiago/documents/publication/wcms_849283.pdf. (Accessed Dec. 06, 2022).

KIM, Rakhyun E. The Nexus between International Law and the Sustainable Development Goals. *RECIEL* (Review of European, Comparative & International Environmental Law), v. 25, n. 1, p. 15-26, 2016.

MACCISE, Regina Larrea. Feminismo(s), perspectiva de gênero y teorías jurídicas feministas. 2011. *Revista Derecho en Libertad*, Facultad Libre de Derecho de Monterrey. Available at: <https://apmj.pt/documentacao/teoria-feminista-do-direito>. (Accessed Sep. 08, 2022).

MARCONDES, Mariana Mazzini; VIEIRA, Regina Stela Corrêa. Perspectiva de gênero nas licenças por nascimento: uma análise do Brasil, da Argentina e do Uruguai durante governos de esquerda. *Revista de Informação Legislativa*,

Brasília, v. 228, n. 57, p. 11-36, out. 2020. Available at: https://www12.senado.leg.br/ril/edicoes/57/228/ril_v57_n228_p11.pdf. (Accessed Dec. 06, 2022).

MAZZUCCONI, Carolina San Martín. Trabajo Femenino: la desigualdad como fator de precariedad. In: ODS 8. El trabajo decente y las aportaciones de la comunidad internacional. 2020. Available at https://e-archivo.uc3m.es/bitstream/handle/10016/30340/monografias_12_IFV_2020.pdf?sequence=1. (Accessed Dec. 07, 2022).

MENEGON, Lizandra da Silva, MENEGON, Fabrício Augusto e Kupek, Emil. Mortalidade por acidentes de trabalho no Brasil: análise de tendência temporal, 2006-2015. Revista Brasileira de Saúde Ocupacional [online]. 2021, v. 46, e8. Available at: <<https://doi.org/10.1590/2317-6369000025219>>. Epub 19 Nov 2021. ISSN 2317-6369. <https://doi.org/10.1590/2317-6369000025219>. (Accessed Oct. 8, 2022).

NOGUEIRA, Mauro Oddo *et al.* Trabalho precário e informalidade: desprecarizando suas relações conceituais e esquemas analíticos. Brasília: Ipea, 2021. Available at: https://repositorio.ipea.gov.br/bitstream/11058/10948/1/td_2707.pdf. (Accessed Oct 04, 2022).

NUNES, Alessandra Garcia Machado *et al.* Relação entre igualdade de gênero e o desenvolvimento sustentável (ODS 5): um panorama internacional da evolução das publicações na Web of Science. Gênero, Niteroi, v. 22, n. 1, p. 1-30. Available at <https://periodicos.uff.br/revistagenero/article/view/50026/30727>. (Access Apr 08, 2023).

OIT. Trabalho decente nas Américas: uma agenda hemisférica, 2006-2015. Available at: https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---ilo-brasilia/documents/publication/wcms_226226.pdf. (Accessed Dec. 07, 2022).

OJEDA-PÉREZ, Fabián, GARCÍA-BUENO, Marco César; GONZÁLEZ-FRANCO, Rubén Antonio. Desarrollo sostenible del trabajador a través del trabajo decente. Sociedad y economía, v. 38, p. 89-104, 2019.

OLINTO, Gilda; OLIVEIRA, Zuleica Lopes Cavalcanti de. Gênero e trabalho precário no Brasil. Gênero, Rio de Janeiro, v. 5, n. 1, p. 209-223, dez. 2012. Available at:

<https://periodicos.uff.br/revistagenero/article/view/31002/18091>. (Accessed Dec. 06, 2022).

PERSSON, Åsa; WEITZ, Nina; NILSSON, Måns. Follow-up and Review of the Sustainable Development Goals: Alignment vs. Internalization. *Review of European, Comparative & International Environmental Law*, v. 25, n. 1, p. 59-68, 2016.

STANDING, Guy. *O precariado: a nova classe perigosa*. Belo Horizonte: Autêntica, 2013.

SÜSSEKIND, Arnaldo. *Direito Internacional do Trabalho*. 3. ed. São Paulo: Ltr, 2000.

UN. Resolution 70/1 Adopted By The General Assembly On 25 September 2015. New York, Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement>. (Accessed Jul. 10, 2022).

UN. Goal 5: achieve gender equality and empower all women and girls. Available at: <https://www.un.org/sustainabledevelopment/gender-equality/>. (Accessed Dec. 06, 2022).

UN. The Sustainable Development Agenda. Available at: <https://www.un.org/sustainabledevelopment/development-agenda-retired/#:~:text=On%201%20January%202016%2C%20the,Summit%20%E2%80%94%20officially%20came%20into%20force>. (Accessed Dec. 06, 2022).

YOUNG, Marisa C. Gender Differences in precarious work settings. *Relations Industrielles, Quebec*, v. 65, n. 1, p. 74-97, jan. 2010. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/meetingdocument/wcms_161370.pdf. (Accessed Dec. 06, 2022).

WEF. *Global Gender Gap Report: insight report*. Geneva: World Economic Forum, 2022. Available at: https://www3.weforum.org/docs/WEF_GGGR_2022.pdf. (Accessed Dec. 06, 2022).

Gig Workers in Poland: The Quest for a Protection Model

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Abstract

The labor law regulations in force in Poland define two groups of "employees". The first group includes employees performing work within the meaning of Art. 2 of the Labor Code. The second group consists of those to whom the Polish legislator gradually grants certain "employee" rights, i.e. contractors and beneficiaries. At the same time, despite the COVID-19 pandemic, the number of self-employed and working on digital platforms has increased on the Polish labor market, creating a fiction of mandate. Digital employees in Poland sign a mandate contract for three hours a week, and the rest of the remuneration results from the vehicle rental contract, which allows you to avoid almost all public law obligations. The entire scope of the provisions of the Polish Labor Code applies only to employees. As for other working people, in particular the analyzed employees of digital platforms, they are forced to run a business or conclude vehicle rental or mandate contracts and are treated as such by the legislator, i.e. either as self-employed or as a form of semi-independent work. The author of the paper tries to indicate the appropriate model of protection of these employees in Polish labor law

Keywords: *Gig workers, Digital workers, Labor law, Protection model for Poland*

1. Introduction

In all EU Member States, the status of people employed on work platforms is not fully regulated by law and therefore questionable¹. It is necessary to

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¹ V. De Stefano, A. Aloisi, European Legal Framework for 'Digital Labour Platforms. Luxembourg: European Commission Joint Research Centre, 2018, Fundamental Labour

consider the origins of the modern phenomenon of e-employment, which is not subject to regulation in the Union, which is "an area of freedom, security, and justice with respect for fundamental rights"². The employment right to decent work and social protection, with adequate pay, is relatively overlooked. In the discussion on employment platforms, state authorities are more willing to consider issues related to new technologies, processes, and changes caused by the development and application of modern digital technologies (digitization) than the status of employees and the associated employee rights. Entrepreneurs and their organizations, including private institutions and employment platforms, are interested in equal treatment by national legislators on local labor markets. However, this may have a negative impact on maintaining such a status concerning the equality of typical employee rights. Entrepreneurs point out that equal treatment in terms of employee rights of employees of digital platforms may violate the balance favorable to their economic interests caused by the public interest in the possibility of using employment in atypical forms of employment. Employment services provided by employment platforms are less expensive than similar work performed by employees employed under an employment contract³.

The literature indicates that the emergence of digital platforms has created millions of jobs in response to demographic change, i.e., a growing youth population in some parts of the world and an aging population in others can put pressure on labor markets and social security systems, but in these changes hide new opportunities for care and inclusive, active societies⁴. Thus, the noticeable expansion of the new way of working: digital platforms working as a way of working is gaining importance and transforming labor markets in the EU. It is indicated that in the EU countries, 1.4% of employees declare work

Rights, Platform Work and Human-Rights Protection of Non-Standard Workers w: *Labour, Business and Human Rights Law*, red. Janice R. Bellace, Samuel Blank and Beryl Haar, s.359–379. Cheltenham, UK; Northampton, MA 2019; V. De Stefano, M. Wouters, "Should Digital Labour Platforms Be Treated as Private Employment Agencies?" European Trade Union Institute (ETUI) Foresight Brief 2019.

² Treaty on the Functioning of the European Union - consolidated text taking into account the changes introduced by the Treaty of Lisbon, Journal of Laws 2004.90.864/2; see (Article 67(1) of the Treaty on the Functioning of the European Union).

³ J. Drahokoupil, B. Fabo, "The Platform Economy and the Disruption of the Employment Relationship", European Trade Union Institute (ETUI) Policy Brief 2016, Nr. 5.

⁴ K. R. Lakhani, David A. Garvin, and Eric Lonstein. 2012. "TopCoder (A): Developing Software through Crowdsourcing", Harvard Business School Case Study 610-032; Katz, Lawrence F., and Alan B. Krueger. 2016, p. 2; The Rise and Nature of Alternative Work Arrangements in the United States, 1995–2015. National Bureau of Economic Research (NBER) Working Paper No. 22667. Kenney, Martin, and John Zysman. 2016. "The Rise of the Platform Economy". *Issues in Science and Technology* 32(3) (Spring).

on digital platforms as their primary occupation, 4.1% indicate it as an additional source of income, 3.1% consider it a marginal occupation for them, and 2.5% that they perform work on platforms occasionally. Such work is the primary source of income for around 1% of workers in the Czech Republic, Slovakia, Finland, France, Italy, and Sweden, and over 2.5% in Spain and the Netherlands⁵.

2. Digital Workers and the Attempts to Clarify their Status at the International Level

International conventions do not regulate the employment platform. At the EU level, work is being carried out to create a legal framework for this form of earning, but the final result is not yet certain. In February 2021, the European Commission launched the first stage of consultations with European social partners on improving the working conditions of people working via digital job platforms⁶. In December 2021, a draft Directive on improving working conditions on digital platforms was published. A broader discussion of this initiative goes beyond the scope of this study (apart from Article 4 of the Directive, which will be discussed in one of the subchapters), but it should be mentioned that the proposal of the Directive contains a rebuttable presumption of employment based on an employment relationship, an obligation to use algorithms that manage work in a more transparent and control over the effects of their operation, as well as information obligations of platforms on employment submitted to the relevant state authorities. The most controversial issue is the exclusion of the self-employed from the personal scope of the Directive. The explanatory memorandum to the Directive states that genuinely self-employed persons are accountable to their clients for how they carry out their work and for the quality of the results. The freedom to choose working hours or periods of absence, refuse to perform tasks, use subcontractors, substitute, or working for third parties is a feature of genuine self-employment⁷. This issue is controversial because the Commission omits the concept of a semi-dependent self-employed person functioning, for example, in Austria.

⁵ C. Urzì Brancati, A. Pesole, E. Fernández-Macías, *Digital Labour Platforms in Europe: Numbers, Profiles, and Employment Status of Platform Workers*, Luxembourg: Publications Office of the European Union 2019.

⁶ European Commission press release “Protecting people working through platforms: Commission launches a first-stage consultation of the social partners”, https://ec.europa.eu/commission/presscorner/detail/en/IP_21_686.

⁷ *Id.*, p. 25.

The doubts indicated above are confirmed by the judgment of the UK Supreme Court of 2021, which in the general context appears revolutionary, as it raises doubts regarding the legal status of employees of digital platforms. The appeals court denied that Uber drivers are not employees⁸. In the Deliveroo judgment, the UK Court of Appeal ruled that Deliveroo drivers in the UK are not employees⁹. This statement is in opposition to the judgment of the UK Supreme Court, which ruled that Uber drivers are employees, giving them the right to the minimum wage, holiday allowance, and access to a pension scheme.

The Deliveroo case indicated that this platform works the same way as Uber Eats: customers place food orders online, which are then delivered by Deliveroo drivers using motorbikes or bicycles. Deliveroo operates in twelve other countries (including the UK, Australia, and Spain). Deliveroo has over 100,000 registered users on its platform¹⁰. The facts of the Deliveroo case were not complicated and concerned one of the fundamental freedoms in labor law, i.e. the freedom of association of employees. The UK Independent Trade Union has asked the court to recognize Deliveroo's right to bargain collectively on behalf of Deliveroo's suppliers. Two lower courts found that because the suppliers did not meet the definition of 'employee' in UK employment law, they had no right to form and join trade unions. The UK Court of Appeal ultimately agreed with the lower courts and confirmed that the suppliers were not employees. Providing services in person is required to meet the definition of an 'employee' under UK employment law. It was ascertained that Deliveroo's suppliers are not employees because the contract between Deliveroo and the suppliers does not require the suppliers to make the deliveries personally. Suppliers may use a substitute to make the delivery¹¹.

⁸ Judgment of the Supreme Court of February 19, 2021, *Uber BV and others (Appellants) v Aslam and others (Respondents)*, [2018] EWCA Civ 2748, Judges criticized controversial contracts Uber asked its drivers to sign saying that "it can be considered that their purpose is to prevent the driver from asserting the rights conferred on employees by applicable law." The court found the drivers were employees due to Uber's level of control over them, including setting fares and not informing them of a passenger's destination until they were picked up. It ruled that Uber must treat drivers as employees from the moment they log into the app until they log out. Employees have more rights than independent contractors but fewer than employees entitled to maternity pay and can, for example, challenge unfair dismissal.

⁹ Ruling no. 374 of March 4, 2020 – Appeal no. 19-13.316; *Independent Workers Union of Great Britain v. RooFoods Ltd (t/a Deliveroo)* TUR1/985(2016).

¹⁰ *The Independent Workers Union of Great Britain v. The Central Arbitration Committee* [2021] EWCA Civ 952 (24 June 2021); *Uber BV and others (Appellants) v Aslam and others (Respondents)* [2021] UKSC 5.

¹¹ Judgment no. 374 of March 4, 2020 – Appeal no. 19-13.316; *Independent Workers Union of Great Britain v. RooFoods Ltd (t/a Deliveroo)* TUR1/985(2016).

The consequence of the judgment is that Deliveroo suppliers do not have the right to freedom of association in trade unions to protect their interests as employees. The judgment of the Court of Appeal is laconic in indicating the components of the freedom of association and does not indicate that suppliers are not entitled to such a right. The very question put to the Court concerned participation in collective bargaining. However, the judgment additionally indicated that suppliers were not prohibited from organizing by means other than a trade union and enjoyed the more general right to freedom of association. Since a higher court issued the Uber judgment than the Deliveroo judgment, the latter judgment does not invalidate the Uber judgment, i.e. Uber drivers in the UK are still classified as employees.

Furthermore, the question before each court differed because Uber drivers were not explicitly asking for the right to form and join a trade union. Therefore, the judgment did not address the issue of associating in trade unions. In the Uber judgment, the Supreme Court noted that the contract between Uber and the drivers requires them to provide services personally. The Supreme Court's decision highlights five aspects of the employment tribunal's findings which supported its conclusion that the applicants were employees; first: Uber sets the fare, and drivers cannot charge more than the fare calculated by the Uber app. Second, the terms of the contracts under which drivers perform their services are imposed by Uber, and drivers have no say in them. Third, once a driver has logged into the Uber app, Uber limits the driver's choice of accepting ride requests. One way this can be done is to monitor the driver's acceptance (and cancellation) rate of ride orders and impose a penalty if too many ride orders are declined or canceled by automatically logging the driver out of the Uber app for ten minutes, thereby preventing how the driver works until he logs on again. Fourth, Uber also exercises considerable control over how drivers deliver their services. The fifth significant factor is that Uber limits communication between the passenger and the driver to the minimum necessary to complete the trip and takes active measures to prevent drivers from establishing any relationship with the passenger beyond the individual trip¹².

The position of the British court, which is damaging for suppliers, stands in complete opposition to the famous judgment of the Spanish court¹³. On July 22, 2019, which ruled that those delivering food and other products are employees and not self-employed. The decision was made in a case brought to

¹² D. Defossez, The employment status of food delivery riders in Europe and the UK: Self-employed or worker? *Maastricht Journal of European and Comparative Law* 2022, 29(1), 25–46.

¹³ Juzgado de Lo Social No 19 DE Madrid, Autos no. 510/18.

court by a former employee of Glovo, next to Deliveroo, the most popular food delivery company in Spain. The Supreme Court said "The relationship between the driver and the Glovo business is professional". This is the first time the Supreme Court ruled on working relationships between food suppliers and digital platforms. Glovo is one of many companies taking advantage of what is known in the US and UK as the "gig economy", a term that refers to self-employed workers and temporary, flexible jobs, such as in this case delivering food from different locations to customers, or routing to transportation companies like Uber, or delivering e-commerce packages like Amazon. The court ruled that Glovo is "a company that sets the terms for the provision of its services and holds the assets necessary to perform its services." The court said that Glovo "was not a mere intermediary" between restaurants and suppliers but "a company that sets the terms for the provision of its services and owns the assets necessary to provide its services." These 'assets' or tools for getting work done include a mobile phone app that passengers must have if they are to find a job. The decision is a significant step forward in a long legal battle to grant even marginal labor protection to employees of digital platforms.

The aforementioned Spanish case went to the Supreme Court after Isaac Cuende, a former employee of Glovo, appealed against a judgment of the Madrid Supreme Court that declared food deliverers to be self-employed. To unify the court's response, in this case, the president of the Supreme Court of Madrid decided to send another related issue to all 17 judges in the Labor Division. In this case, the judges found that the riders delivering the food were employees. The ruling comes at an essential time for two reasons: on the one hand, it coincides with ongoing discussions by the European Commission on the concept of employment based on digital platforms in the European Union, and on the other hand, in the face of plans at the national level to further regulate this sector. In recent years, some workers employed to deliver goods through apps such as Glovo have claimed to be considered salaried employees and have applied for appropriate rights such as sick leave and paid holidays. Glovo commented it would respect the court's ruling but expected the government and the European Union to establish a regulatory framework. "Glovo strongly believes that this regulation must be promoted based on dialogue between all actors involved," the statement reads¹⁴. According to Adrian Todoli-Signes, the legal designation of the employment relationship itself does not remain at the parties' disposal, but depends on the actual

¹⁴ Glovo elige Madrid para abrir su tercer 'hub' tecnológico y contratará a más de 100 ingenieros, <https://www.telemadrid.es/noticias/madrid/Glovo-Madrid-tecnologico-contratará-ingenieros-0-2331366849--20210412124815.html>.

content of the obligations arising from it and the fulfillment of legal requirements determining the type of contract in question. Suitably, the Deliveroo judgment considers it irrelevant that the 'courier' accepted and signed the civil contract. Ultimately, legal norms have a superior function over the will of the parties¹⁵.

3. Introduction: The Growing Number of Digital Platforms

Digital platforms have been able to build on some of the distinct features of the digital economy and have penetrated various sectors of the economy. In addition, the increasing reliance on ICT, from smartphones to computers, has created many opportunities for platform companies to emerge and grow. In addition, the nature and organization of the digital economy have further facilitated the rapid development of digital platforms. For example, the availability of reduced-cost digital platform services and venture capital funding has reduced barriers to entry and enabled the rapid growth of digital platforms over the last decade¹⁶. Digitization has facilitated the development of digital platforms in many countries and regions. Such investments minimize costs, but through platforms in traditional capital assets such as cars, hotels, or warehouses, they are overwhelmingly dependent on the data, skills, ideas, and physical resources their users provide (both customers and employees). For example, Uber does not invest heavily in cars but has been able to grow and scale in 69 countries at an unprecedented rate (in the 11 years since its inception). It has 26,900 employees and 5 million drivers who own or lease cars, most of them self-employed or "driver-partners". Platforms are increasingly redefining, through the use of technology, how to establish economic relationships between employees and clients or customers, many of whom are geographically dispersed around the world¹⁷.

