

## LABOUR RIGHTS OF DELIVERY WORKERS IN THE CONTEXT OF DIGITAL PLATFORMS

On 12 May 2021 Royal Decree-Law 9/2021, of 11 May, amending the Workers' Statute ("**WS**") to safeguard the labour rights of delivery workers who provide their services through digital platforms ("**RDL 9/2021**"), was published in Spain's Official State Gazette (the "**BOE**").

The new text is the result of the agreement reached on 10 March 2021 by the government and the employees' representatives. Its main objective is to protect delivery workers who provide their services through digital platforms in those cases where the work is done for someone else who takes the business risks and gives direction; characteristics of an employment relationship.

RDL 9/2021 incorporates the doctrine established by the Spanish Supreme Court in Judgment 805/2020, of 25 September – the first decision handed down to unify the doctrine on the issue –, in which the Court concludes that the typical business powers of management, organisation and control over activity (i.e. taking the business risks and giving direction) may in certain cases materialise in different forms than the traditional and can be considered to exist if the company assumes the risks of the activity and benefits from its results, coordinating, organising or controlling the work and holding sanctioning power, even if indirectly or implicitly, through the algorithmic management of the working conditions or the service provided.

The text comprises one article and two final provisions. The single article amends the WS from two perspectives:

### 1. **Presumption of an employment relationship in the context of digital delivery platforms**

Additional provision 23 is added to the WS, by virtue of which there is a presumption of an employment relationship existing where a worker provides remunerated delivery services for any consumer product or good on behalf of employers who exercise the business powers of management, organisation and control directly, indirectly or implicitly, by means of the algorithmic management of the service or working conditions through a digital platform.

The purpose of this new provision is to prevent delivery employees who provide services with a certain flexibility/freedom from falling outside the scope of the WS.

However, the employment relationship of those who carry out such delivery roles is established as a "presumption", i.e. evidence to the contrary is

#### Key issues

- Presumption of an employment relationship in the context of digital delivery platforms
- Disclosure of the algorithms used by the company to the employees' legal representatives

permitted, such that if it is proved that there is no company exercising the powers of management, organisation and control in the terms set forth by the new law, the workers in question would not be protected by the WS.

**2. Disclosure of the algorithms used by the company to the employees' legal representatives**

A new paragraph – paragraph d) – has been added to Article 64.4 WS, introducing a new disclosure obligation for companies, which must now inform the employees' legal representatives of the parameters, rules and instructions used as a basis for the algorithms or artificial intelligence systems that affect how decisions that could affect working conditions and access to and retention of employment are made, including profiling.

In addition to the relevance of this provision to the broadening of the rights to information of employees' legal representatives, the information that the workers have in relation to the performance of their activity through digital platforms will bolster the effectiveness of the new additional provision 23 of the WS.

RDL 9/2021 will enter into force three months after its publication in the BOE, i.e. on 12 August 2021, and thus operators have a margin to make the necessary adaptations to the new legal framework.

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