At the same time, digital job platforms are creating job opportunities and gaining ground among policymakers and governments worldwide as a means

¹⁵ A. Todoli-Signes, Judgment designating Deliveroo 'rider' an employee and analysis of its impact on the 'gig economy', ETUI 2018, Vol. 24(4), s. 487–490.

¹⁶ N. Countouris, L. Ratti, "The Sharing Economy and EU Anti-Discrimination Law". In *The Cambridge Handbook of the Law of the Sharing Economy*, edited by John J. Infranca, Michèle Finck and Nestor M. Davidson, 486–498. Cambridge, UK: Cambridge University Press 2018

¹⁷ Uber 2020a. 2019 Annual Report. 2020b. 2020 Investor presentation, 6 February. 2020c. "What does the background check look for?" https://help.uber.com/driving-and-delivering/article/what-does-the-background-check-look-for?no_deId=ee210269-89bf-4bd9-87f6-43471300ebf2;

https://s23.q4cdn.com/407969754/files/doc_financials/2021/ar/FINAL-Typeset-Annual-Report.pdf;
https://s23.q4cdn.com/407969754/files/doc_financials/2019/ar/Uber-Technologies-Inc-2019-Annual-Report.pdf.

of boosting economic development with the increased penetration of information and communication technology (ICT) in many countries. In addition, digital job platforms attract workers from many sectors and countries because they provide flexibility in work schedules, the ability to work from anywhere and at any time, and the ability to choose the tasks to be performed¹⁸.

This raises significant concerns about the protection of workers on such platforms, particularly regarding working conditions, ranging from limited access to work and social protection to low wages and income volatility¹⁹. Delivering decent job opportunities for all requires a better understanding of the platform's workforce experience and employee motivations, opportunities, and challenges across multiple sectors, countries, and contexts. At this point, it will be justified to state that the thesis on extending employee rights remains valid in the context of determining the status of this category of employees. In the Polish legal system, work - in the functional sense, may be provided: (a) on the basis of an employment relationship, (b) on the basis of a civil law contract, (c) as part of self-employment. Work - in the traditional sense, it can be performed: based on an employment relationship, and only such work gives the employee work protection and rights. Regardless of the assessment of the legal status of this category of employees, problems related to this status will not result from the formal qualification of these people by platforms as self-employed, which was criticized in many European Union countries and resulted in extensive jurisprudence of national and European courts on the criteria for determining the legal status of these employees²⁰.

4. “Determining the Existence of an Employment Relationship”: Poland’s Litmus Test

When evaluating the employment relationship in Poland in the context of the development of the model of protection for those working based on digital platforms, first, one should analyze the contractual relationship, which may seem to be regulated, although the discussion on the status of dependents, i.e. those working based on an employment contract with those semi-dependent started for good. Making allowances for the differences between employees, partially dependent employees (with a subcategory of employees similar to employees), and self-employed, the provisions of the Labor Code regarding the

¹⁸ Ibidem.

¹⁹ R. Florisson, What new EU Commission proposals may mean for platforms and gig workers in the UK, <https://www.lancaster.ac.uk/work-foundation/news/blog/what-new-eu-commission-proposals-may-mean-for-platforms-and-gig-workers-in-the-uk> 2021.

²⁰ A. Todoli-Signes, Judgment designating..., a. 487-490.

rights of employees within the meaning of Art. 2 of the Labor Code (e.g. regulations on working time, act on holidays, etc.) do not apply to the second group of workers. It is worth noting that in Poland, since January 1, 2017, the Act on the minimum hourly rate for contractors and persons performing services has been in force²¹, and according to the judgment of the Constitutional Tribunal of June 2, 2015, the possibility of associating in trade unions has been extended, e.g. for contractors and self-employed. It is reasonable to ask whether, from a teleological point of view, a different assessment of the self-employed status would be necessary. According to Polish labor law, there are generally three categories of working people: employees within the meaning of the Labor Code, people performing work under civil law contracts, and self-employed. However, regarding the application of certain specific labor law provisions, a further differentiation of the self-employed into semi-dependent and fully independent workers should be made. The categorization done by individual labor law is crucial because it extends to collective labor law and, with some marginal deviations, to social security law.

The basic definition of "employee" is contained in Art. 2 and 22 of the Polish Labor Code. An employee is a person who benefits from the entire scope of labor law, i.e. protection and employee rights²². According to Art. 22 of the Labor Code (employment contract) is a contract where two parties agree that one (employee) provides his/her services to the other (employer) for a certain period, under the direction of the employer and for remuneration. When juxtaposing the terms "employment contract" with the term "service contract or cooperation contract", it should be noted that in the case of the latter, the parties agree that one of them (self-employed) will be provided with performance (delivery of a specific result/completion of a designated task) services personally, i.e. he will provide the contractor with a kind of "success", with the difference that the self-employed person can use the help of "substitutes". Based on the definition contained in Art. 22 of the Labor Code. The doctrine and courts have developed several critical criteria in their jurisprudence that must be met in order to determine whether an obligation relationship is actually an employment contract or a civil law contract²³.

²¹ Act of 22 July 2016 amending the Act on the minimum remuneration for work and certain other acts (Journal of Laws, item 1265, as amended).

²² Article 22 of the Labor Code.

²³ See e.g. Judgment of the Supreme Court of April 4, 2014, I PK 234/13, judgment of the Supreme Court of September 18, 2019, I PK 142/18, resolution of the Supreme Court of April 19, 1988, file ref. III CZP 26/88, OSNC 1989 No. 9, item 140; judgment of the Supreme Court of October 30, 2008, II CSK 233/08, judgment of the Supreme Court of April 1, 2004, file ref. no. II CK 125/03.

However, it should be noted that the contractual relationship does not have to meet all the criteria set out in Art. 22 of the Labor Code for it to be considered an employment contract, but in general assessment, these criteria must take precedence over others that favor an employment contract or any other contractual relationship. Upon meeting the criteria set out in Art. 22 of the Labor Code, a situation of personal dependence arises, which leads to the classification of the contractual relationship as an employment contract. The main criterion is personal subordination, which means that the person works under the employer's direction, and has the right to decide where, when and under what circumstances to work (i.e. the employer controls the employee's work). Any "employee success" that results from the time and work provided by the employee is the success of the employer, not the employee. At the same time, the employer bears the risk of success/failure, not the employee. In turn, the employee is obliged to perform work diligently, using the tools provided by the employer. More generally, the employee is integrated into the employer's organization.

The employer has the right to discipline the employee, such as disciplinary penalties (Article 108 of the Labor Code), and, in particular, the employer may terminate the employment relationship by dismissing the employee in disciplinary proceedings for, for example, a serious violation of primary employee duties (Article 52 of the Labor Code). According to the doctrine and jurisprudence of the courts, any general possibility of delegating work to another person, apart from exceptional circumstances, is unacceptable in a traditional employment relationship. Allowing such a possibility may lead to the conclusion that: there is no personal dependence of the employee towards the employer, i.e. the critical element of the employment relationship, i.e. subordination, is missing²⁴. There is no legal definition of working people in the Civil Code, i.e. self-employed semi-dependents. It is worth noting that instead of a civil law relationship based, for example, on actions to establish the existence of an employment relationship (Article 189 of the Code of Civil Procedure), the labour courts have, over the years, developed criteria in their jurisprudence to determine the existence of an employment relationship²⁵. Any voluntary employment, paid employment, performed under the employer's direction, is treated by law as employment under an employment relationship, regardless of the name of the contract concluded by the parties. Establishing that work of a specific type is performed for the employer, under his

²⁴ The Act of June 25, 2015 amending the Labor Code and certain other acts was announced on August 21, 2015, Journal of Laws of 2015, item 1220; see more: L. Mitrus, Draft amendment to the Labor Code concerning fixed-term contracts, MoPr 2015, No. 6, p. 285 et seq.

²⁵ Act of November 17, 1964, Code of Civil Procedure, Journal of Laws 1964 No. 43 item 296.

supervision, at the place and time specified by him is sufficient to verify the existence of an employment relationship. The employee's subordination to the employer's management in performing work is "a demarcation line, allowing to distinguish the structural element of employment under the employment relationship"²⁶. The subordination of the employee to the employer consists of the management of the employing entity and the determination of the time and place of work by the employer²⁷.

The draft EU directive on digital platform work in defining a platform employment relationship in Art. 4 is the closest to the Polish model of establishing an employment relationship, excluding the self-employed and semi-dependent self-employed from this scope. Art. 4 confirms an employment relationship between a digital job platform that controls, within the meaning of para. 2, the performance of work and the person performing work via this platform are legally considered an employment relationship. Great emphasis is placed on the concept of "control" of the employer's specific subordination in the word's narrow sense. Work performance control within the meaning of sec. 1 is to be understood as satisfying at least two of the following conditions:

- (a) the actual setting or capping of remuneration levels;
- (b) obliging the person performing the work via online platforms to comply with specific binding rules regarding the appearance, conduct towards the recipient of the service or the performance of the work;
- (c) supervising the performance of work or verifying the quality of work results, including by electronic means;
- (d) effectively restricting, including by means of sanctions, the freedom to organize work, in particular the freedom to choose working hours or periods of absence, to accept or decline tasks and to use subcontractors or substitutes;
- (e) effectively limiting the possibility of expanding the customer base or performing work for third parties.

In the definition of the concept of "control", presented in the draft directive, the limits of subordination have been narrowed down to the direct control of the employee, excluding the indirect dependence that occurs with self-employed semi-dependents, who often remain dependent on one or two contractors, which does not exclude personal subordination, which means that the person works under the direction of the employer, who has the right to

²⁶ Judgment of the Supreme Court of June 24, 2015, II PK 189/14, OSP 2016, No. 9, item 89 with a commentary by S. Kowalski.

²⁷ Judgment of the Supreme Court of April 22, 2015, II PK 153/14, OSP 2016, No. 6, item 6 with a gloss A. Musiala.

decide where, when and under what circumstances he or she is to work (i.e. the employer controls the work of the employee).

5. Mark Freedland's Concept of 'personal employment relationship'

The main problem of the previous considerations is a new challenge or set of challenges for the world of work arising on the one hand from the so-called "digital economy" and, on the other hand, the opportunities offered by the initiative "inclusion of labor protection for semi-dependent self-employed workers (or semi-dependent workers can be used for this study). The concept of granting the self-employed, self-employed semi-dependent, and those working based on civil law contracts a certain scope of protection that employees are entitled to under traditional labor law is a new labor law challenge and is based on the idea of "personal relationship at work", a concept developed by Freedland²⁸. The notion of a personal relationship implies that in modern employment markets, work can be provided in various ways and through various conditions and patterns. They can range from a classic subordinate, bilateral and continuous forms of employment to more varied and complex forms of work involving many parties and economic operators, and ultimately developing in the sphere of autonomy in terms of their legal characteristics and self-reliance in the provision of work²⁹. Although the concept of the personal employment relationship was created in 2010, Freedland only in 2019, in his publication devoted to the strategies of trade unions in protecting employees performing work in new forms of employment, emphasized that first of all, it is important to understand the methodology of providing work outside the employment relationship. The author pointed out that currently, there are efforts to shape and present contractual relations in the sphere of employment in such a way that they do not take the form, or at least do not seem to take the form, of permanent and bilateral employment contracts, which constitute the classic paradigm of the traditional definition of the employment relationship³⁰. This transformation of commitments places the worker on the other side of the line between 'employees' and 'independent contractors' or 'self-employed', thus affecting the traditional division of the world of work. It is this particular kind of transformation or conceptual relocation of work-related tasks that gives rise to the "new forms of work" that were, among others, the subject of the

²⁸ See more: M. Freedland, „The Personal Employment Contract”, Oxford University Press 2010.

²⁹ Id.

³⁰ M. Freedland, New trade union strategies for new forms of employment – A brief analytical and normative foreword, *European Labour Law Journal* 2019, Vol. 10(3), pp. 179–182.

International Labor Organization Report 2020³¹. The idea of a "personal relationship at work" is a concept developed by M. Freedland and is undoubtedly a critical attempt to re-conceptualize the contractual relationship that connects, for example, a self-employed person and his contractor. The notion of a personal relationship at work captures the fact that in today's work labor markets, one can testify in different ways and on various grounds of employment. They can range from classic subordinate, bilateral and permanent employment relationships to more varied and complex forms of work, involving many parties and economic operators and ultimately developing in the sphere of autonomy and, in terms of their legal characteristics, self-employment. G. Davidov and others indicate that the concept of "personal employment relationship" can be used to determine the subjective scope of application of labor law concerning any person engaged by another person to perform work unless that person runs his own business.³² In this regard, we must make it clear that the concept of the EU directive contradicts the idea of a personal employment relationship and somehow contradicts the ongoing trend of extending protection standards to non-subordinate workers³³.

6. Conclusions

Poland's applicable labor law provisions define two groups of "employees". The first group includes employees performing work within the meaning of Art. 2 of the Labor Code. The second group consists of those to whom the Polish legislator gradually grants some "employee" rights, i.e. contractors and benefit recipients. At the same time, in the Polish labor market, despite the COVID-19 pandemic, the number of self-employed and those working on digital platforms has increased, creating the fiction of a mandate relationship. Digital workers in Poland sign a contract of a mandate for three hours a week, and the rest of the remuneration results from the vehicle rental contract, which avoids almost all public law liabilities.

The entire scope of the provisions of the Polish Labor Code applies only to employees. As for other working people, in particular, the analyzed employees of digital platforms, they are forced to run a business or conclude vehicle rental

³¹ See the entire ILO report: Ensuring better social protection for self-employed workers 2020, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---ddg_p/documents/publication/wcms_742290.pdf.

³² G. Davidov, M. Freedland, N. Kountouris, „The Subjects of Labor Law: Employees and Other Workers”, in M. Finkin and G. Mundalok (red.), *Research Handbook in Comparative Labor Law* (Edward Elgar 2015), s. 115.

³³ For instance: C. Behrendt, A. Nguyen, Innovative approaches for ensuring universal social protection for the future of work, ILO Future of Work Research Paper Series 2018, Paper, 12.

contracts or contracts of mandate and are treated in this way by the legislator, i.e., either as self-employed or as a form of semi-dependent work. Meanwhile, they perform work based on the characteristics of an employment contract, with the difference that employees of digital platforms do not even enjoy some employment rights specific to employees within the meaning of the Labor Code (working time, holidays, etc.). However, one should consider *de lege ferenda* the possibility of granting them some employment rights, provided that they are economically dependent on their contractor after a comprehensive assessment of the situation. It can be assumed that due to the existence of an intermediate category of "employees/self-employed" who are economically dependent, it is reasonable to grant them at least some employment rights after verification of the criteria defining the employment relationship by determining the characteristics of the employment relationship or their predominance (Article 22 of the Labor Code). In the face of ongoing social and economic transformations, new forms of work, and especially in the circumvention of labor law, there are reasonable doubts about the role that labor law should play in these phenomena. The European legislator also asks such questions in the draft directive on improving working conditions via online platforms; however, it takes a step backward concerning the intended direction, i.e., the inclusion of the axiology of the protective function on non-employee forms of work. In connection with these doubts, there are demands for a substantial increase in protection standards, and even a kind of deregulation in this area.

Corporate and Occupational Welfare: the Need for a Quantitative Approach to Modern Industrial Relations

Massimiliano De Falco *

Abstract

Lacking a legal definition, corporate welfare can be understood as the set of goods, services, and benefits with a social purpose, provided by employers to their workers, in addition to remuneration. In the transition from the welfare state model to the welfare society one, where industrial relations actors become relevant figures, a new approach should be promoted, to understand whether the benefits satisfy the current needs of employers, employees, and workers. Consequently, this paper focuses on the value of welfare measures in collective agreements as only through a “quantitative” approach, the “qualitative” path of modern industrial relations can be traced.

Keywords: Corporate and occupational welfare; Italian legal system; Industrial Relations; Trade Unions; Employers’ Associations; Collective bargaining; Quantitative approach.

1. Measuring what Counts for the “Social Construction of new Labour Markets” **

Quoting Stiglitz, “*if we want to put people first, we have to know what matters to them, what improves their well-being, and how we can supply more of whatever that is*”. In this sense, “*we need to measure what matters, and what matters is well-being*”¹. It is believed that the social construction of new labour markets can be approached considering people’s needs.

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¹ J. E. STIGLITZ, J. FITOUSSI, M. DURANT, *Beyond GDP. Measuring What Counts for Economic and Social Performance*, OECD, 2020.

However, «the scale of [social] needs is an evolving concept, and reacts to the mobility of a country's familiar, social, productive, and legislative structure»². Nowadays, the transformations affecting the world of work – especially the technological ones, which have already evolved from the Industry 4.0³ to the Industry 5.0 paradigm⁴ – are generating new risks and new needs for workers⁵, not only for safety in the workplace but also in terms of ‘organizational well-being’⁶.

In this scenario, the aim is to provide a more effective form of protection than the social security traditionally guaranteed by the Italian welfare state model⁷, which, with the shift to a «welfare society»⁸, today give industrial relations actors a prominent role⁹. The actions implemented for this purpose by trade unions and employers’ associations enable the social construction of new labour (and industrial) relations, where the well-being of people must be given priority.

Nevertheless, in the academic debate, there is a lack of reflection on the value of the actions taken, measuring their capacity to meet the needs of employers, employees, and workers. The variety of measures provided through collective bargaining requires a meticulous examination of their effects on the recipients.

² A. DE FILIPPO, *Contenuti e tipi di welfare aziendale*, in T. TREU (ed.), *Welfare aziendale. Migliorare la produttività e il benessere dei dipendenti*, Ipsosa, 2017, spec. 35.

³ M. TIRABOSCHI, F. SEGHEZZI, *Il Piano nazionale Industria 4.0: una lettura lavoristica*, in *LLI*, 2016, 2, 1.

⁴ EU COMMISSION, *Policy Brief Industry 5.0. Towards a sustainable, humancentric and resilient European industry*, 2021.

⁵ E. PAVOLINI, U. ASCOLI, M. L. MIRABILE, *Introduzione. Gli ambivalenti processi di trasformazione del welfare in Italia fra Stato, imprese e sindacato*, in E. PAVOLINI, U. ASCOLI, M. L. MIRABILE (ed.), *Tempi moderni. Il welfare nelle aziende in Italia*, Il Mulino, 2013, spec. 41, distinguish the «historical major “social risks” (income preservation, pensions, health, illness, unemployment) » from the «new “social risks” (school-to-work transition, work-life balance policies, childcare, housing emergencies, non-self-sufficiency)».

⁶ On this topic, see S. BUOSO, *Definire e qualificare il benessere organizzativo*, in *DSL*, 2019, 1, 26, who identify the «organizational well-being [as the set of] actions, procedures and guarantee techniques aimed at the joint improvement of “health and safety”», which, according to F. MALZANI, *Ambiente di lavoro e tutela della persona*, Giuffrè, 2014, spec. 160, «reflect the content of fundamental rights».

⁷ The Italian Welfare State system is based on Art. 38 of the Italian Constitution, which states that «all citizens unable to work and lacking the resources necessary for their existence are entitled to assistance support» (Par. 1) and that «workers are entitled to adequate insurance for their needs in the case of accidents, illness, disability, old age and involuntary unemployment» (Par. 2).

⁸ R. PESSI, *L'accordo sul modello di welfare aziendale nel distretto industriale pratese: l'avvio di una possibile esperienza di welfare society*, in *DLRI*, 145/2015, 133.

⁹ For a more detailed examination of this topic, please refer to § 2.

This seems necessary to understand which actions, better than others, can be qualified as a source of value for the involved parties.

The condition for trade unions and employers' associations to fulfil their mission – promoting, in addition to contractual exchange, opportunities for collecting needs and satisfying them – is the development of appropriate evaluation tools. What yesterday was the “times and methods”, today becomes the “impact assessment” of actions taken.

In this paper, I will deal with the evolution of social protection measures promoted through collective bargaining, focusing on ‘corporate welfare’ in the Italian labour market, to emphasize the relevance of a quantitative approach to this issue, and to support the qualitative path of modern industrial relations.

2. The Role of Private Actors in the Italian Social Security System

The Italian social security model, through which the state protects citizens in socially relevant situations of need¹⁰, has undergone profound changes over the years, as the suitability of the measures and the system could only be achieved with «multi-actors and multi-level governance, [able to reach an] efficient and socially balanced distribution of the resources employed»¹¹.

Thus, there has been a gradual erosion of the difference between social assistance and social security (provided for in Par. 1 and 2, Art. 38, Italian Constitution¹²) in favour of a «hybridisation [...] with labour law»¹³. This path has led to the «creation of a welfare mix, of public and private experiences, no longer limited to social assistance and anti-poverty benefits, but extended to social security protection for workers»¹⁴.

¹⁰ See W. SIR BEVERIDGE (*Report by*), *Social Insurance and Allied Services*, HMSO, 1942, and, referring to Italian legal system, M. PERSIANI, *Il sistema giuridico della previdenza sociale*, Cedam, 1970, who identifies its scope in «social security, social assistance and health protection», which find their constitutional reference in Art. 32 and 38 of the Italian Constitution, in a perspective oriented to Art. 2 and 3 of the Italian Constitution.

¹¹ T. TREU, *Introduzione Welfare aziendale*, in *WP CSDLE “Massimo D’Antona”.IT*, 297/2016, 16. In the same direction, see B. CARUSO, “The bright side of the moon”: *politiche del lavoro personalizzate e promozione del welfare occupazionale*, in *RIDL*, 2016, 1, 187, who, on this point, highlights the «crisis of universal welfare as a single actor».

¹² O. BONARDI, *Separate in casa? La distinzione tra previdenza e assistenza oggi*, in *RDSS*, 2021, 4, 694.

¹³ G. CANAVESI, *Le interazioni tra diritto all’assistenza sociale e diritto del lavoro. Un tentativo di ricognizione*, in *VTDL*, 2019, 2, spec. 429. On this topic, see also R. PESSI, *Tornando sul welfare*, in *WP CSDLE “Massimo D’Antona”.IT*, 311/2016, 8, who envisaged «the transition from an occupational model to a universalist one».

¹⁴ G. SIGILLÒ MASSARA, *L’insostenibile tensione verso il welfare mix, tra fondi di solidarietà bilaterali e previdenza complementare*, in *RDSS*, 2017, 3, spec. 484.

It should be noted that the public-private partnership is «a phenomenon dating back to the origins of the [Italian] social protection system»¹⁵, especially considering that the first experiences of («factory) welfare»¹⁶ were born at the corporate level, in the context of the so-called «industrial paternalism [or] neo-paternalism»¹⁷. These actions consisted of disbursements provided by employers, who, providing basic forms of social security, avoided the risk of insurrection by the workers.

Afterwards, the need to cover workers against social risks became a matter of public interest, no longer a mere allowance paid by farsighted entrepreneurs. This process – which was reinforced with the advent of the fascist regime and culminated with the promulgation of the Italian Constitution in 1948¹⁸ – outlined a set of mandatory public tools, resulting in the gradual repeal of existing forms of private social protection, but also the weakening of the need for workers themselves to receive benefits from employers, as these were guaranteed by the welfare state¹⁹.

However, the rise and diversification of «socially relevant needs»²⁰ led to moving beyond the traditional (exclusively) public model, entrusting the task of providing social protection for workers to private entities²¹. In this context, a central role was progressively played by industrial relations actors, when companies, trade unions and employers' associations sought to promote, privately, decentralized forms of social protection, with subsidiary functions²²

¹⁵ M. CINELLI, *Pubblico, privato e Costituzione nelle attuali dinamiche della previdenza*, in *RDSS*, 2017, 3, spec. 402, who highlights that the Italian Constitutional system, while maintaining a «rigidity of purpose», has a «flexibility of manner» (here spec. 412). More generally, on public-private complementarity, see J. FORRER, J. E. KEE, K. E. NEWCOMER, E. BOYER, *Public-Private Partnerships and the Public Accountability Question*, in *Public Administration Review*, 2010, 475 and G. ESPING-ANDERSEN, *Three worlds of welfare capitalism*, Princeton University Press, 1990, 21.

¹⁶ F. SANTINI, *Profili di regolamentazione collettiva del welfare aziendale*, in *ADL*, 2018, 6, spec. 1480.

¹⁷ U. ASCOLI, M. L. MIRABILE, E. PAVOLINI, *Dal welfare di cittadinanza al welfare nel lavoro? Contrattazione collettiva e iniziativa d'impresa in Italia*, in *RPS*, 2012, 3, 55.

¹⁸ P. OLIVELLI, *La Costituzione e la sicurezza sociale. Principi fondamentali*, Giuffrè, 1988, spec. 69.

¹⁹ M. PERSIANI, *Previdenza pubblica e previdenza privata*, in *GDLRI*, 2000, 2, spec. 208.

²⁰ R. PESSI, *La collocazione funzionale delle recenti innovazioni legislative in materia di previdenza complementare nel modello italiano di sicurezza sociale*, in G. FERRERO (ed.), *La previdenza complementare nella riforma del Welfare*, Vol. I, Giuffrè, 2000, 53.

²¹ For example, consider, from the social assistance point of view, the establishment of supplementary health funds (provided for in Legislative Decree no. 502/1992), or, in the field of social security, the introduction of complementary pension funds (provided for in Legislative Decree no. 124/1993, as amended by Legislative Decree no. 252/2005).

²² On the principle of subsidiarity, as «the distribution of functions among a plurality of subjects [aimed at] equality and [at] equal opportunities», see G. G. BALANDI, «Pubblico», «privato» e principio di sussidiarietà nel sistema del welfare state, and M. PERSIANI, *Crisi e riforma del welfare State*, both in *RGL*, 1998, 1, respectively 213 (here spec. 226) and 299.

«compared to those (increasingly less, both qualitatively, and quantitatively²³) ensured by welfare state policies».

Nevertheless, it should be noted that the scholarly work on the connection between the rise of “private social protection” and the retrenchment of the Welfare State includes those that identify a direct causal link – pointing out that public finance has been placed under stringent constraints²⁴ – and those who partially reject this approach²⁵. Alongside these interpretations, a new suggestion has been recently proposed: it describes «a path (consciously or unconsciously) undertaken by IR actors (including the State) to support the profound transformations of the world of work»²⁶.

It has also been observed that the process of complementing the welfare state by private entities has proved suitable to protect workers from the mentioned emerging risks²⁷, and, even more, to guarantee the continuity and the effectiveness of «social rights»²⁸. In this sense, the legislator has more recently

²³ F. BACCHINI, *Welfare aziendale: illazioni (ricostruttive) giuslavoristiche (I. Parte generale)*, in *ADL*, 2017, 3, 636.

²⁴ J. S. HACKER, *Privatizing Risk without Privatizing the Welfare State: The Hidden Politics of Social Policy Retrenchment in the United States*, in *American Political Science Review*, 2004, 243, and, referring to the Italian case, M. FERRERA, *Secondo welfare: perché? Una introduzione*, and F. MAINO, *Tra nuovi bisogni e vincoli di bilancio: protagonisti, risorse e innovazione sociale*, both in F. MAINO, M. FERRERA (ed.), *Primo rapporto sul secondo welfare in Italia*, Centro Einaudi, 2013, respectively 8 and 23.

²⁵ M. FERRERA, A. HEMERIJCK, *Recalibration European Welfare State Regimes*, in J. ZEITIN, D. TRUBECK (ed.), *Governing Work and Welfare in a New Economy: European and American Experiments*, Oxford University Press, 2003, 88, and, referring to the Italian case, T. TREU, *Introduzione Welfare aziendale* cit., spec. 6, and B. CARUSO, “The bright side of the moon” cit., spec. 187. According to them it is not a retrenchment but a «recalibration» of Welfare State resources.

²⁶ M. TIRABOSCHI, *Il welfare aziendale e occupazionale in Italia: una prospettiva di relazioni industriali*, in *DRI*, 2020, 1, spec. 88.

²⁷ P. TAYLOR-GOUBY, *New risks and social change*, in P. TAYLOR-GOUBY (ed.), *New risks, new welfare?*, Oxford University Press, 2004, 2, who clarifies that «new social risks are the risks that people now face in the course of their lives as a result of the economic and social changes associated with the transition to a post-industrial society».

²⁸ As defined by E. ALES, *Diritti sociali e discrezionalità del legislatore nell'ordinamento multilivello: una prospettiva giuslavoristica*, in *DLRI*, 2015, 147, spec. 458, as «the rights instrumental to the social inclusion of the owner in the community, [ensuring] certain qualitative-quantitative level of well-being».

wanted to facilitate private (and subsidiary²⁹) social protection measures with a tax reform, which replaces the previous approach³⁰.

In particular, Law no. 208/2015 – as subsequently amended by Law no. 232/2016³¹ – recognised fiscal and contribution incentives for goods, services, and benefits, with social purpose, provided by employers to the whole of the workers in the plant, in addition to the wage and the benefits provided by a collective agreement or a (mandatory) corporate regulation³². Thus, the Italian legal system (re)discovered «corporate and occupational welfare».

Considering this tax legislation, the focus of the paper will be on collectively negotiated corporate welfare, as it is considered suitable to realise the interests of the parties involved³³. Collective bargaining is the privileged forum for balancing demands and addressing people with needs and expectations.

3. The Contents of Corporate Welfare Promoted through Collective Bargaining

The aim of defining corporate welfare and its characteristics seems very difficult to be achieved. The absence of legal indications (except for the fiscal one³⁴) calls for interpretative efforts to identify a phenomenon «whose

²⁹ It should be noted that the concept of «subsidiarity» is placed in antithesis to the «substitution» one, because the participation of private actors in the social protection system does not substitute the Welfare State but, on the contrary, complements it. See E. ANDERSEN, *Welfare regimes and social stratification*, in *Journal of European Social Policy*, 2014, spec. 124, and, regarding the Italian case, W. CHIAROMONTE, M. L. VALLAURI, *Trasformazioni dello Stato sociale ed ascesa del welfare aziendale. L'esperienza italiana*, in W. CHIAROMONTE, M.L. VALLAURI. (ed.), *Modelli ed esperienze di welfare aziendale*, Giappichelli, 2018, spec. 19.

³⁰ Before the tax reform, the legislator had foreseen incentives for social protection measures voluntarily provided by employers to their workers. In this way, the provisions of collective agreements and of (mandatory) corporate regulations played a marginal role, because, although they were present, they were not tax-privileged.

³¹ For a detailed reconstruction of developments in tax legislation on this topic (spec. with respect to Art. 51 and 100, Italian Tax Code, 1986), see E. MASSAGLI, *Le novità in materia di welfare aziendale in una prospettiva lavoristica*, in M. TIRABOSCHI (ed.), *Le nuove regole del lavoro dopo il Jobs Act*, Giuffrè, 2016, 600.

³² M. SQUEGLIA, *Il welfare aziendale è la risposta al bisogno previdenziale e al "welfare integrato"?*, in LD, 2019, spec. 693, clarifies that «with regard to the deservingness of need [...] the tax legislator has allowed exclusions from taxable income».

³³ See T. TREU, *Introduzione Welfare aziendale* cit., spec. 14, who qualifies the collective dimension as a suitable vehicle «for responding to the increasingly personalized needs of workers». In these terms, see M. SQUEGLIA, *La disciplina del welfare aziendale. Linee evolutive, sentieri di indagine e prospettive di sviluppo*, in RSDD, 2018, 4, 828.

³⁴ According to M. SQUEGLIA, *L'evoluzione del "nuovo" welfare aziendale tra valutazione oggettiva dei bisogni, regime fiscale incentivante e contribuzione previdenziale*, in ADL, 2017, 1, spec. 131, here emerges «the need for a transversal definition across all areas of the legal system [...]

development is linked to economic and social demands, deeper than the taxation lever»³⁵.

The definition of this expression – unquestionably «non-technical»³⁶ and «not legally prescriptive»³⁷ – has been entrusted to scholarly work. Legal scholars have been called upon to perform a difficult interpretative task, in the search for a balance between tax legislation and the (various and often «contradictory»³⁸) and collective bargaining.

The concept of corporate welfare belongs to sociological, economic, and political language, identifying the set of benefits that employers grant to their workers, to improve their private and professional life³⁹. However, it is a definition that does not consider the legal value of corporate welfare, whose emergent characteristic is the fact that «pertains to a limited context, such as the corporate one»⁴⁰.

In addition to this, corporate welfare has been variously denominated in relevant research, changing its semantic scope «according to the sources of the benefit, or according to the financing, disbursing or promoting subjects»⁴¹. This «definitional chaos»⁴² has led to the (disorganised⁴³) inclusion in corporate welfare of all well-being promoting actions «provided by companies to the workers in execution of the agreements that link them to each other, regardless of both the type of measure and its normative source»⁴⁴.

Occupational welfare delineates a «complex private system, with a corporate or collective bargaining nature, [...] that, limited to the workers employed in a

explaining what corporate welfare is or, alternatively, identifying the requirements that corporate welfare must meet to acquire legal validity».

³⁵ M. TIRABOSCHI, *Il welfare aziendale e occupazionale in Italia* cit., spec. 87.

³⁶ T. TREU, *Il welfare aziendale: problemi, opportunità, strumenti*, in T. TREU (a cura di) *Welfare aziendale 2.0. Nuovo welfare, vantaggi contributivi e fiscali*, Ipsoa, 2016, spec. 3.

³⁷ G. CANAVESI, *Le interazioni tra diritto all'assistenza sociale e diritto del lavoro* cit., spec. 424.

³⁸ F. SANTINI, *Profili di regolamentazione collettiva del welfare aziendale* cit., spec. 1476.

³⁹ R. TITMUS, *Essay on the Welfare State*, Allen and Unwin, 1958, 100.

⁴⁰ D. GRANDI, *Redistribuzione o retribuzione: le diverse funzioni del welfare aziendale*, in E. MASSAGLI, (ed.), *Il welfare aziendale territoriale per la micro, piccola e media impresa italiana. Una indagine ricostruttiva*, ADAPT University Press, 2014, spec. 12.

⁴¹ E. MASSAGLI, S. SPATTINI, *Cosa intendiamo quando parliamo di welfare aziendale? Un tentativo di mappatura concettuale di un concetto abusato*, in *Bollettino ADAPT*, January 23, 2017, to which please refer for a careful terminological survey.

⁴² F. BACCHINI, *Welfare aziendale: illazioni (ricostruttive) giuslavoristiche* cit., spec. 634.

⁴³ A. TURSI, *Il «Welfare aziendale»: profili istituzionali*, in *RPS*, 2012, 4, spec. 213, who points out that the «conceptual clarity of the expression “corporate welfare” [is] inversely proportional to its diffusive and evocative capability».

⁴⁴ M. TIRABOSCHI, *Il welfare aziendale e occupazionale in Italia* cit., spec. 98, recalling the definition of «occupational welfare» used by R. TITMUS, *Essay on the Welfare State* cit., in the Italian version, in *Saggi sul “welfare state”*, Edizioni Lavoro, 1963, 58.

plant and their relatives, affects the same needs satisfied by the welfare state system, or protects, with additional benefits compared to the public ones, other needs»⁴⁵.

If such an observation perspective were to be adopted, the topic of the investigation would appear excessively broad, and any assessment on this point would lead to some ambiguities⁴⁶. Consequently, the need arises to pursue an industrial relations law-oriented approach⁴⁷, enhancing corporate welfare promoted through collective bargaining («in all its dimensions and levels»⁴⁸).

Nevertheless, the main reports on the issue⁴⁹ have highlighted the variety of benefits that can be planned in a (national, corporate, or territorial) collective agreement. Considering the holistic vision of employee well-being⁵⁰, corporate welfare includes measures ranging from the social security and health area to the professional training one, even including care services for workers' families (especially for relatives with a disability or older), and parenting support tools. Moreover, welfare benefits may concern tools which are characterized by a

⁴⁵ F. OLIVELLI, *L'inquadramento sistematico del welfare aziendale*, in *RDSS*, 2020, 1, spec. 103.

⁴⁶ The variety of the sample would result in the comparison of «non-comparable forecasts, [and, above all] without a precise system view» (on this point, see M. TIRABOSCHI, *Il welfare aziendale e occupazionale in Italia* cit., spec. 98).

⁴⁷ According to M. TIRABOSCHI, *Teoria e pratica dei contratti di lavoro*, ADAPT University Press, 2016, spec. 33, the «Industrial Relations Law» represents «the set of formal and informal rules, intended to systemically regulate the methods of production of a Country, and which are the result of the interrelation between the State, the Employers' Associations and Trade Unions». In the same direction, B. KAUFMAN, *The Theoretical Foundation of Industrial Relations and Its Implications*, in *Industrial and Labor Relations Review*, 2010, 64, 103, clarifies that the «value added employment relations approach that distinguishes the Industrial Relations field from others [consists in] a welfare function that includes not only consumers' interests and economic efficiency but also workers' interests and distinctly social/humanistic goals, such as procedural and distributive justice; protection of basic human rights; provision of elemental democratic procedures at work; and opportunities for human self-development and self-actualization at work».

⁴⁸ U. STENDARDI, A. R. MUNNO, *Il welfare contrattuale: un nuovo orizzonte strategico*, in T. TREU (ed.), *Welfare aziendale 2.0. Nuovo welfare, vantaggi contributivi e fiscali*, Ipsoa, 2016, spec. 145.

⁴⁹ Among the several surveys carried out on this topic, please refer at least to M. TIRABOSCHI (ed.), *Welfare for People. Quinto rapporto su Il welfare occupazionale e aziendale*, ADAPT University Press, 2022, and to the others Reports cited therein (spec. 223).

⁵⁰ According to A. MARESCA, *Il welfare aziendale nella prospettiva delle politiche retributive del personale*, in I. ALVINO, S. CIUCCIOVINO, R. ROMEI (ed.), *Il welfare aziendale. Una prospettiva giuridica*, Il Mulino, 2019, spec. 69, «under a broader meaning, corporate welfare is everything that is aimed at the well-being of workers, [...], not only those referred to in the tax law». On this point, as it will be explored in § 3, E. GRANAGLIA, *Welfare fiscale: risorsa da promuovere o rischio da evitare?*, in M. JESSOULA, E. PAVOLINI (ed.), *La mano invisibile dello stato sociale. Il welfare fiscale in Italia*, Il Mulino, 2022, 329, has recently emphasized the need for a «reasoned assessment of tax-privileged welfare», which could be useful to argue for possible «extensions of existing benefits, as well as specific revisions of the most controversial aspects».

more economic than social function⁵¹, such as leisure services or vouchers to sustain workers' income.

Finally, adopting a broader conception of corporate welfare, can even include the flexible models of work oriented towards a better work-life balance (like, for example, teleworking⁵²), and the actions to implement health and safety protection in the workplace.

Leaving aside these macro-areas, welfare benefits can be divided into two different types. The first one includes the tools «allowing the workers to carry out their work more easily, moving beyond the inconveniences caused by how they perform the assigned task or supporting their personal needs». The second one includes the instrument «to which the Italian legal system confers a social value on them, so significant that they do not compete with the taxable employee income»⁵³.

4. The Request for an Impact Assessment: Some Insights from the Italian Third Sector

Corporate welfare, as defined in the previous paragraph, seems to be at the heart of modern industrial relations, for three reasons at least.

First of all, the Italian legal system recognizes corporate welfare as a social benefit, which is realized through tax incentives for its provision. These fiscal advantages are suitable to raise the interest of both sides of the employment relationship: workers can obtain (customized) wage additions, with a reduced tax burden, able to meet their social needs and desires; employers can reduce the labour costs, improving corporate wellness and, consequently, the productivity of their workers, ensuring positive effects on the competition in the market⁵⁴.

The second point regards the well-being of people in the post-pandemic era⁵⁵, where new sustainability seems to be found through a tool that (potentially)

⁵¹ F. BACCHINI, *Welfare aziendale: illusioni (ricostruttive) giuslavoristiche* cit., spec. 641.

⁵² On tele-working as a work-life balance measure, see M. BROLLO, *Il lavoro agile tra emergenza pandemica e riemersione della questione femminile*, and, as a «reasonable accommodation» for disadvantaged workers, A. ZILLI, *Il lavoro agile per Covid-19 come "accomodamento ragionevole" tra tutela della salute, diritto al lavoro e libertà di organizzazione d'impresa*, both in *Labor*, 2020, 4, respectively 87 and 531. In addition to this, on the tax incentives for work-life balance corporate welfare measures, see C. GAROFALO, *Le politiche per l'occupazione tra aiuti di Stato e incentivi in una prospettiva multilivello*, Cacucci, 2021, 204.

⁵³ M. SQUEGLIA, *L'evoluzione del "nuovo" welfare aziendale* cit., spec. 114.

⁵⁴ B. CARUSO, «The bright side of the moon» cit., spec. 185.

⁵⁵ The pandemic has raised the «new social issue» [D. GAROFALO, M. TIRABOSCHI, V. FILLI, F. SEGHEZZI (ed.), *Welfare e lavoro nella emergenza epidemiologica. Contributo sulla nuova questione sociale*, ADAPT University Press, 2020], which is already evolving into the «new geo-eco-social issue»

guarantees equal opportunities and improved satisfaction for all workers⁵⁶. The long-standing challenge of achieving «equal pay for work of equal value», which was even more arduous in the emergency context,⁵⁷ could be successfully met with corporate welfare, which could allow, in addition to benefits with significant economic impact, supplementary (and indispensable) social protection measures for all workers in a plant⁵⁸, «leaving no one behind»⁵⁹.

The third aspect – which is related to the second one but considered on the employer side⁶⁰ – concerns the ongoing difficulties of companies in attracting and retaining (essential) human resources. These hard times are witnessing large flows of workers moving from one job to another, looking for more gratifying working conditions, not only in terms of salary but also well-being⁶¹. It follows that the challenges of attraction and retention in the current labour

due to climate change (A. PERULLI, V. SPEZIALE, *Dieci tesi sul diritto del lavoro*, Il Mulino, 2022, spec. 146).

⁵⁶ L. BARBIERI, G. SCANSANI, M. TOMBARI, *Welfare aziendale, leva strategica tra sviluppo sostenibile e PNRR*, in *DPL*, 14/2022, 841. On this point, see also C. MURENA, *Il welfare aziendale come strumento di sostenibilità*, in VV.AA., *Il diritto del lavoro per una ripresa sostenibile. XX Congresso Nazionale AIDLASS. Taranto, 28 – 30 ottobre 2021*, La Tribuna, 2022, 501.

⁵⁷ A. ZILLI, *Parità di retribuzione per lavori di equo valore: un passo avanti e uno di lato*, in *DRI*, 2021, 3, 956.

⁵⁸ Although, historically, corporate welfare has been associated with the risk of widening social inequalities between workers [as highlighted by E. PAVOLINI, U. ASCOLI, M. L. MIRABILE, *Conclusioni*, in E. PAVOLINI, U. ASCOLI, M. L. MIRABILE (ed.), *Tempi moderni. Il welfare nelle aziende in Italia*, Il Mulino, 2013, 259], recent surveys show how it can guarantee new forms of equal pay. On this point, please refer to C. ALTILO, M. DALLA SEGA, M. DE FALCO, *Apprendistato e dinamiche retributive. Una ricerca nel settore metalmeccanico*, in *WP ADAPT*, 16/2022, spec. 30.

⁵⁹ Recalling the motto of UNITED NATIONS, *Transforming our world: the 2030 Agenda for Sustainable Development*, 2015.

⁶⁰ According to S. CIUCCIOVINO, D. GAROFALO, A. SARTORI, M. TIRABOSCHI, A. TROJSI, L. ZOPPOLI (ed), *Flexicurity e mercati transizionali del lavoro*, ADAPT University Press, 2021, the doctrinal debate on «flexicurity» – i.e., on the reconciliation of flexibility of company and (social) security of workers – does not seem to have been resolved yet, and, on the contrary, it faces new challenges imposed by European impulses for «Sustainable Development» in the post Covid-19 emergency recovery.

⁶¹ N. RICHARDSON, M. ANTONELLO, *People at Work 2022. A Global Workforce View*, ADP Research, 2022 highlight how the needs of people have radically changed after the two-year pandemic experience: today, the added value for attracting and retaining human resources, as well as for creating stronger and more resilient organizations, lies in «flexibility, health protection, well-being and work-life balance». On the Italian phenomenon of the 2021 Great Resignation, see R. BRUNETTA, M. TIRABOSCHI, *Grande Dimissione: fuga dal lavoro o narrazione emotiva? Qualche riflessione su letteratura, dati e tendenze*, Working Paper ADAPT n. 6/2022, and for a quantitative “brain drain” survey FONDAZIONE STUDI CONSULENTI DEL LAVORO, *Le dimissioni in Italia tra crisi, ripresa e nuovo approccio al lavoro*, 2022.

markets require looking at the changed circumstances of the world of work with new eyes, focusing action on the satisfaction of the needs and desires that everyone is seeking today.

It is a matter of understanding how the exchange between employers and workers is transforming – “beyond” the traditional references to wage, tasks, environment and working time⁶² – and how corporate welfare could fit into these new metrics. Moreover, the variety of measures, with social relevance, promoted through collective bargaining requires a detailed analysis of the effects on the well-being of people and the company, to assess the value of the actions implemented.

Some insights can be taken from the «social impact evaluation systems» provided for Italian third sector (ITS).

Looking at Art. 118, Par. 4, Italian Constitution⁶³ – ITS constitutes the second pillar of the welfare society, «adding the civil dimension to the public and private ones, under the principles of equity, efficiency, and solidarity»⁶⁴.

According to Legislative Decree no. 117/2017⁶⁵, ITS entities are «voluntary organizations, associations for social promotion, philanthropic entities, social enterprises, including social cooperatives [and other private entities] established for the non-profit pursuit of civil, solidarity and socially useful purposes, by carrying out, exclusively or principally, one or more activities of general interest» (Art. 4). The Italian legal system recognizes to ITS entities their «value and social function, [...] as an expression of participation and solidarity» (Art.

⁶² According to M. BROLLO, *Il lavoro agile alla prova dell'emergenza epidemiologica*, in V. FILÌ (ed.), *Volume I. Covid-19 e rapporto di lavoro*, in D. GAROFALO, M. TIRABOSCHI, V. FILÌ, F. SEGHEZZI (ed.), *Welfare e lavoro nella emergenza epidemiologica. Contributo sulla nuova questione sociale*, ADAPT University Press, 2020, spec. 169 the new employment relationships assign «more relevance to “what” workers do than to “where” and “when” they do it». The expression, already adopted during the pandemic with the massive adoption of tele-work, emphasizes a «new exchange between employer and workers [in which there is] no longer an exchange between presence and wage, but between autonomy, responsibility, and result», as in A. BOSCATI, *L'inquadramento giuridico del lavoro da remoto tra potere direttivo e autonomia della prestazione*, in M. MARTONE (ed.), *Il lavoro da remoto. Per una riforma dello smart working oltre l'emergenza*, La Tribuna, 2020, spec. 61.

⁶³ The Art. 118, Par. 4, Italian Constitution states that «the State, Regions, metropolitan cities, provinces, and municipalities shall promote the autonomous initiatives of citizens, both as individuals and as members of associations, relating to activities of general interest, on the basis of the principle of subsidiarity».

⁶⁴ S. ZAMAGNI, *Prefazione*, in C. CITTADINO (ed.), *Dove lo Stato non arriva. Pubblica Amministrazione e Terzo settore*, ASTRID, Passigli Editori, 2008, spec. 9.

⁶⁵ For a comprehensive overview of the Italian Third Sector and of its Labour Law dynamics, see D. GAROFALO, *Il lavoro nel Terzo settore*, in *MGL*, 2018, 1, 91, and, for a monographic research on this topic, A. RICCOBONO, *Diritto del lavoro e Terzo settore. Occupazione e welfare partenariale dopo il d.lgs. n. 117/2017*, Edizioni Scientifiche Italiane, 2020.

2) that characterize the «social economy»⁶⁶, to which post-pandemic recovery and resilience should be inspired⁶⁷.

As a result of the «Guidelines for the implementation of social impact evaluation systems of the activities carried out by Third Sector organizations» (Decree of Minister of Work, July 23, 2019⁶⁸), it is recommended that these entities produce a social impact assessment once a year, to «report on the quantity and quality of their activity, and the effects, they produce about the identified objective»⁶⁹. Hence, this evaluation represents «the tool through which [an ITS organization] reports to its stakeholders on its effectiveness in creating social and economic value» (Art. 2)⁷⁰.

⁶⁶ Recalling VV.AA., *Social and Solidarity Economy: Our common road towards Decent Work*, ILO, 2011, E. DAGNINO, *Diritto del lavoro ed economia sociale. Appunti per una ricerca*, in *DRI*, 2021, 4, spec. 1060, defines the social economy as «a concept that refers to enterprise and organizations [...] which specifically produce goods, services and knowledge while pursuing economic and social aims and foresting solidarity».

⁶⁷ Indeed, the Italian «National Recovery and Resilience Plan» (NRRP) assigns a leading role to ITS entities, as clearly shown by IRIS NETWORK – FORUM DISUGUAGLIANZE E DIVERSITÀ, *PNRR: alcune linee di indirizzo e priorità*, in *Impresa Sociale*, 1/2021.

⁶⁸ In the Italian legal system, the issue of social impact assessment of ITS enterprise had already been addressed in Law no. 328/2000, where the focus on evaluation processes is mentioned in several steps: for example, the Art. 3 provided that «the implementation of social services [requires] the systematic assessment of the results in terms of quality and effectiveness of the services», while Art. 20 referred to «forms of monitoring, verification, and evaluation of the costs, yields and results of interventions». The measurement of the results achieved by ITS entities was subsequently regulated by the Ministerial Decree of January 24, 2008, where the guidelines for drawing up the «social statement» were adopted. Lastly, the Law no. 106/2016, containing the «Delegation to the Government for the reform of the Third Sector», provided a precise specification of the social impact assessment in the new regulatory framework of ITS entities, defining it as «the qualitative and quantitative evaluation, in the short, medium, and long term, of the effects of the activities, carried out on the community of reference with respect the identified objective» (Art. 7, Par. 3). This definition was incorporated in the mentioned Decree of Minister of Work, July 23, 2019.

⁶⁹ On this point, even before the legislative provision, see S. ZAMAGNI, P. VENTURI, S. RAGO, *Valutare l'impatto sociale. La questione della misurazione nelle imprese sociali*, in *Impresa Sociale*, 12/2018, to which please refer for proposed economic measurement indicators.

⁷⁰ The process of measuring Social Impact, which must be based on the principles of «intentionality, relevance, reliability, measurability, comparability transparency and communication», is divided into five steps: *i*) context and needs analysis with stakeholder participation; *ii*) planning of impact objectives; *iii*) choice of methodologies, tools, and timing of measurement, with respect to the set objectives and to the characteristics of the intervention; *iv*) attribution of a value to the results achieved by the measurement process; *v*) communication of the results of the evaluation. On the different steps of the social impact assessment and on their purpose, see M. RENNA, *L'impatto sociale del Terzo settore: finalità, attività e governance*, in *RDI*, 2021, 2, 363.

If it is true that trade unions and employers' associations, as well as ITS organizations, carry out their activity to produce a positive effect on their stakeholders, even a quantitative impact assessment of corporate welfare benefits promoted through collective bargaining becomes crucial for the social construction of new labour (and industrial) relations.

Thus, the new challenge is to guide the social partners, through a quantitative approach, towards collective qualitative choices able to respond to the new demands of employers, employees, and workers. Concerning the employers' associations, it is a matter of supporting employers, with the method to know the value of corporate welfare measures, by going beyond tax benefits and quantifying the return on investment. Referring to trade unions is a matter of enabling them to suggest, assess, and convey customized offers that do meet the needs and desires of workers⁷¹.

5. Closing remarks

This paper attempted to highlight the need for a quantitative approach to the issue of social needs that could be satisfied through corporate welfare in the new era of industrial and labour relations.

A new research perspective emerges, which allows us to reflect both on the capacity of industrial relations actors in providing (structural and durable) answers in a deeply transformed framework, and on the suitability of corporate welfare measures in satisfying the social and economic needs of workers and companies, beyond the mere contractual exchange. The more corporate welfare promoted through collective bargaining meets the needs and desires of the involved parties, the best the resources allocated will be able to spread their value, in broader terms than a wage addition or a tax benefit.

A greater awareness among IR actors of the value of corporate welfare could enhance the social construction of a new labour market through participatory models, also as a tool to face the transition underway, and to sustain attraction and retention.

⁷¹ Along these paths, B. CARUSO, *Sviluppi normativi e contrattuali del welfare aziendale*, in *RIDL*, 2018, 1, spec. 376 qualifies corporate welfare as a «propulsive tool for the reorganization of the collective bargaining structure».

Emotional Labour Well-Being and Leadership among Spanish Academics

Simone Belli, Jacinto G. Lorca, Marcelo León Castro *

Abstract. The adaptation to flexible work during the COVID-19 pandemic has meant that researchers still do not know how professional dynamics function correctly in this new context. In this research, we focus on new issues that have arisen in this era of hybrid work, with the aim of improving performance, conciliation, and emotional labour well-being in the specific professional environments of Spanish universities and research institutes. We show the results from a survey comprising 451 academics. Aspects such as management and leadership over their work and promoting well-being in their work spaces and co-workers, have been observed and identified in the survey. The figure of a leader emerges as someone who is communicative, collaborative, and that helps colleagues and their professional development. We suggest that a tightrope walker leader, that is, one who knows how to strike a balance between individual needs and collective interests, could be the key to ensuring the well-being of academics.

Keywords: *Emotional labour; Well-being; Hybrid work; Leadership; Academic collaboration; Spanish universities.*

1. Introduction

The arrival of the pandemic caused by COVID-19 in 2020 has transformed our society. Every aspect of our lives has been changed in trying to adapt to the new context, marked by uncertainty and numerous restrictions. To try to preserve some normality, the use of technology was enhanced, which ended up

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covering, even more than before, all spheres of our daily lives (García et al., 2020), from social relations to the workplace.

Until then, remote working in Spain was a very unusual practice, compared to the rest of the countries in Europe. According to data from the National Institute of Statistics of Spain, in 2019 only 4.8% of the active population usually performed their job remotely, and 3.5% occasionally, while the average for European Union countries was around 10% (It is the sum of usually and occasionally of remote job). More recently, the vertiginous increase in remote working during the pandemic has been reversing and stabilizing little by little, currently placing the proportion of people in Spain who usually work in this way at 7.9% (Observatorio Nacional de Tecnología y Sociedad, 2022).

In this paper we present questions that have arisen in this new era of hybrid work, such as new forms of leadership and emotional well-being at work. People who work from home in Spain list the main advantages as, the avoidance of displacement, the self-management of working time, the reconciliation with their family and personal life, and the better use, or saving, of time. Among the disadvantages, the most marked are the lack of social contact with co-workers, the non-disconnection from work, overload, and the poor organization and coordination of teleworking (INE, 2021).

Likewise, in the years since the beginning of the pandemic, more studies have focused on exploring the disadvantages and biases of remote working, with the intention of finding a satisfactory solution. Criticisms include, that the flexibility of teleworking may clash with the right to digital disconnection, or that it implies people should do more hours of work. On the other hand, people who work from home do not always know how to properly organize the use of their time (for example, separating work time with staff or family), which can have consequences for their health and well-being. In addition, remote workers do not always have, or receive, adequate information to carry out their work in this modality (Collados, 2022). Finally, numerous biases have been found regarding remote working, given that more women do it than men, on the one hand, because they are employed in sectors where it is potentially applicable (De la Puebla Pinilla, 2020), and, at the same time, because they are also the ones who bear the greatest burden of family responsibilities and care (Galiño and Arochena, 2021).

Among the many definitions of 'leadership', there is some agreement on the idea of exerting influence on the part of one person over others, with which it seeks to favor behaviors, activities, and/or relationships with which to achieve the same objective (Barrasa Notario, 2022). In line with this, digital leadership can be defined as: 'a social influence process embedded in both proximal and distal contexts mediated by IT that can produce a change in attitudes, feelings, thinking, behavior, and performance' (Avolio et al. 2014, p. 107). For Barrasa

Notario (2022), digital leadership is a way to lead a group composed of people that work in different departments, organizations, and countries. This new type of leadership is the science of leading as mediated by a digital device. The main difference with the more traditional forms of leadership is its technological intermediation, framed within a rapid and changing digital revolution. It is characterized by ways of collecting, managing, interpreting, and disseminating information through these devices (Avolio and Kahai, 2003). Video calls, video conferences, or chats are some of the elements that tend to be used in the so-called 'virtual groups'. The fact that interactions and communication are at a distance, and not face to face, is what most distinguishes these virtual groups from traditional ones. Likewise, they can also be composed of people who are dispersed spatially or temporally (Cascio and Shurygailo, 2003). Last but not least, digital leadership needs to solve technical problems during interactions at a distance, such as a microphone or a camera that does not work perfectly, or noises produced by technological devices during the meeting (Belli, 2018; Santoro and Belli, 2018). In addition to these problems, there are aspects of human communication that cannot be expressed through a digital social interaction, such as gestures, body posture, and gazes.

The figure of the digital leader could be characterized by the use of non-coercive means, as well as a greater interest in changes and in the construction of relationships of trust within the team. On the other hand, the digital leader could be more responsible for maintaining stability and responding to the challenges that arise in the short-term, with a more active role in planning and control of tasks. Likewise, when we talk about a digital leader, the relationship with the other members of the group is of 'followers', while for the other it would be of 'subordinates' (Bennis and Townsend 1989; Pautt 2011).

This paradigm shift in the modality of work, and the reinforcement of virtual teams, has brought with it new challenges in terms of leadership and group management (Lilian 2014), which are now beginning to be studied in depth. In this sense, Van Wart et al. (2019) point out three reasons why it is important to understand and study digital leadership. (1) To study the forms of communication in the era in which we live, that of 'constant contact', and their implications. (2) The new means by which work is carried out involve new forms of management and collaborative tools that need to be studied. (3) Changes to ways of working and management also imply adapting forms of leadership.

It has been seen that all these advantages can have associated drawbacks if not implemented or managed properly. In addition, to the latter are added four main challenges within leadership: trust, communication, distance time, and diversity. The dynamics are different from the face-to-face ones, since workers have not always met each other face-to-face or trust each other, hence the

relevance of the cohesion and motivation of the group (Berry, 2012). In addition, the communication of virtual groups differs from face-to-face communication. The first is in turns, and the second, simultaneously. Likewise, the lack of personal will, participation or planning, together with individual disagreements, are common and contradictory problems that have a negative impact on the performance of virtual groups. Finally, in the digital context, the traditional trust based on social interaction is replaced by one based on performance (Berry, 2011).

Virtual groups also face difficulties and complications, and, unlike groups that work in person, they have to look for ways adapted to their characteristics to build effective teams. In these circumstances it is more complicated to know what activities the rest of the colleagues are doing, unless they explain it (Webster and Sandy Staples, 2006). For this same reason, creating an atmosphere of mutual trust, being empathetic and open to others, and sharing information are some actions that can help improve the work of virtual groups (Alsharo et al. 2017). 'Virtual coffee', celebrations, and 'care calls' have also been found useful, and even the use of virtual reality as a form of communication has been found more suitable for this environment (Zeuge et al., 2020). Face-to-face meetings, or direct observation, have also been identified as possible means of trying to build trust. However, exaggerated use of them, multi-tasking, or lack of breaks can lead to lower productivity (Fosslien and Duffy, 2020) and the appearance of 'zoom fatigue' (Nadler, 2020; Wiederhold, 2020).

Therefore, it could be said that there is some tension when it comes to managing virtual groups, and that their excess, or the lack of them, can lead to a more or less beneficial situation in the well-being of workers. We use the term 'well-being' as a measure of health-related to work, assuming that psychological symptoms are more likely to be associated with leading practices and related to such symptoms as anxiety, depression, or stress related to work (Kuoppala et al., 2008). Psychological well-being has different dimensions such as life satisfaction, depression symptoms, positive self-concept, and job satisfaction (Friedland and Price 2003; Ryff and Keyes 1995; Warr 1987). Thus, Kossek et al. (2009), point to the perceived control and separation of the family and work spheres as relevant points for 'good teleworking'. On the other hand, inadequate management of these areas when working can lead to greater family conflicts and less happiness, and even encourage discussions regarding the distribution of time of household chores or leisure. Thus, it is not surprising that, frequently, people who work remotely tend to work for more hours, and that they tend to combine their professional and personal lives, which leads to higher levels of stress (Song and Gao 2020).

On the other hand, Heiden et al. (2021) found a greater relationship between academics who had the opportunity for working remotely and stress, compared to those who did not, and again point to the distribution of remote working time as the most influential factor. Thus, the flexibility offered by remote working does not necessarily translate into greater well-being. Having your own space to be able to work remotely, the presence of more people at home when you are working, the number of days of remote working, the time a person spends working, and their responsibilities outside of the work environment are also conditions that positively or negatively influence satisfaction with remote working.

Our research question is located in the field of work that has been discussed, and seeks to contribute knowledge to this field with the aim of contributing to pointing out skills and forms of leadership appropriate to the context of hybrid work in Spanish universities and research centres, and, of course, its relationship with the well-being of researchers. In addition, and given that the lack, or abuse, of certain tasks or actions can lead to greater or less well-being, research is proposed that studies these aspects from the perspective of researchers.

Thus, we propose the following research objectives:

- (a) To find out whether relationships can be established between the well-being of academics and the way in which working groups are managed.
- (b) Identify what skills, knowledge and actions academics based in Spain point out as appropriate to the current hybrid work context.

2. Materials and Methods

To address our objectives, a self-administered online survey, composed of 24 questions (taking 11 min to complete), was carried out. This method was chosen for various reasons. The target population of researchers (involved in public Universities or Spanish public research centers such as CSIC) was very dispersed, so this method allowed us access to them. Second, the speed and low cost enabled us to spend more time on the invitation process, reminders, and control of the responses (Nayak and Narayan 2019, Latkovikj and Popovska 2019). A non-probabilistic method was used for sample selection, and an institutional email was requested to participate. Neither quotas nor branch of knowledge distinction was established prior to filling in the questionnaire for two reasons. In the first place, the non-existence of a census of research personnel in Spain meant that the possibility of establishing quotas or reweighting the sample was not possible. Secondly, our exploratory approach can be very suggestive to map the state of the situation among all the knowledge fields involved. Eventually, this study can serve as a benchmark for

future research aspiring to a deeper understanding of specific sciences or representativeness.

To address the first objective, we started analyzing, at a descriptive level, items concerning participants', current job situation, emotions, and personal attitudes to individual or collective preferences. This part would eventually help us to configure our regression model. To address the second objective, we analyzed the next two open questions: 'Could you tell me what a good boss consists of for you?' (Q4), and 'In what aspects do you think the modality of work, that is, face-to-face and online, affect the performance of your tasks?' (Q15). Q4 was formulated in this way to pick up the different ways of understanding leadership implicitly associated with the figure of the boss, since this is an aspect that people often tend to get confused about (Bennis and Townsend 1989). Whereas, Q15 served to obtain views on the role attributed to leadership from the researcher's point of view in face-to-face, online, and hybrid work formats.

To organize our data collection, we created a database with the institutional email addresses of all the Spanish public universities, as well as the different divisions of the Spanish National Research Council (CSIC). In the email we explained the relevance of the topic (a study on well-being and leadership in the context of telecommuting in the Public Administration), we invited researchers to participate, and we also highlighted the ethical considerations of the research, according to the 'European Code of Conduct for Research Integrity', such as anonymity, confidentiality, the possibility to stop participating in the study at any time, return of results, etc. Regarding the latter, 93.3% of the participants expressed their interest in knowing the results of the research. This aspect, together with the high participation (451 people) in the period of two and a half weeks suggests the interest and usefulness that this kind of study arouses in the researchers' community.

The questionnaire was open from March 24 to April 10. Previously, a pretest was carried out to test the questionnaire's validity and readability. Some questions were re-written on account of their lack of clarity and having multiple possible interpretations. Nevertheless, once the survey was finished, some items (P18A, P18B, P18C, P23) were discarded because not all of the participants understood their meaning in the same way. On the other hand, some of the items used in the questionnaire were adapted from previous scales. The first question was taken from the 'European Values Survey' (EVS, round2017) and the 'Valued Living Questionnaire' (VLQ) (Wilson et al., 2010). These were also used for question 3 (Q11) and question 6 (Q32, items C and D). In Q11, 'a good boss' item was added in a question which asked for the importance of some aspects in their current job. Q32 is aimed at obtaining different views on individual-collaborative work preferences and attitudes. To

determine the importance of freedom and control for researchers, question 2 was asked, extracted from the World Values Survey, wave 7 (WVS, round 2017–2020), but modified to refer to work context and not our lives. Also, some items of the PVQ-21 scale of Cieciuch et al. (2014). were adapted to the workplace to form question 6: ‘respect for the rules’, ‘pleasure in what they do’, ‘make their own decisions’, and ‘be successful’. Finally, we extracted the SEWBI (Socioemotional Well-Being Index) proposed by Bericat (2014) from the ‘Living Conditions of the Andalusian Population during the State of Alarm’ (Instituto de Estadística y Cartografía de Andalucía 2020) to evaluate its implications regarding personal attitudes, leadership, and workplace. Our work merges some of Bericat’s items together: ‘I feel stressed by the amount of things I have to do’ (represent ‘calm and peaceful’ and ‘rested upon waking in the morning’ together) and ‘I feel worried about how things are going’ (‘felt depressed’ and not ‘feel energetic’). Even though this version is less accurate (eight items were used instead of ten) it enabled us to add two more items inspired by the theoretical work of Collins (2004) and Kemper (1978) that we thought may be related to well-being: ‘He/She occupies a position with more power and responsibility’ and ‘His/her works and trajectory endorse a greater status in his/her study field within the research group’. According to Kemper and Collins (1990, p. 34) there are two fundamental dimensions in micro interactions. Power: ‘in a social relationship entails conduct by which actors have (or try to gain) the ability to compel other actors to do what they do not wish to do’; and Status: ‘a social relationship is conduct by which actors give voluntary compliance to others actor and is marked by willing deference, acceptance, and liking. It involves the voluntary provision of rewards, benefits, and gratifications without threat or coercion’. Those terms seemed appropriate in the study of research groups and leadership, and more so in the actual hybrid era work context marked by the numerous transformative processes described above. For this reason, we added the previous two items to test their relevance to the study’s objective.

3. Data Analysis

The SEWBI, as previously commented, is our own adaptation of the labour context of Bericat’s index (2014). It is made up of two axes, one of ‘Situation–Person’ and another of ‘Links–Control’. ‘Situation’ refers to the perception that the subject has about a given situation. ‘Person’ refers to the individual’s ability to manage any situation to which they are exposed. Finally, much narrower and more solid could be ‘Links’ and ‘Control’, the index establishes a higher score, it is, a major well-being (Bericat and Acosta 2020). The organization between axis and emotional statements is summarized in Table 1.

Table 1. Socioemotional Well-Being Index

Axis	Emotional Statements
Situation-Person	I am proud of what I do in my work and of my results.
	I feel worried about how things are going.
	I feel like I'm enjoying myself.
	I feel satisfied with the activities/functions I perform.
	I feel optimistic about my future.
Links-Control	I feel alone or misunderstood.
	I feel depressed, not wanting to do anything.
	I feel stressed by the amount of things I have to do.

Note: Bericat's own adaption (2020).

The index was elaborated, recoding the scores of the negative emotional states ('Feeling worried', 'Lonely', 'Depressed', and 'Stressed') and adding the eight items. As we used it referring to the workplace and job aspects, we will talk about 'labour-emotional well-being'. In this way, a higher score obtained represents a greater well-being in the dimensions considered related to the researcher's workplace, format, and job situation. In Bericat's words: 'the socioemotional well-being index indicates how individuals evaluate their social status, general life situation, themselves or their "self", and their social power'. In this regard, it should be noted that the measurement model of the index necessarily incorporates all the complexity involved in our emotional processes' (2014, p. 19). Then, to express our logistic regression model, we used McFadden probability increases (McFadden 1974) to standardize variables' values and to make their interpretation easier using base 100. Also, the age was recodified, distinguishing 5 groups (under 30, 31–40, 41–50, 51–60, and over 61), and weakness significant differences were found.

To analyze the open questions regarding the second objective, grounded theory was used, as it allows theory to emerge from empirical data using a systematic research process, through which categories are constructed (Charmaz 2006). The main advantage of this methodology is that by deriving precisely from empirical data, the theory is more likely to be closer to the participant's realities (Strauss and Corbin 2002; Glaser and Strauss 2017). The scheme of work followed implied a first definition of the categories according to the properties attributed to the academics. Then, those categories were constantly re-elaborated to approach the most accurate visions of the participants, distinguishing between central categories and their different nuances. Finally, we have related the categories to each other, starting from the

nuances, then the central categories, and, finally the ‘discursive poles’ (Conde 2009), which condense the main idea of the researcher’s perception. However, since the answers analyzed came from the open questions, it was not possible to know the socio-structural conditions of the people who made them. Despite this limitation, the high number of responses obtained (414 in the first question and 266 in the second) made it possible to explore more deeply the concerns and opinions of the people most motivated by the research topic.

4. Results

The survey included 451 participants from 30 Spanish Universities and CSIC centres (Spanish National Research Council), with 55.2% of them being women and 44.8% being men. The average age of the participants was 46 years, with a standard deviation of 11 years. The survey may be biased due to the positions held by the participants: primarily university deans and research centre heads. A possible explanation for this fact may be that, when we contacted the deans of the universities or heads of research centres and institutes, they did not disseminate the survey among the rest of the scientific staff and answered it exclusively themselves. For teaching researchers, 13.1% of participants were professors, 29.4% were full professors, 18.2% were hired doctors, 12.9% were doctor assistants, 9.1% were assistants, and 18.2% did not teach classes. By area of study, 22% were in the Human Sciences, 29.5% in the Health and Environmental Sciences, 35.7% in the Experimental Sciences and Technology, and 35.9% in the Social Sciences. Overall, the emotional-labour well-being of the researchers was positive, with a mean score of 23 and a standard deviation of 4. The contrast of the Kolmogorov–Smirnov normality test yielded a score of 0 *, indicating that the variable does not have a normal distribution. No missing values were obtained from the total of 451 responses. In Table 2 we summarise frequencies and percentages distribution in SEWBI.

Table 2. Frequencies and percentages distribution in SEWBI

Emotional States	At No Time or at Almost No Time	At Some Point	Much of the Time	All or Almost All the Time
I am proud of what I do in my work and my results	4 (0.9%)	62 (13.7%)	239 (53%)	146 (32.4%)
I feel worried about how things are going	42 (9.3%)	205 (45.5%)	125 (27.7%)	79 (17.5%)
I feel like I'm enjoying myself	9 (2%)	107 (23.7%)	242 (53.7%)	93 (20.6%)
I feel satisfied with the activities/functions I perform	7 (1.6%)	72 (16%)	269 (59.6%)	103 (22.8%)
I feel optimistic about my future	34 (7.5%)	109 (24.2%)	204 (45.2%)	104 (23.1%)
I feel lonely or misunderstood	174 (38.6%)	200 (44.3%)	58 (12.9%)	19 (4.2%)
I feel depressed, not wanting to do anything	257 (57%)	160 (35.5%)	25 (5.5%)	9 (2%)
I feel stressed by the number of things I have to do	34 (7.5%)	160 (35.5%)	153 (33.9%)	104 (23.1%)

Note: Own elaboration.

A very weak significant relationship (Chi-square = 0.039, score = 0,145) was found between the SEWBI and age groups (under 30, 31–40, 41–50, 51–60, and over 61). In general, lower scores were more present in younger groups (Table 3), such as those under 30 (mean = 22.50), or between 31 and 40 years (21.91). While the highest score was obtained in those over 61 (25.20). However, the Kruskal–Wallis test (0*) showed that these differences were not significant.

Table 3. Descriptive statistics by age group and SEWBI

	Under 30	Between 31 and 40 Years Old	Between 41 and 50	Between 51 and 60	Over 61 Years Old
Average	22.55	21.91	23.98	23.47	25.20
Median	23	22	24	24	26
Deviation	4.91	4.25	3.75	3.67	3.25

Note: Own elaboration.

Regarding the work format, 19.1% of academics stated that they currently work fully face-to-face, 29.7% more face-to-face than remote, 16.9% both equally, 27.1% worked more time remotely than face-to-face, and 7.3% totally at a distance. No significant differences were found in terms of emotional-labour well-being according to gender (Mann–Whitney U test = 0.36) or age

group (Kruskal–Wallis = 0.012). Additionally, the relationship between emotional-labour well-being and work format was not significant (Chi-square = 0.079).

On the other hand, a positive correlation was found between emotional-labour well-being and ‘the feeling of having freedom and control over their work’ (Pearson correlation = 0.504). As the sense of freedom and control increased, so did well-being. However, the correlation between emotional-labour well-being and ‘trust in coworkers’ (0.334), ‘having a good income’ (0.212), ‘good schedule’ (0.271), ‘opportunity to take initiatives’ (0.355), ‘extended vacations’ (0.286), ‘a job with responsibilities’ (0.170), or ‘having a good boss’ (0.212) were all low. The highest correlation was found between the SEWBI and the ‘feeling of being able to achieve something in your work’ (0.405) (Table 4).

Table 4. SEWBI and current research job situation

Aspects Present in Your Current Job	Significance	Eta
Good income	0*	0.212
Good schedule	0*	0.271
Opportunity to take initiatives	0*	0.355
Extended holidays	0*	0.286
A job where you think you can achieve something	0*	0.405
A job with responsibilities	0.020	0.170
A good boss	0.008	0.212

Note: 0* (full significance = 0.000). Own elaboration.

So far, it appears that having freedom and control in one's work, trust in coworkers, the feeling that one can achieve something in one's job, and the opportunity to take initiative are important factors in explaining emotional-labour well-being. Additionally, items based on Collins' (2004) theory of interaction ritual chains and Fine and Kemper's (1978) interactional social theory, which examined how participants are demarcated from each other in terms of power and status, were also tested. The items proposed were: 'I feel in line with the rest of the people with whom I work', 'He/She occupies a position with more power and responsibility', and 'His/her works and trajectory endorse a greater status in his/her study field within the research group'. The first item was significant, with a score of 0.425 in the Eta, indicating that it positively contributes to emotional-labour well-being. However, no significance was found for the second and third items (scores of 0.058 and 0.069, respectively).

Table 5. Cross Tabulation. Feeling of consonance, Power, Status and SEWBI.

Item	Significance	Eta
I feel in line with the rest of the people I work with	0*	0.425
Occupy a position with more power and responsibility	0.058	
Their work and trajectory endorse a greater status within the field in which they investigate within the group.	0.069	

Note: 0* (full significance = 0.000). Own elaboration.

No significance was found between the SEWBI and any of the following items, related to attitudes regarding work and its organization: 'I prefer solo work to group work' (0.123), 'For me it is important to do things that give me pleasure in my work' (0.143), 'There should be greater incentives for individual effort' (0.621), 'Competence is good for better results' (0.087), 'A well-defined work hierarchy is good and necessary to achieve results' (0.225), and 'You have to obey the rules or guidelines of work even if the person in charge is not nearby' (0.585). The following were significant: 'Being successful is something

important to me' and 'I prefer to make my own decisions and do what seems right to me', although the association is low (0.252 for the first and 0.202 for the second in the Eta test).

Table 6. Cross Tabulation. Attitudes towards work and its organization and SEWBI

Item	Significance	Eta
Be successful	0.08	0.252
Make my own decisions	0*	0.202
Incentives for individual effort	0.621	-
Obey rules and guidelines even if the person in charge is not nearby	0.585	-
Well-defined hierarchy	0.225	
Pleasure at work	0.143	-
I prefer solo work to group work	0.123	-
Competition is good for better results	0.087	-

Note: 0* (full significance = 0.000). Own elaboration.

A binomial logistic regression was performed to identify which factors contribute to higher emotional-labour well-being. Index scores were grouped into two categories, using the mean score of 23 as a cut-off point. The first group, called “Lower emotional-labour well-being”, included scores from 9 to 23 (48.6% of responses). The second group, “Greater emotional-labour well-being”, included scores from 24 to 32 (51.4% of responses). The final model included four relevant variables: age, feeling of being able to achieve something, feeling of freedom and control over one’s work, and feeling of being in line with coworkers. The final classification percentage was 73.4%, with a higher percentage in the group with the highest emotional-labour well-being (80.9%), compared to the group with the lowest score (65.4%). The Hosmer–Lemeshow test score was 0.088, indicating a good fit between the observed and predicted values.

Table 7. Logistic Regression Model Proposed

Variables	Average	B	β	McFadden R2
Age	46.01	0.034	0.14	0.49%
Sense of freedom and control	7.2	0.415	0.05	1.90%
Feeling of being able to achieve something	3.38	0.581	0.11	6.27%
Feel in consonance with other team members	2.86	0.75	0.09	7.04%
N = 451				
Constant = -3.277 (0 *)				
Hosmer–Lemeshow test = 0.088				
Classification = 73.4%				

Note: Own elaboration. Please, note * means full significance (= 0.000).

All the variables are of a positive trend, which means that a higher score in them increases the probability of being placed in the group of greater emotional-labour well-being. In this way, for each increase in a unit in the age

variable, there is an increase in the probability of being in the group of greater well-being by 0.49%, keeping the rest of the variables constant. This increase is 1.90% in the variable ‘feeling of freedom and control over their work’, 6.27% for each increase in a category in the variable ‘feeling of being able to achieve something’, and 7.04% for the variable ‘feel in consonance’.

In the second part of the work, the answers of the open questions were analyzed: ‘Could you tell me what a good boss consists of for you?’, and ‘In what aspects do you think the modality of work, that is, face-to-face and online, affect the performance of your tasks?’.

4.1. Towards a Funambulist Leadership: The Leader in Times of Hybrid Work

Regarding the evaluation of leaders and leadership by researchers based in Spain, certain discursive poles appear to be found (Conde 2009), that is, defining extremes around a series of aspects, characteristics, and attitudes that are positively valued in leadership. In this study, two main poles were identified: the pole of responsibility and organization, and the pole of feeling valued. Each pole is defined by a series of attitudes and behaviours that are positively valued or expected around the figure of the leader. They also have points of mutual connection. Together, this helps to understand the role of the leader in the management and organization of work groups beyond the purely labour aspect, and how it plays a special role in promoting a healthy work environment, which is essential for the satisfaction and well-being of team members.

The first pole, ‘feeling valued’, is composed of different elements, the first of which are the feelings of freedom and initiative. These manifest in different ways, but in general, they all involve the possibility of participation (providing ideas, solutions, proposals, etc.) by the different members of the team. There also seems to be a certain consensus on the need to establish limits within which to exercise this freedom, without which the group would not function correctly.

Closely related to this issue is the second element, which is the communicative dimension, where team members feel heard by the leader, as well as the transparency of the leader when communicating actions, changes, etc. As we can see, this first pole is closely related to the facet of the leader as a guarantor of group cohesion. In this sense, an essential task of a good leader is to promote a healthy work environment that can take into account the specific needs of each of its members, and that allows the sharing of concerns or issues among its members. However, it is not the exclusive responsibility of this pole, since, as we will see, the combined feedback with the second pole contributes

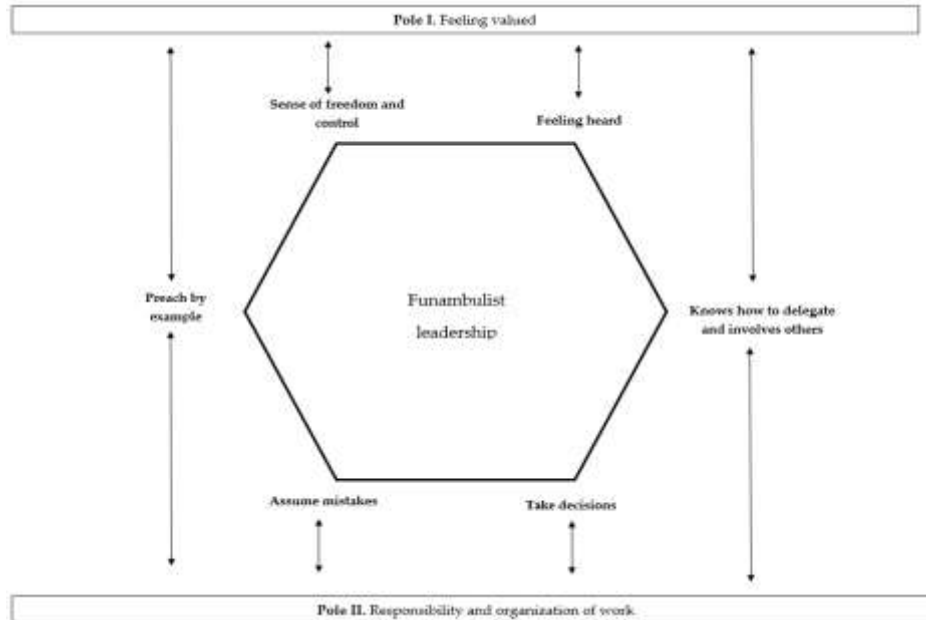
to generating a good work climate that leads to greater satisfaction and well-being on the part of the team.

The second pole, called ‘responsibility and organization of work’, represents all the tasks and facets that are expected to be carried out by the leader, that is, all the functions that are assumed to be carried out. Within this pole, we would mainly find management, coordination, organization, and guidance with respect to tasks and work in general, as well as the assumption of responsibilities, that is, errors, in the event that things do not turn out as planned. Although a certain degree of consensus is shared to respect the leader’s decisions, it is also expected that these decisions are not made solely and exclusively based on a mandate based on a superior hierarchical position, but rather, they are demonstrated through the leader’s knowledge (leadership for wisdom, as some of the participants, have come to call it) and their career in this field (inspiring leadership). In line with this, the fact of ‘preaching by example’ is a highly valued aspect among research team members.

All these considerations help to outline the figure of the ‘good leader’ (Figure 1) as defined by Spanish-based researchers, which in turn are complemented by the ‘sense of balance’ that we find in all of them. In general, the leader is expected to be a conciliatory, pragmatic, decisive, communicative, transparent person, who sets an example, makes decisions, assumes responsibilities and mistakes, is actively involved in work, is available and empathetic, and considers the specific particularities of each person and their tasks at certain times.

However, all this implies that the leader must navigate a gradient of different responsibilities, which is not always easy. In general, the discursive poles indicated seem to contribute, as a whole, to promoting and ensuring a healthy work environment, focused on generating an atmosphere of mutual trust internally. This is reflected in the form of constructive criticism, promotion of a climate of internal collaboration rather than competition, and being an approachable figure who allows for sharing of concerns or proposals and shows interest in them. Additionally, the leader should possess the ability to make clear and decisive decisions when necessary.

Figure 1. Outlining the funambulist leader: attitudes, perceptions and assumption



Note: own elaboration.

4. Discussion and Conclusions

In the first part of this work, it was seen that aspects such as age, the feeling of freedom and control at work, the feeling of being able to achieve something in work, and feeling in harmony with the rest of the team are aspects that help to explain a greater sense of well-being in Spanish-based researchers.

There is a tendency to link 'leader' with 'boss', when they do not necessarily have to go hand in hand (Turk 2007). Additionally, Spanish academics greatly value aspects related to status, progress in their professional career, or the development of skills in terms of their well-being. Likewise, a freedom to act and initiative, which are manifested in the form of being asked for their opinions, proposals, etc., is also highly valued. Closely related to this, great weight is given to leaders showing interest in their proposals, and, in short, to communicating with the rest of the team, and for the latter to feel listened to by the former. These results align with others, which highlight the vital role of the leader in building healthy organizational environments (Bingham and Bubb 2021).

The role of a leader is not straightforward, as they must balance the demands assumed by the team around their figure of the leader, and the two do not

necessarily coincide. There is a need for certain rules, agreements, and divisions for the leader to function effectively, but excessive rigidity can negatively impact the team's performance and the well-being of its members. These findings agree with similar studies, where it is shown that leadership driven by emotional intelligence is positive and decisive in job satisfaction and the well-being of workers (Brunetto et al. 2012).

Once again, the leader's ability to understand the specific needs of their members, as well as the phase of the work they are in, comes into play here, and they should try to contribute as much as possible for a greater conciliation that results in a collective benefit, both in terms of team goals as well as on a personal level. For example, it seems that hybrid work modalities and understanding the personal circumstances of each individual and the tasks and phase of the project they are in could be a great window of opportunity to exploit. However, if the activities are not clear, or there are 'new signings' that have just joined, this could be counterproductive. The cohesion of the group, the relationships between colleagues, or the very synergies that arise from these more or less informal meetings would also be affected, because of the lack of a shared space, which could in some cases affect people in terms of performance (the cross-fertility of informal events that has been seen) and well-being (problems with work disconnection, feelings of loneliness, fatigue, and the lack of human contact itself, among others).

When we collected our data, March and April 2022, the context of the Spanish labour market was marked by a progressive tendency to return to face-to-face work after the COVID-19 restrictions. In addition, the modifications of the 10/21 Law on Remote Work were launched. Unlike the 2021 text version, modifications were made to include new aspects for regulating the Spanish Public Administration situation. Now, the worker is considered to be telecommuting when at least 30% of his working day is carried out remotely. Other novelties were also established: telecommuting cannot imply a salary or working-hours modification to those previously existing, and its voluntary nature is always remarked. Finally, companies are responsible for providing the equipment required to perform the tasks. With all this, it seems that in the new post-pandemic scenario, the figure of a good digital leader is more necessary than ever, not only because the situation is different, but because they have to face certain tensions that, although they have always been able to exist in the framework of the science and innovation system, with the current situation, have changed or are being redefined. Thus, it seems that the figure of the current tightrope walker leader involves balancing the issues raised, as observed by López Carrasco and Belli (2023), with the aim of proposing what will result in greater performance for the group, but, above all, in the better

well-being of the team members, since, without the second, the first will be more complicated.

For future research, it will be useful to test possible differences while using SEWBI of eight items (as we do) or ten items, as Bericat (2014) does. Furthermore, separating ‘freedom’ and ‘control’ from the unique items used could help to clarify which of the two aspects contributes the most to well-being. On the other hand, questions about power and self-perceived status seem to be interesting, especially if we take into account the theory of Collins (2004), so it is suggested to try to ask questions about these, but without considering it in comparative terms with the rest of the coworkers. Perhaps, having formulated it in these terms, some type of bias related to the age or position of the person responding has arisen. In addition, it could be very favorable to continue with the work based on the findings of this research, and complementing it with in-depth interviews or discussion groups, which would allow an even deeper exploration into the figure of the leader. Lastly, studying the question according to knowledge branches could be useful, to explore their specific condition and look for differences about what they ask and what they assume about the figure of a leader.

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References

- Alsharo, Mohammad, Gregg, Dawn, and Ronald Ramirez. 2017. Virtual team effectiveness: The role of knowledge sharing and trust. *Information & Management* 54: 479–90. <https://doi.org/10.1016/j.im.2016.10.005>.
- Avolio, Bruce J., and Surinder S. Kahai. 2003. Adding the “E” to E-Leadership: How it May Impact Your Leadership. *Organizational Dynamics* 31: 325–38. [https://doi.org/10.1016/s0090-2616\(02\)00133-x](https://doi.org/10.1016/s0090-2616(02)00133-x).
- Avolio, Bruce J., John J. Sosik, Surinder S. Kahai, and Bradford Baker. 2014. E-leadership: Re-examining transformations in leadership source and transmission. *The Leadership Quarterly* 25: 105–31. <https://doi.org/10.1016/j.leaqua.2013.11.003>.

- Barrasa Notario, Angel. 2022. *Liderazgo. Acercando el futuro a las personas*. Madrid: Biblioteca de Psicología.
- Belli, Simone. 2018. Managing Negative Emotions in Online Collaborative Learning A multimodal approach to solving technical difficulties. *Digitum* 22: 1–12.
- Bennis, Warren G., and Robert Townsend. 1989. *On Becoming a Leader*. Reading: Addison-Wesley, vol. 36.
- Bericat, Eduardo, and Ma. Julia Acosta. 2020. El impacto del COVID-19 en el bienestar emocional de los trabajadores de Uruguay. Montevideo: Equipos Consultores. Available online: <https://equipos.com.uy/el-impacto-del-covid-19-en-el-bienestar-emocional-de-los-trabajadores-en-uruguay/> (accessed on 1 January 2023).
- Bericat, Eduardo. 2014. The Socioemotional Well-Being Index (SEWBI): Theoretical Framework and Empirical Operationalisation. *Social Indicators Research* 119: 599–626. <https://doi.org/10.1007/s11205-013-0528-z>.
- Berry, Gregory R. 2011. A cross-disciplinary literature review: Examining trust on virtual teams. *Performance Improvement Quarterly* 24: 9–28. <https://doi.org/10.1002/piq.20116>.
- Berry, Gregory R. 2012. Enhancing Effectiveness on Virtual Teams: Understanding Why Traditional Team Skills Are Insufficient. *International Journal of Business Communication* 48: 186–206. <https://doi.org/10.1177/0021943610397270>.
- Bingham, Domini, and Sara Bubb. 2021. *Leadership for Wellbeing. School Leadership and Education System Reform*. London: Bloomsbury.
- Brunetto, Yvonne, Stephen T. T. Teo, Kate Shacklock, and Rod Farr-Wharton. 2012. Emotional intelligence, job satisfaction, well-being and engagement: Explaining organisational commitment and turnover intentions in policing. *Human Resource Management Journal* 22: 428–41. <https://doi.org/10.1111/j.1748-8583.2012.00198.x>.
- Cascio, Wayne F., and Stan Shurygailo. 2003. E-Leadership and Virtual Teams. *Organizational Dynamics* 31: 362–76. [https://doi.org/10.1016/s0090-2616\(02\)00130-4](https://doi.org/10.1016/s0090-2616(02)00130-4).
- Charmaz, Kathy. 2006. *Constructivist Grounded Theory. A Practical Guide Through Qualitative Analysis*. London: SAGE Publications.
- Cieciuch, Jan, Eldad Davidov, Michele Vecchione, Constanze Beierlein, and Shalom H. Schwartz. 2014. The Cross-National Invariance Properties of a New Scale to Measure 19 Basic Human Values: A Test Across Eight Countries. *Journal of Cross-Cultural Psychology* 45: 764–76. <https://doi.org/10.5167/uzh-94906>.

- Collados, María Belén Fernández. 2022. ¿Es el teletrabajo una fórmula de conciliación de la vida personal, familiar y laboral?. *Relaciones Laborales y Derecho del Empleo* 10 (1): 1-21 e-ISSN 2282-2313.
- Collins, Randall. 2004. *Interaction Ritual Chains*. Princeton: Princeton University Press.
- Conde, Fernando. 2009. *Análisis sociológico del sistema de discursos*. Madrid: CIS. Cuadernos Metodológicos nº43.
- De La Puebla Pinilla, Ana. 2020. Trabajo a distancia y teletrabajo: Una perspectiva de género Ana de la Puebla Pinilla. *Labos Revista de Derecho Del Trabajo Y Protección Social* 1: 4–11. <https://doi.org/10.20318/labos.2020.5547>.
- Fine, Gary Alan, and Theodore D. Kemper. 1978. A Social Interactional Theory of Emotions. *Social Forces* 59: 1332. <https://doi.org/10.2307/2578010>.
- Fosslien, Liz, and Mollie West Duffy. 2020. How to combat zoom fatigue. *Harvard Business Review* 29: 1–6. Available online: <https://hbr.org/2020/04/how-to-combat-zoom-fatigue> (accessed on 1 January 2023).
- Friedland, Daniel S., and Richard H. Price. 2003. Underemployment: Consequences for the Health and Well-Being of Workers. *American Journal of Community Psychology* 32: 33–45. <https://doi.org/10.1023/a:1025638705649>.
- Galiño, María Dolores Fernández, and José Fernando Lousada Arochena. 2021. Covid-19 e igualdad de género. *Femeris: Revista Multidisciplinar de Estudios de Género* 6: 84–117. <https://doi.org/10.20318/femeris.2021.6137>.
- García, Rubén Díez, Simone Belli, and Israel V. Márquez. 2020. La COVID-19, pantallas y reflexividad social. Cómo el brote de un patógeno está afectando nuestra cotidianidad. *Revista Española de Sociología* 29: 759–68. <https://doi.org/10.22325/fes/res.2020.49>.
- Glaser, Barney G., and Anselm L. Strauss. 2017. *The Discovery of Grounded Theory: Strategies for Qualitative Research*. London: Routledge.
- Heiden, Marina, Linda Widar, Birgitta Wiitavaara, and Eva Boman. 2021. Telework in academia: Associations with health and well-being among staff. *Higher Education* 81: 707–22. <https://doi.org/10.1007/s10734-020-00569-4>.
- INE. 2021. *Encuesta sobre equipamiento y uso de tecnologías de información y comunicación en los hogares*. Madrid: Instituto Nacional de Estadística.
- Instituto de Estadística y Cartografía de Andalucía. (2020). Encuesta Social 2020. Hábitos y Condiciones de Vida de la Población Andaluza Durante el Estado de Alarma. Available online: <https://www.juntadeandalucia.es/institutodeestadisticaycartografia/encsocial/2020/> (accessed on).
- Kemper, T. D. (1978). A social interactional theory of emotions. John Wiley & Sons.

- Kemper, Theodore D., and Randall Collins. 1990. Dimensions of Microinteraction. *American Journal of Sociology* 96: 32–68. <https://doi.org/10.1086/229492>.
- Kossek, Ellen Ernst, Brenda A. Lautsch, and Susan C. Eaton. 2009. “Good teleworking”: Under what conditions does teleworking enhance employees' well-being? In Yais Amichai-Hamburger (Ed.), *Technology and Psychological Well-Being*. Cambridge: Cambridge University Press, 148–73. <https://doi.org/10.1017/cbo9780511635373.007>.
- Kuoppala, Jaana, Anne Lamminpää, Juha Lira, and Harri Vainio. 2008. Leadership, job well-being, and health effects. *Journal of Occupational and Environmental Medicine* 50: 904–15.
- Latkovikj, Marija Topuzovska, and Mirjana Borota Popovska. 2019. Online research about online research: Advantages and disadvantages. *E-Methodology* 6: 44–56. <https://doi.org/10.15503/emet2019.44.56>.
- Lilian, Snellman Carita. 2014. Virtual Teams: Opportunities and Challenges for e-Leaders. *Procedia—Social and Behavioral Sciences* 110: 1251–61. <https://doi.org/10.1016/j.sbspro.2013.12.972>.
- López Carrasco, Carlos, and Simone Belli. 2023. En búsqueda de un equilibrio inestable: Estilos de colaboración en grupos científicos de alto rendimiento. *RES. Revista Española de Sociología* 32: 148.
- McFadden, Daniel. 1974. Conditional logit analysis of qualitative choice behavior. *Frontiers in Economics* 2: 105–42.
- Nadler, Robby. 2020. Understanding “Zoom fatigue”: Theorizing spatial dynamics as third skins in computer-mediated communication. *Computers and Composition* 58: 102613. <https://doi.org/10.1016/j.compcom.2020.102613>.
- Nayak, Siva Durga Prasad, and Kora Narayan. 2019. Strengths and weaknesses of online surveys. *IOSR Journal of Humanities and Social Sciences (IOSR-JHSS)* 24: 31–38.
- Observatorio Nacional de Tecnología y Sociedad. 2022. *Flash Datos de Teletrabajo—Cuarto Trimestre 2021*. Madrid: Ministerio de Asuntos Económicos y Transformación Digital. <https://doi.org/10.30923/094-22-033-5>.
- Pautt, Geli. 2011. Liderazgo y Dirección: Dos conceptos distintos con resultados diferentes. *Revista Facultad de Ciencias Económicas: Investigación y Reflexión* 19: 213–28.
- Ryff, Carol D., and Corey Lee M. Keyes. 1995. The structure of psychological well-being revisited. *Journal of Personality and Social Psychology* 69: 719–27.
- Santoro Lamelas, Valeria, and Simone Belli. 2018. Digital communication in scientific practices: Limitations and possibilities for equality. *Prisma Social* 20: 316–32.
- Song, Younghwan, and Jia Gao. 2020. Does Telework Stress Employees Out? A Study on Working at Home and Subjective Well-Being for Wage/Salary

- Workers. *Journal of Happiness Studies* 21: 2649–68.
<https://doi.org/10.1007/s10902-019-00196-6>.
- Strauss, Anselm, and Juliet Corbin. 2002. *Basics of Qualitative Research*. Thousand Oaks: Sage.
- Turk, W. 2007. Manager or leader? *Defense AT&L* 36: 20–22. Available online: <https://www.scirp.org/reference/ReferencesPapers.aspx?ReferenceID=856923> (accessed on).
- Van Wart, Montgomery, Alexandru Roman, Xiaohu Wang, and Cheol Liu. 2019. Operationalizing the definition of e-leadership: Identifying the elements of e-leadership. *International Review of Administrative Sciences* 85: 80–97.
<https://doi.org/10.1177/0020852316681446>.
- Warr, Peter B. 1987. *Work, Unemployment, and Mental Health*. New York: Oxford University Press.
- Webster, Jane, and D. Sandy Staples. 2006. Comparing Virtual Teams to Traditional Teams: An Identification of New Research Opportunities. *Research in Personnel and Human Resources Management* 25: 181–215.
[https://doi.org/10.1016/s0742-7301\(06\)25005-9](https://doi.org/10.1016/s0742-7301(06)25005-9).
- Wiederhold, Brenda K. 2020. Connecting Through Technology During the Coronavirus Disease 2019 Pandemic: Avoiding “Zoom Fatigue”. *Cyberpsychology, Behavior, and Social Networking* 23: 437–38.
<https://doi.org/10.1089/cyber.2020.29188.bkw>.
- Wilson, Kelly G., Emily K. Sandoz, Jennifer Kitchens, and Miguel Roberts. 2010. The Valued Living Questionnaire: Defining and Measuring Valued Action within a Behavioral Framework. *The Psychological Record* 60: 249–72.
<https://doi.org/10.1007/bf03395706>.
- Zeuge, Anna, Frederike Oschinsky, Andreas Weigel, Michael Schlechtinger, and Björn Niehaves. 2020. Leading Virtual Teams—A Literature Review. Conference: New Future of Work Symposium. Project: ASTAR-Competence Transfer in a VR/AR-Based Environment for Work Design, (August), 1–9. RWTH-2021-04644. Available online: <https://www.researchgate.net/publication/343473371>.

HR Policies for Labour Migrants: A Process still in its Infancy?

Jan Cremers *

Abstract

The aim of this article is to explore HR policy areas that are applied for migrant labour, independent from the type of hiring or recruitment. The author discusses a series of opinion surveys, dedicated to these areas, among these workers in the Netherlands. The literature often speaks about a dichotomy in HR policies between the 'high road' and the 'low road'. The 'high road' is characterised by a 'humane' policy, while the 'low road' is instrumental. The surveys lead to the conclusion that, in many (user) undertakings, the recruitment of labour migrants is left to the planning department, resulting in an instrumental approach. The complete absence of dignity and care is characteristic for a 'hard' HR approach, a fate that migrant workers share with other marginalised labour market groups. At the same time employers glorify the 'work ethic' of migrant labour, without further attention for the motives that brings them to the Netherlands. The contribution ends with a plea for a more active role on the part of HR management in the deployment of labour migrants.

Keywords: Labour migration; HRM; Labour mobility; Workers' rights; Labour standards.

1. Introduction

This contribution explores several HR policy areas that can be assessed from the perception of migrant labour present at the workplace. In particular, the housing, working and living situations of labour migrants are examined. Over the past decade, a team from the Tilburg Law School analysed the labour market effects of the cross-border recruitment of large numbers of migrant

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labour. Long-term cooperation with the Labour Inspectorate and trade unions facilitated the analysis of “employer behaviour” in employing such workers. Based on desktop research and local employer surveys performed earlier, the team had already concluded that the anger caused by unequal treatment in the workplace undermined motivation and commitment, even though in many cases migrant labour was necessary to keep production going. This contribution refers to a recent series of opinion polls and surveys among migrant labour in the Netherlands. Analysis of additional qualitative and quantitative research leads to a plea for an active role on the part of HR management in the deployment of labour migrants. In several branches labour migrants constitute, in the meantime, a structural segment of the labour force. After the outbreak of the corona pandemic, it became manifest that labour migrants conduct many essential, vital functions. In HR policy, this is hardly reflected in suitable care and paid attention. In many (user) undertakings, the recruitment of labour migrants is left to the planning department, resulting in an instrumental approach. The literature on investments in human capital within organisations often refers to a dichotomy between the “high road” and the “low road”. The “high road” is characterised by a “humane” HR policy, while the “low road” is instrumental. The rationale is that the first category will be better off because motivated personnel can be an important competitive advantage. Based on the research in the Netherlands, it can be concluded that the second approach predominates for migrant labour. The complete absence of dignity and care is characteristic for the “hard” HR approach, a fate that migrant workers share with other marginalised and precarious groups on the labour market. At the same time employers glorify the “work ethic” of labour migrants, without further attention for the motives that bring them to the Netherlands. However, being treated like a number does not exactly work as a binding force. The quoted opinion polls among migrant workers reveal that this population does make trade-offs that can play a role in developing a successful and more sustainable recruitment, if appropriately translated into HR policy.

2. Background

In the last decade, the presence of large numbers of foreign workers on the labour market has become more prominent. Although research has been conducted for decades and policy recommendations have been formulated for a more active role on the part of HR management when it comes to the

deployment of labour migrants (see, for example, ILO¹), the involvement of the human resources department in relation to migrant workers is in many cases non-existent. The majority of these workers comes in via the temporary agency formula and is therefore not seen as “own staff”. This view seems difficult to reconcile with the observation during the first months of the corona pandemic, namely that migrant workers perform essential, vital functions in many workplaces. It also contradicts our local research in which user undertakings firmly stated the expectation that they would need labour migrants in the company in the future. In general, little research has been done on the perception by migrants of their (poor) working conditions. However, based on local research, a 2018 report concluded that unequal treatment in the workplace undermines the employment of migrant workers, while in many cases this employment is necessary to keep production upright.²

From an HRM perspective, there are several reasons for a more active personnel policy towards labour migrants, whether or not the recruitment passes through temporary work agencies. Legally, it is correct that the employer's responsibility basically lies in the hands of the temporary work agency. However, this does not release the user undertaking from a number of obligations that normally form part of HR work. Some rights apply, independent from the type of hiring or juridical status.³

Obligations arise from legislation and regulations, for both the user undertaking and the temporary work agency. For example, occupational safety and health legislation provides that, in the event of the presence in a workplace of personnel from several employers, including temporary agency workers, there is shared liability and responsibility regarding health and safety at that workplace. This entails, among other things, obligations regarding safety regulations and instructions, and the correct provision of information, available in the required languages. In this context, reference can also be made to the obligation to verify the applicability of legally binding collective agreements and other mandatory prescriptions, such as a statutory minimum wage, by the user undertaking. The liability in this area is merely based on soft law, and currently an important part of the corporate social responsibility and due diligence debates.⁴

¹ ILO, *Towards a Fair Deal for Migrant Workers in the Global Economy*, Report VI, 92nd Session, International Labour Conference, Geneva, 2004.

² J. Cremers, M. Houwerzijl, *INT-AR eindrapportage: Onderzoeksprogramma internationalisering arbeidsmarkt/HRM-beleid*. Tilburg Law School, Tilburg, 2018.

³ L. Keith, *Guide to Undocumented Workers' Rights at Work under International and EU Law*, Platform for International Cooperation on Undocumented Migrants, Brussels, 2022.

⁴ In the Netherlands, user undertakings must check the applicability of general binding agreements when using temporary agency workers. If there is an agreement in the sector that is

If the HR policy is aimed at increasing the well-being of workers and improving the functioning of a firm, there are several reasons for a more active attitude. For example, various publications have pointed to the underutilisation, the consequence of a mismatch between the educational level of many labour migrants and the work to be performed. This is often the result of a lack of investment and increases the risk that people will not stay long. As a result, it will be constantly necessary to introduce new people. This is a missed opportunity against the background of the current elevated level of labour shortages. Moreover, scholars have pointed out that it is at the expense of productivity and continuity in the labour process. But above all, it detracts from the meaning that work can have for people.⁵

This contribution explores some areas that belong to an HR policy that takes into account the perception of all workers at the workplace, regardless of the form of recruitment. The local research referred to beyond found that user undertakings often throw all the responsibility too easily over the fence. This is not only indecent and irresponsible; it makes working in and for a company unattractive and counterproductive in the long run. For the sake of convenience, I refer to other publications about the socio-economic consequences for the workers involved.⁶ In this article, the emphasis is more on the broader well-being and living situation. In the first section, I briefly sketch out the picture that emerges from qualitative research into the housing, working and living conditions of labour migrants. An important part of the argument in this section is substantiated with the results of local research among employers who currently and in the future rely on the deployment of migrant labour. This is followed by a section that briefly summarises the results of three opinion polls among labour migrants, conducted by the Knowledge Centre for Labour Migrants. Based on these sections, I discuss the sustainability of the current practice of hiring migrant labour and its

binding, temp workers must be paid accordingly, after a first period of service falling under the agreement for the temporary agency sector.

⁵ C. Forde, R. MacKenzie, *Employers' use of low-skilled migrant workers: Assessing the implications for human resource management*, *International Journal of Manpower*, vol. 30, n. 5, Emerald Publishing UK, 2009. 437-452.

J. Cremers, H. Van den Tillaart, *De resultaten van het 1e arbeidsmigrantenpanel: Een eerste onderzoek naar de woon-, werk- en leefsituatie van arbeidsmigranten in Nederland*. Het Kenniscentrum Arbeidsmigranten, Tilburg, 2021.

J. McGrath, *Report on Labour Shortages and Surpluses*, European Labour Authority, Information and EURES Unit, Bratislava, 2021.

⁶ J. Cremers, *De zoektocht naar goedkope arbeid ondergraaft het arbeidsbestel*. *ESB Dossier*, vol. 102, n. 4754S, Amsterdam, 2017. 61-65.

J. Cremers, E.J.A. de Volder *Arbeidsmigratie in Noord-Brabant - de markt en de mensen(handel): Een inventarisatie*. CoMensha, Amsterdam, 2020.

consequences for industrial relations. Finally, I formulate suggestions for a more humane personnel policy for labour migrants, pointing at aspects of social policy that are important in shaping an inclusive HR policy.

3. What do we Know from the Existing Literature?

After the creation of the Single Market in the EU, cross-border job placement and recruitment of workers became an integral part of supply and demand at the national labour markets. And while transnational mobility may appear to be modest in numbers on a macro scale, many industries have become dependent on this form of employment. Employers chose to attract CEE-workers because of the scarcity on the national market of available workers who were willing to perform the unattractive, temporary, repetitive routine work on the offered terms of employment and working conditions. Nowadays, migrant workers have become a structural segment of the labour force in large parts of the business community. Regularly, this is done by using pay models that exploit loopholes in the legislation and are at odds with the principle of equal pay for equal work.

The perception of the working and living world of these labour migrants varies widely. On the one hand, temporary work agencies and user undertakings emphasise, when asked, that these employees are hard workers, well-motivated and willing to do work for which native workers are no longer available, and that for appealing (low) pay and employment conditions. Even employers themselves speak of dirty or monotonous work, with a bad image. The reasons why employers work with labour migrants are a combination of scarcity, cheapness, demanding work, a job offer that others do not accept, the much-vaunted work morale and flexible employability, in short, an excellent “price/quality ratio”.⁷

The majority of the employers surveyed in our local surveys expects to (have to) make use of migrant labour in the future. On the other hand, alarming reports regularly appear in the media about dangerous and unhealthy work, underpayment, abominable living conditions and labour exploitation. Current legislation and regulations often turn out to be a toothless tiger when it comes to combating abuse and undesirable poor living and working conditions. A Dutch report that reviews existing abuses speaks volumes in this regard. After talking to migrant workers about their experiences, it was found that they regularly feel treated as second-class citizens who are confronted with numerous barriers that hinder their full participation. In addition, access to

⁷ Cremers, *Houwerzijl op. cit.* 2.

justice is problematic because of language problems, opaque procedures and little help in the social environment.⁸

In the international literature on labour migration, a picture emerges that is generally endorsed when it comes to the position of labour migrants at the lower end of the labour market. This literature provides an insight into possible risks and problems encountered by labour migrants at the “bottom” of the labour market.⁹

- In general terms, the majority of labour migrants is active in occupations below their educational level. This mismatch between competences and qualification and the work carried out in the host country is caused by arbitrary indirect recruitment and to a smaller extent the result of a lack of recognition of diplomas.¹⁰
- Main benchmark during the recruitment is the physical employability and capacity. For example, an OECD study in 2003 referred already to selection criteria that were only slightly based on education.¹¹ In a study for the ILO, it is stated that while a growing level of education can be observed everywhere in Europe, it leads to an imbalance, especially among migrants, which is largely due to the vulnerable position they occupy in the labour market and the limited opportunity they are offered to use their skills.¹²
- Migrant labour is more often employed in low-quality and low-paid 3D occupations with a high workload, an ILO term for unhealthy, dangerous and heavy work (dirty, dangerous, demanding). As a result, labour migrants are regularly exposed to higher security risks.
- The fact that migrant workers often are engaged indirectly for a user company, through intermediaries, employment agencies or

⁸ <https://open.overheid.nl/repository/ronl-404846f9-9f80-400f-90c3-0c9a8b0fd036/1/pdf/Geen%20tweedetrangsburgers-Interactief.pdf>

⁹ Summarised among others in:

FRA, *Protecting migrant workers from exploitation in the EU: workers' perspectives*, Publications Office of the European Union, Luxembourg, 2020.

Eurofound, *Living, working and Covid-19, Covid-19 series*. Publications Office of the EU, Luxembourg, 2020.

ETUI, *Work, health and Covid-19: a literature review*. ETUI, Brussels, 2020.

¹⁰ F. Biagi, S. Grubanov, J. Mazza, *Over-education of migrants? Evidence from the EU*, Ispra, JRC115881, European Commission, Luxembourg, 2019.

M. McAuliffe, A. Triandafyllidou, (eds.), *World Migration Report 2022*. International Organization for Migration (IOM), Geneva, 2021.

¹¹ M. Doudeijns, J.C. Dumont, *Immigration and Labour Shortages: Evaluation of Needs and Limits of Selection Policies in the Recruitment of Foreign Labour*, OECD, Brussels, 2003.

¹² T. Sparreboom, A. Tarvid, *Skills mismatch of natives and immigrants in Europe*, ILO, Geneva, 2017.

subcontractors, carries the risk of less attention to occupational health and well-being in the workplace, of insufficient protective equipment, and limited access to general health care.

- The language barrier and the lack of instruction and information in their own language form a major barrier to access to and understanding of safety regulations, occupational health information and other facilities.
- Migrant workers are less likely to report sick for various reasons (insufficient insight into how the system works, unfamiliarity with local facilities, fear of dismissal or loss of income).
- Other provisions in terms of personnel care or welfare and, for example, secondary or tertiary employment conditions usually do not apply.
- The language barrier and the lack of access to education and training are barriers that seriously impede their career. This reduces the prospect for the labour migrant and (partly) explains the high replacement demand in this segment of the labour market. Another related phenomenon is that long-staying labour migrants will try to leave precarious, unhealthy and heavy work in the long run.
- The lack of challenges can affect both the search behaviour (and possible departure) of labour migrants, as well as the belief in their own abilities and the motivation to develop. Some authors speak of a process of the loss of qualifications and skills (“deskilling”). This development can hinder the proactive behaviour that is necessary for an improvement of the labour market position.¹³
- Research into housing conditions regularly reveals unhealthy living and housing situations, poor sanitary facilities and poor hygiene. Many jobs performed cannot be filled by working from home, while research shows that the risk of contamination in the workplace is high. Statistics show a higher COVID-19 death rate for professions that do not lend themselves to working from home than for professions that can be easily practiced from home.
- Reference is regularly made to the brain-drain effect on the home country of the withdrawal of skilled workers, who are subsequently employed in low- or unskilled work in another country. It easily leads

¹³ P. Kerti, B. Kroon, *De invloed van werkomstandigheden in Nederlandse distributiecentra op inzetbaarheidsverzuimen van Hongaarse free movers*. *Tijdschrift voor Arbeidsvraagstukken*, vol. 36, n. 2, Amsterdam University Press, Amsterdam, 2020. 177-194.

to the emergence of significant shortages of skilled workers in the country of origin. A high outflow hampers economic development.¹⁴

From the perspective of the host countries, this leads to missed opportunities. The possible contribution of labour migrants in solving labour market shortages that arise in skilled work (now and in the future), and for which (some) vocational training is essential, is ignored.

4. How do Labour Migrants View Working and Living in the Netherlands?

The cited literature shows that employers often praise the labour migrants because of high work morale, with great involvement and flexibility. Migrant workers are willing to do physically demanding work at irregular times and to work long hours. They can and want to work more because they have fewer social contacts far from home. That is one of the reasons why they do not have a 9 to 5 mentality. They are willing to work many hours and entrepreneurs sometimes even have to “put on the brakes”. In this context, researchers speak of a glorification of the “good worker”, which may also primarily be an expression of the employer's preference for workers over whom they can exercise maximum control.¹⁵ An English field study found that the vaunted work ethic was not so much about hard work, but more about the willingness to work long hours at random times, as well as the willingness to work on weekends. Or, as one user undertaking puts it: “no, I wouldn't say they work hard, but they're prepared to come in at seven in the morning and finish at ten at night if you ask them to”.¹⁶ The user undertaking can order the required number of workers at any time. Their living conditions do not really matter, and the housing is not important, as long as there is no nuisance. The rest can be left to the planning department.

The question is whether this image of the uncomplicated, always prepared employee is correct. For this we can consult three opinion polls, which were carried out in 2021 and 2022 by I&O Research on behalf of the Knowledge Centre for Migrant Workers. In these polls, migrants were asked about their opinion, feelings and experiences regarding their housing, working and living conditions. The polls examine the perception of the interviewed labour

¹⁴ A. Zaiceva, *Post-enlargement emigration and new EU members' labor markets*, IZA World of labor, Bonn, 2014

¹⁵ B. Anderson, M. Ruhs, (eds.), *Who Needs Migrant Workers? Labour Shortages, Immigration and Public Policy*, Oxford University Press, Oxford, 2010.

¹⁶ P. Thompson, K. Newsome, J. Commander, ‘Good when they want to be’: migrant workers in the supermarket supply chain. *Human Resource Management Journal*, vol. 23, n. 2. London, 2013. 129-143.

migrants and reflect ideas and motives that are prevalent among this population. The first survey examined the living situation, but also questions about social participation and integration in the local environment, about work and working conditions and about career prospects. The second survey was about the experiences of labour migrants with the care and health facilities in the Netherlands, with safety and health at the workplace and with occupational healthcare. The third survey focused on the themes of provision of education, (re)training and other career related facilities. The polls do not provide a representative picture of all migrant labour in the Netherlands but can give an indication of the opinions of different categories of labour migrants working on the Dutch labour market, including the category of high-skilled working migrants. The polls deal with their (objective) situation as well as with the way in which they experience that situation.

Working, Housing and Living

The first survey focused in particular on the themes of housing, working conditions, integration in the local environment and future prospects.¹⁷ Central questions were about satisfaction with the stay in the Netherlands, an assessment of their living and working conditions, participation in the local community and one's own future prospect (in the Netherlands). In the synthesis, a division is made between workers in low-skilled jobs and workers in high-skilled jobs. This dichotomy is *based on the performed work and the related pay*. Low-skilled worker means in this context thus a worker who performs low paid and low qualified work with few skill requirements.

The interviewed labour migrants usually cite a combination of reasons for working in the Netherlands: better working conditions, job opportunities, opportunities for personal development and the Dutch living climate. A striking finding of the first survey (with 1,634 respondents), however, was the mismatch between the education received in the home country and the education or training required for the work to be carried out in the Netherlands. This imbalance was particularly evident in the category of low-skilled workers from Central and Eastern Europe. In the category of low-skilled working CEE-workers, 54% had a secondary or higher education, while only 19% worked at that level in the Netherlands.

Although three quarters of the labour migrants surveyed were (very) satisfied with their stay in the Netherlands, the satisfaction score for all categories of labour migrants was lower than for the Dutch population. Migrant workers reported fewer positive aspects of their stay in the Netherlands, with housing

¹⁷ *Creemers, Van den Tillaart op. cit.* 5.

and living conditions being the most frequently negatively mentioned. Among all the 1,634 labour migrants surveyed, there are even more with a negative opinion about their housing and living conditions (40%) than with a positive opinion (25%). A stark contrast with the Dutch population, who are more than 85% satisfied with their housing. Almost half of all interviewed labour migrants (46%) would like to exchange their current living situation for another, a percentage that continues to rise among low-skilled workers (to 56%). The low-skilled CEE-workers labelled housing only to a small extent (14%) as a positive aspect of staying in the Netherlands, while a large part of this category (40%) explicitly refers to housing as a negative aspect. This looks even more negative for temp workers: only 13% of people with a temporary agency contract mention housing as a positive aspect of staying in the Netherlands. This shows that housing really matters.

When asked about their positive experiences in the Netherlands, less than half (45%) of all labour migrants mentioned their working conditions as a positive point, with 10% mentioning the working conditions as a negative experience. Once again, the category of low-skilled working CEE labour migrants stood out with as many negative and positive experiences (21% and 26%), respectively. Migrant workers come to the Netherlands to work. Therefore, their employer will play a vital role in whether they feel valued or not. Of the labour migrants who feel valued by the Dutch (one in three), 84% think they are treated well by their employer, of the labour migrants who do not feel valued by the Dutch (three out of ten), only 55% say they are treated well by their employer. In particular, low-skilled working CEE-workers and from the rest of the world see less opportunities to express any dissatisfaction to their employer.

A key driver for coming to the Netherlands among the labour migrants surveyed is that they can earn a higher salary than in the country of origin. The most frequently mentioned considerations for staying in the Netherlands are therefore salary and job opportunities. Rising wages in their own country are the most frequently cited argument for returning, especially for CEE-workers in low-skilled work. In doing so, they send a clear signal that the recruitment attractiveness of the salary level in the Netherlands is relative. Without adequate measures, it will probably not be possible to maintain the number of migrant workers for low-skilled jobs. Knowledge workers also quite often indicate that they want to exchange the Netherlands for another country. The picture that emerges from the poll is that a substantial proportion of the labour migrants working in the Netherlands (43% of all respondents) would like to change the Netherlands for their home country or any other EU country, depending on the salary offered and good job opportunities, in addition to being closer to family and friends.

Care and Welfare, Occupational Healthcare

The second survey aimed to provide a picture of the knowledge of access to, the lack of and use of health care and occupational safety and health provisions among migrant workers. This poll had fewer respondents (more than 600). However, the participation was sufficiently large to provide insight into the perception of labour migrants of some relevant themes related to health care and occupational health and safety.¹⁸

The provision of information about healthcare in the Netherlands is diverse. A majority of respondents answered in the affirmative to the question of whether information was provided upon entry. However, the category of low-skilled CEE-workers in particular was informed for less than half (44%). In addition, young people scored very low (14%), and labour migrants with a temporary agency contract remained far below the average (with 39%). The question about their own knowledge of Dutch healthcare also produced a mixed picture: 30% indicate that they were well informed, 36% were not and 34% gave a neutral answer or did not know. Worrying is that a third of the respondents indicated that their health changed since their arrival in the Netherlands. It is particularly striking that 49% of temporary workers speak of a deteriorating health. Trust in healthcare providers is not particularly high, certainly not compared with the trust among the Dutch population.

Several questions had the purpose to gain insight into relevant occupational health and safety aspects and provisions. The results regarding OSH-policies show that this form of personnel care for migrant labour is in its infancy. The questionnaire was drawn up in line with the questionnaire of the National Survey on Working Conditions.¹⁹

Analysis of the results made clear that protection in the workplace for the majority of labour migrants is non-existent. The answers to the questions whether a safety coordinator or prevention officer, an occupational doctor or health service or a confidential adviser were available, proved to be very discouraging. A majority signalled the absence of such policy, with one third of respondents (34%) unaware of provisions regarding dangerous or unhealthy workplaces, and 23% indicating that nobody was accountable. The occupational health service was only visible to 5% of all respondents. This finding is even more accentuated among temp workers, with 41% indicating that they had no knowledge of any of these provisions, and 34% that nobody

¹⁸ J. Cremers, *Hoe denken arbeidsmigranten over gezondheid en zorg in Nederland? De resultaten van het 2e arbeidsmigrantenpanel*. Het Kenniscentrum Arbeidsmigranten. Tilburg, 2021.

¹⁹ TNO/CBS, *NEA - Nationale Enquête Arbeidsomstandigheden 2020*, TNO|CBS Leiden, Heerlen, 2021.

was accountable. Half of respondents (50%) had never received an explanation of the function or presence of a company doctor or occupational health service, 27% had never received personal protective equipment, 23% had received no safety instructions and 22% never received any details about reporting sick. The results on, for example, the provision of safety instructions also show a significant difference between the respondents with permanent contracts (17% never) and the respondents with a temporary contract or working as temporary agency workers (both 30% never). For low-skilled working the outcome was even worse, for instance, more than 60% stated that the function of an occupational health service never had been explained.

The way in which respondents were informed or instructed in the field of safety regulations, the provision of personal protective equipment, reporting sick, contact with the company doctor/company health service and the participation in preventive examinations were also discussed. In the last 12 months, instruction about reporting sick came first (with 51%), followed by the provision of safety instructions (with 47%), the provision of protective equipment (34%), explanation about occupational physician or occupational health service (25%), and finally on preventive research (13%).

Finally, the opinion of the labour migrants about necessary occupational OSH-provisions is interesting. The respondents were presented with a list of twelve aspects related to the working conditions policy. The question was asked whether the company should take measures in this area.

Comparison of the five most mentioned OSH-areas.²⁰			
Answer: yes, OSH-policy is necessary			
Measures:	All respondents	Low-skilled CEE-workers	Dutch labour force
Work pressure, stress	59%	63%	37%
Emotional hard work	48%	57%	15%
Noise, temperature, illumination	42%	63%	9%
Lengthy screen work	39%	16%	24%
Physical hard work	35%	58%	13%

Respondents could answer with yes or no, but also with an indication of whether measures were necessary because the measures taken were insufficient. The answer was summarised in a table in order of importance. The answers by all respondents (1st row), the category of low-skilled working from

²⁰ Simplified table based on Cremers 2021 op. cit. 18.

CEE-countries (2nd row) and, for comparison, the answers in the National Survey on Working Conditions 2020 among the Dutch labour force were examined.²¹

The highest score when it comes to the absence of policies regarding work pressure and work stress is expressed among low-skilled working from CEE-countries (63%). They also attach significant importance to the aspects of noise, temperature and lighting (63% indicate that measures are necessary). Measures related to physically demanding work score high as well among the low-skilled working from CEE-countries (58% indicate that measures are necessary), followed directly by policies on emotionally demanding work (57%). All other categories lag far behind.

Comparison of the answers about the need to take the various occupational health and safety measures for both the total group of respondents and for the category of low-skilled working from Central and Eastern Europe, with the NEA 2020 outcomes for the total Dutch workforce, shows major differences. A vast majority of Dutch workers (87%) thought in 2020 that no (additional) occupational health and safety measures were necessary regarding physically demanding work. By far the largest part of all Dutch workers (97%) thought that no (additional) health and safety measures were necessary regarding hazardous substances. This also applied to a lesser extent to measures relating to safety or industrial accidents (94%) and viruses, bacteria or fungi (89%). In 2020, 15% of Dutch workers indicated that (additional) occupational health and safety measures were needed when it comes to emotionally demanding work and almost 4 in 10 workers wanted (additional) measures for work pressure and work stress.²²

The comparison with the NEA results shows a large gap between the level of OSH-provisions for the Dutch workforce and for migrant labour. In summary, it can be stated that the low-skilled working migrant worker in particular is poorly informed about relevant occupational health and safety provisions, as well as about institutions to be consulted in the event of illness. The contract form appears to be an important variable; respondents in temporary contracts and temporary agency workers score lower than people in permanent employment. And, more importantly, migrant workers are deprived of measures that are pertinent in their own judgment. This is an undesirable situation, especially since labour migrants are more often employed in low-valued and low-paid occupations with a high workload and physically demanding work.

²¹ J. Cremers, *Invisible but not unlimited - migrant workers and their working and living conditions. Transfer*, Sage, vol. 28, n. 2, 2022. 285–289.

²² TNO/CPB *op. cit.* 19.

Education, Training and Career Prospects

The third survey focused on the themes of provision of education, training and other career related facilities.²³

Central questions were about the attention paid during the selection procedure for issues of education and vocational training, about the information provided on possible (further) education and training facilities, about the occurrence of these facilities and the actual use. The respondents also had to answer questions about their participation, their motivation, and ambitions in this respect.

The survey results confirmed that the attention paid to, and the recognition of the pursued education and training followed in the home country is very low. A quarter of the respondents were not interviewed at all, and about 50% of the respondents stated that diplomas had no impact on their recruitment. In one-third of the cases competences and qualifications were not touched upon. Looking beyond the results at aggregate level, the type of contract seems to dictate the policy: only 10% of the temporary agency workers confirmed a match between their education and the work carried out, against 40% for those that work in a direct temporary work contract and 49% for workers with a permanent contract.²⁴

In case of training facilities, almost all attention is paid to informal learning by doing and functional instruction at the workplace. Overall, 29% of the sample never received a training offer (for workers dealing with low-skilled work this was 36% and for workers with a temporary agency contract 43%). The consequence is that more than 75% of the respondents does not participate in a training course or other educational activity. The worst score is for CEE-workers in low-paid, low-skilled jobs (only 14% participates) and temp workers (6%). In contrast, the motivation to participate is remarkably high: around 80% of all labour migrants would welcome (further) education and training.

The migrant workers were asked whether they are guided in the performance of their current work, i.e., whether there is someone who fulfils the role of mentor, source of information or point of contact for them. A majority of labour migrants (53%) has neither a mentor nor a contact person who they can turn to with questions about their work. A third of all respondents would like to have such a mentor or contact. The question whether the company uses some form of career guidance (advancement in the current or another job) is

²³ J. Cremers, H. van den Tillaart, *De scholing en loopbaanbegeleiding van arbeidsmigranten - een wereld te winnen. De resultaten van het 3e arbeidsmigrantenpanel*. Het Kenniscentrum Arbeidsmigranten, Tilburg, 2022.

²⁴ In comparison: 61% of the Dutch labour population confirmed this match (see NEA 2020, TNO/CPB *op.cit.*19).

answered in the affirmative by a quarter of the respondents. The supply is ten percentage points higher for high-skilled workers and workers with a permanent contract. If provided this option is always used. Based on the outcomes described earlier, it was to be expected that there would be a great need for career guidance. The answer *no, but I would like to*, therefore scores very high, with outliers among the youngest group and the low-skilled workers from the CEE countries. Temporary agency workers hardly get any offer in this area, while labour migrants with this contract form say with a large majority (65%) that there is a need. Labour migrants with a permanent contract are considerably better off than labour migrants who work in flexible contracts. Temporary workers score exceptionally low on all the facilities mentioned. In the eyes of employers, low-skilled working migrants, and especially low-skilled working CEE-nationals, are less interesting for long-term relationships than high-skilled workers. Consequently, they are less informed of or eligible for forms of training and associated incentives.

A large number of respondents experiences a discrepancy between wish and possibility: the wish to grow in their own work on the one hand, and few or no opportunities on the other. Just as many respondents believe that their current work offers no opportunities for growth as the respondents who do have or see this perspective. It is not surprising that more than half of the respondents indicate that they would like to follow a course in order to improve the perspective for other work.

It can be concluded that the results show that labour migrants receive less training compared to the Dutch workforce. Labour migrants more often experience a discrepancy between their training wishes and the opportunities they receive from the companies where they work. The emphasis in the offer seems to be more one-sided on functional training and guidance in the workplace. Their knowledge and skills are primarily viewed from a short-term perspective, which is one of the reasons why career guidance has little priority. In many cases the work is not very specialised, and the existing qualifications and skills appear to meet the needs of the user undertaking. Partly because of this, the importance of permanent education is less recognised. In summary, low-skilled working CEE citizens are more likely than the other groups to be seen by employers as unattractive for investment in training, especially in training that requires relatively more long-term investment. In view of the recorded willingness and ambition, we call this a serious misconception.

5. Consequences for Industrial Relations

A few decades ago, it was fashionable to talk about the “high road” or the “low road” when it came to investment in human capital within organisations. The

first approach was characterized by a “humane” personnel policy, while the second approach had an instrumental view. The rationale was that the first category would be better off because motivated personnel can be a key factor in the competition. On the basis of the results of the quoted surveys, it can be concluded that the second approach is the predominant one with regard to labour migrants. The complete absence of attention and care is also referred to in the literature as the “hard” personnel approach, a fate that migrant workers share with several marginalised and precarious groups on the labour market. In the search for cheap labour, reduction of labour costs is paramount, with as few obligations and investments as possible. Hence the enormous growth of outsourcing and the externalisation of labour. An important characteristic of externalised labour is the resulting unequal treatment between the permanent core of direct labour and the “flexible layer”. This has led to situations in which labour migrants depend on their employer for their work as well as for their housing and living situation.

For a long time, the availability of a large potential reserve army of labour allowed such an approach, with the intermediary brokers in some cases using authoritarian pressures, such as high deductions for housing and transportation and fines for “misconduct” and “insufficient performance in work”. Housing in an unknown environment means that pressure can be exerted in any case, and there is a risk of loss of work (and housing) in the event of illness or an industrial accident. What this does to the employee has been recorded by several anthropologists during fieldwork among migrant workers. That ethnographic work illustrates how workers try to deal with this dependency. In part, there is an internalisation of experiences of exploitation and domination, sometimes even a certain justification among migrant workers. By speaking of an exceptional period and of a temporary, transitory period of migration, they divert attention from the conflicts due to the dependence to which they are subject. Migrant workers often reinterpret the mental and physical strain of work using a logic of masculine toughness (“many can't stand it”, “we are strongmen”) and justify the strain with the financial compensation it entails (“as long as they pay me at the end of the month...”). When they express their unease in encounters with other persons (supervisors, inspectors and natives), they seem to provide evidence that justifies initial prejudice, they are “incompetent”, “crude”, “incomprehensible”.²⁵ All this reinforces an attitude

²⁵ J. Queirós, *Working Class Condition and Migrant Experience: The Case of Portuguese Construction Workers*. In: C. Pereira, J. Azevedo (eds.) *New and Old Routes of Portuguese Emigration*. IMISCOE Research Series, Springer. 2019. 155-170.

of striving for quick, economic earnings and accepting self-exploitation through overwork and hard labour under harsh conditions.²⁶

This does not mean, however, as indicated above, that these workers let it all pass. It is rightly pointed out by various authors that the harsh approach of workers can also lead to an attitude of “good enough” or a “vote with the feet”. For example, the French anthropologist Jounin found that the purely contractual dimension of wage earning always comes with the granting of a status, even an implicit one. That status determines the labour force supply, the quality of work as well as the loyalty of workers. He observed that migrant workers in a vulnerable employment relationship regularly opt for an individual escape and speaks of a spiral of disloyalties: line drawing, absenteeism, alcoholism and even sabotage and ultimately departure.²⁷

Other anthropological research shows that in addition to such individual reactions and despite the power imbalance that characterizes their position, migrant workers do indeed develop more far-reaching strategies to escape overly strict subordination. Berntsen concludes that these workers develop a wide range of strategies to survive and live with them, with frequent job transitions.²⁸ Ultimately, they weigh up social and economic aspects and decide on that basis whether it is worth staying or not. The precarious, flexible status in that case facilitates this choice to a certain degree. Nowadays, this is mainly expressed in a return to the home country or the choice for an EU country with more promising prospects. The consequences are a large fluctuation and rotation of personnel, loss of expertise, with few sustainable employment relationships and recruitment that stalls (or has to come from further and further away).

Migrant workers are in the meantime an integral part of the “flexible layer” in large parts of the economy in the Netherlands. The available statistics show that the temporary nature of the deployment of labour migrants is not an intermediate station on the way to a permanent appointment. Compared to their Dutch colleagues, they are much more dependent on their employer and/or employment agency for their work, transport, housing and health insurance. The recruitment of labour migrants is in many cases left to intermediaries and temporary work agencies, using revenue models that are sometimes at odds with the principle of equal pay for equal work. It is often

²⁶ B. Monteiro, *Portuguese construction workers in Spain: situated practices and transnational connections in the European field of construction (2003-2013)*, CLR-News 2-2014, Construction Labour Research, vol. 2014, n. 2. Brussels, 2014. 8-32.

²⁷ N. Jounin, *L'illégalité sous-traitée ? Les conséquences du recours à des employeurs intermédiaires dans le secteur du bâtiment*. *Droit social*, vol. 1, 2007, 38-45.

²⁸ L. Berntsen, *Agency of labour in a flexible pan-European labour market - A qualitative study of migrant practices and trade union strategies in the Netherlands*. PhD thesis, Groningen University, 2015.

impossible to answer the question whether the recruitment and hiring have been carried out correctly, whilst the externalisation transfers responsibilities from the user company to the recruiter. The multiple dependence, the lack of work and/or housing alternatives, the lack of a social network, the language barrier and the absence of information in their own language, combined with a lack of knowledge of legislation and regulations make it difficult for these workers to find their own way.

The starting point of HR policy is to promote the well-being and health of workers. The thinking has always been that promoting the well-being of the staff benefits workers, employers and society in many ways. However, the conducted surveys and the cited studies show that the Human Resource tasks for this part of the working population are seriously neglected, as far as they exist at all. There is little attention from the HRM side or, more accurately, HRM is absent. Being treated like a number is not exactly binding or motivating. The bad feelings that, perhaps temporarily accepted, unequal treatment in the workplace causes undermines the commitment of migrant labour. And this while this commitment is sorely necessary to keep the activity afloat. In fact, the Dutch labour market will come under pressure if companies continue to resort to the recruitment of cheap labour. The question is not so much whether this should change, but how to change it.

All things considered, enough reasons not to wait any longer, but to invest in agreements that ensure the raising of the housing, work and living situation of migrant workers to a level that justifies the work they perform.²⁹

It is time to work out a policy that can lead to equal treatment not only in theory, but also in practice, in the company and in society, based on well-being, prevention, good and accessible care, and adequate training facilities.³⁰

The (re)development of HR policy in areas that makes it possible for these workers to perform the assigned essential activities in a dignified manner can contribute to this. In the first place, this is a task for the (hiring and user) undertakings and the temporary work agencies. The lead should be taken by the HR departments of large user undertakings (i.e., distribution centres of large retailers, logistics hubs, meat processing industries, horticulture). Also, social partners, labour market institutions and local and national governments need to take a more active stand.

²⁹ K.H. Onarheim, K. Wickramage, D. Ingleby, et al. *Adopting an ethical approach to migration health policy, practice and research*. *BMJ Global Health*, vol. 6, n.7, 2021.

³⁰ J. Cremers, *Social policy and labour mobility in Europe - the gap between law and enforcement*, *Sociologia: Revista da Faculdade de Letras da Universidade do Porto*, Número temático – A construção civil numa perspetiva sociológica: enquadramento e análise, Lisbon, 2020, 148–161.

6. Conclusions: Tasks from an HR perspective

The aim should be to increase social protection, prevent abuse and facilitate the stay of migrant labour. The agenda for a welcoming and inclusive HR policy should include:

a. Recruitment and appointment

- A fair recruitment policy that guarantees working with bona fide intermediates.
- Counteracting the mismatch between education level and job requirements.
- Introduction at the workplace, career guidance, access to training, retraining and further training offers, both job- and career-oriented.

b. Remuneration and primary working conditions

- Support in obtaining and checking compliance with applicable working conditions, information about applicable collective agreements and pay compliance checks (by the user undertaking).
- Social security, ensuring the correct registration, explanation about social security provisions, information about reporting sickness and about healthcare.

c. Well-being and care, occupational health and safety, participation

- Working conditions, integral application of occupational safety and health rules and safety instructions, personal protective equipment and other relevant occupational health facilities.
- Combating discrimination and assisting with access to basic facilities that can be derived from labour legislation and regulations. The application of ILO standards such as the right to union membership, involvement in social dialogue, information and consultation in the company.

d. Healthy and responsible housing and living conditions

- Formulating binding conditions and minimum standards for housing and living facilities.
- Mediation towards housing associations and other forms of social housing.
- Stimulate cultural and social participation, introduction to public facilities and cultural amenities.

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